Approved by the Judicial Council on 1/5/17

# REPORT OF THE JUDICIAL COUNCIL ADVISORY COMMITTEE ON 2016 HB 2639 ENACTING THE EMERGENCY OBSERVATION AND TREATMENT ACT

**JANUARY 5, 2017**

In May 2016, Representative Ramon Gonzalez asked the Judicial Council to study 2016 HB 2639 enacting the emergency observation and treatment act. The bill would allow a licensed crisis recovery center to admit and detain a person for up to 72 hours upon the written application of a law enforcement officer, behavioral health professional, or other reliable individual having contact with the person. The Judicial Council agreed to undertake the study and created a new advisory committee for the purpose.

## COMMITTEE MEMBERSHIP

The members of the Judicial Council Advisory Committee on H.B. 2639 are:

**Phil Martin**, Chair, practicing attorney; Larned

**Kip Elliot**, Disability Rights Center of Kansas; Topeka

**Lael Ewy**, Behavioral Health Systems Specialist at Wichita State University; Wichita

**Hon. Amy Harth**, District Judge in Miami County; Paola

**John H. House**, former attorney for SRS (now KDADS); Topeka

**Nancy Jensen**, Self-advocate; Wichita

**Ed Klumpp**, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association; Tecumseh

**Susan Crain Lewis**, Mental Health America of the Heartland; Kansas City

**Hon. Kate Lynch**, District Judge in Wyandotte County; Kansas City

**Bill Rein**, Superintendent of Larned State Hospital and former Commissioner of Behavioral Health for the Kansas Department on Aging and Disability Services; Larned

**Jane Rhys, Ph.D.**; Topeka

**Ann Sagan**, Shawnee County Public Defender Office; Topeka

**Julie Solomon**, Vice President, Emergency and Stabilization Services at Wyandot, Inc.; Kansas City

**Colin Thomasset**, Association of Community Mental Health Centers of Kansas, Inc.; Topeka

**Dr. John Whipple**, Kansas Psychiatric Society; Lawrence

BACKGROUND

House Bill 2639 would enact the emergency observation and treatment act. The bill provides that a licensed recovery center may admit and detain any person 18 years of age or older who is presented for emergency observation and treatment upon written application by a law enforcement officer, behavioral health professional or other reliable individual having contact with the person. HB 2639, Sec. 5(a). The written application must state facts supporting the applicant's reasonable belief that the person is a mentally ill person subject to involuntary commitment for care and treatment, a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment, or both, and because of their condition is likely to cause harm to self or others if not immediately detained. HB 2639, Sec. 5(b). If this application process is followed, the law enforcement officer, behavioral health professional or other reliable individual is not required to seek an ex parte court order under the Care and Treatment Act for Mentally Ill Persons or the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem. HB 2639, Sec. 7(a).

Under the bill, a licensed recovery center may not refuse to accept a person brought for treatment by a law enforcement officer, so long as the officer's jurisdiction is within the center's service area. HB 2639, Sec. 6. The head of the center must evaluate the person being admitted within four hours and again at appropriate intervals and must discharge the person whenever it is deemed safe for them to return to the community but not later than 72 hours after admission. HB 2639, Sec. 7(b) and (c). If the head of the center believes the person continues to meet the criteria for involuntary commitment and is likely to cause harm to self or others if not detained longer than 72 hours, then the head of the center must file a petition for involuntary commitment and find appropriate placement. HB 2639, Sec. 7(d). If the 72-hour hold period ends on a weekend or holiday, then that period is extended to the next day that is not a weekend or holiday. HB 2639, Sec. 3.

House Bill 2639 was introduced by the House Committee on Corrections and Juvenile Justice. At a hearing before that Committee, proponents of HB 2639 explained that enabling licensed crisis recovery centers to admit patients on an involuntary basis for up to 72 hours would give them the opportunity to stabilize a patient who is experiencing a mental health or substance abuse crisis, in hopes of avoiding a full-blown involuntary commitment proceeding and admission to a state hospital. According to the bill's proponents, there is a need for these types of centers, especially given the current moratorium on admissions to Osawatomie State Hospital. Because of the lack of other options, people in crisis are ending up in jails, emergency rooms, or back out on the street and are not receiving the treatment they need. Under the bill, people can be treated in crisis recovery centers in their own communities where there is better continuity of care. There are currently three facilities in major metropolitan areas that are likely candidates for licensure as crisis recovery centers under the bill; however, there is no mandate for communities to establish these kinds of facilities.

Opponents of HB 2639 focused on the potential lack of due process protections under the bill. They pointed out that the existing Care and Treatment Act already has provisions for emergency warrantless detention, but those provisions trigger court review. By contrast, under HB 2639, no court review is required if a person is released before the end of the 72-hour hold period. Other due process concerns expressed by opponents included the low threshold for detention, including the fact that the likelihood of harm to self or others could be demonstrated by a likelihood of causing substantial damage to another's property. Opponents were also concerned that any "reliable individual" could present a person for emergency observation and treatment without submitting a statement from a medical professional, as is required under current law. Finally, there was concern about the potential conflict of interest when a crisis center both conducts the assessment and acts as the treatment provider.

Rep. Gonzalez, who chairs the House Committee on Corrections and Juvenile Justice, requested that the Judicial Council study HB 2639. Specifically, he asked that the Council "study the language of the bill, particularly how it would fit within the current system and how it

implicates constitutional due process rights, and make recommendations for improvement to the language to address these issues."

METHOD OF STUDY

In forming the Advisory Committee on HB 2639, the Judicial Council invited both proponents and opponents of the bill to participate. As always, the Council's goal was to bring people on all sides of the issue to the table in hopes of facilitating communication and consensus.

The Advisory Committee on HB 2639 held five meetings, one subcommittee meeting, and one conference call during the fall and winter of 2016 to study the bill. Rep. Gonzalez attended part of one meeting and spoke to the Committee about his concerns. He noted that the bill will affect mainly metropolitan areas and stated that he hopes the Committee will consider how smaller communities in rural areas might be helped.

In addition to the bill and Rep. Gonzalez' letter requesting the study (Attachment #1), the Committee reviewed the following materials:

- Minutes from the February 16, 2016, hearing on HB 2639 held by the House Committee on Corrections and Juvenile Justice, and written testimony offered by proponents, opponents and neutral conferees during that hearing.
- The Care and Treatment Act for Mentally Ill Persons, K.S.A. 59-2945, *et seq*.
- The Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem, K.S.A. 59-29b45, *et seq*.
- A chart prepared by Judicial Council staff comparing HB 2639 to the emergency observation and treatment provisions of the Care and Treatment Act for Mentally Ill Persons, K.S.A. 59-2945, *et seq*.
- A chart prepared by the Revisor of Statutes Office comparing HB 2639, the Care and Treatment Act for Mentally Ill Persons, K.S.A. 59-2945, *et seq*., and a similar Texas law.

- An email from Rep. Gonzalez dated October 5, 2016, setting out his concerns about the bill in more detail.

The Committee also reviewed other states' statutes allowing for emergency detention and treatment, a number of which authorize a 72-hour hold. See, *e.g.*, Colorado (C.R.S.A. § 27-65-105); Indiana (I.C. 12-26-5-1); Kentucky (K.R.S. § 202A.031); Massachusetts (M.G.L.A. 123 § 12); Washington (R.C.W.A. 71.05.153 and 71.05.180); and Wisconsin (W.S.A. 51.15). The Committee especially focused on Texas and Arizona law (V.T.C.A. § 573.001, *et seq*., and A.R.S. § 36-524, *et seq*.) because proponents of HB 2639 had modeled the bill on those two states.

In addition, the Committee reviewed case law upholding other states' emergency detention and treatment statutes. See, e.g., *In re Detention of June Johnson*, 179 Wash. App. 529 (2014) (72-hour emergency detention without opportunity for judicial review did not violate procedural due process); *Tracz v. Charter Centennial Peaks Behavioral Health Systems, Inc.*, 9 P.3d 1168 (Colo., App. 2000) (lack of in-person evaluation requirement in statute authorizing involuntary 72-hour hold did not violate due process). See also *Luna v. Van Zandt*, 554 F. Supp. 68 (1982) (confinement in protective custody in excess of 72 hours without notice and an opportunity to be heard was unconstitutional).

DISCUSSION

In reviewing HB 2639, the Committee first focused on areas of agreement. The Committee generally agreed that there is a need for an intermediate option between jail or the emergency room, neither of which are good options for a person experiencing a mental health or substance abuse crisis, and commitment to a state hospital where bed space is limited. The consensus of the Committee was that carving out a process for a short-term detention separate from the involuntary commitment process could be helpful.

While the Committee recognized that HB 2639 attempts to accomplish that goal and was based on good intentions, the Committee also acknowledged the serious due process concerns that had been raised. Involuntary detention, even for the best of reasons, represents a deprivation of liberty. While giving more time to mental health professionals may make it easier for them to assess and attempt to stabilize a patient, it must also be recognized that the patient is losing that time away from their job and family. On the other hand, it was argued that due process may be satisfied by protections other than court oversight or involvement. Also, it was noted that 72-hour hold provisions are not uncommon and have been upheld in other jurisdictions.

Some Committee members were concerned about the potential for unintended consequences and also noted that some provisions of the bill did not appear to accurately reflect the intent of the drafters. But all Committee members expressed a willingness to seek compromise and look for ways to address the due process concerns that had been raised in hopes of reaching consensus on an alternative bill that everyone could support.

Rural Communities

In response to Rep. Gonzalez' question about how rural communities might be helped, the Committee noted that, even if only metropolitan and mid-size communities were able to establish crisis centers initially, that could divert a number of people from the waiting list for the state hospitals so that rural communities would have more access to the state hospitals.

The Committee also noted that, while HB 2639 does not mandate the creation of crisis recovery centers, it does provide an opportunity for communities to create them. There are existing facilities in many communities that might choose to license as crisis centers. Communities will need to decide whether this would be a good option for them.

Alternative legislation

The Committee ultimately agreed to recommend a number of changes to HB 2639 to address the concerns that were raised by the bill's opponents. The Committee drafted a new bill, which is attached at the end of this report.

As a preliminary matter, the Committee discussed whether it would be better to draft a freestanding act or simply amend the existing Care and Treatment Acts. A majority of the Committee ultimately agreed to proceed with a freestanding act. The majority believed that a freestanding act would highlight how crisis centers are a new option and would be clearer and easier to understand, especially since only a few counties will initially be able to create these centers. Another advantage of keeping the bill as a freestanding act is that it doesn't require a law enforcement officer to decide which Care and Treatment Act applies, in other words, to determine whether a person is suffering from a mental health crisis or an alcohol or substance abuse related crisis. Often a person in crisis may be suffering from both.

The remainder of this report describes how the Committee's proposed legislation differs from HB 2639.

Naming Conventions and Definitions

The Committee agreed to change the name of the Act to the "Crisis Intervention Act" and to change the term "licensed crisis recovery center" to "crisis intervention center." The Committee also agreed to incorporate certified peer specialists into the definition of these centers. The Committee also added a number of definitions from the current Care and Treatment Acts, including definitions of "licensed addiction counselor," "physician," "psychologist," and "treatment."

72-hour Detention Period

One of the main due process concerns of HB 2639's opponents was the 72-hour detention period with no judicial oversight. Several Committee members found this provision problematic, especially when read in conjunction with the day-counting provision of Section 3, which extends the 72-hour period beyond that time if the end of the period falls on a weekend or holiday. Then, if a petition for an ex parte order under the Care and Treatment Act is filed, that restarts the clock under that Act, and the total length of time a person could be detained before a court hearing could be lengthy.

Also, some Committee members read these provisions to allow a treatment facility to hold a person beyond 72 hours if the 72-hour period ends on a weekend or holiday without making a decision about whether a petition for involuntary commitment needs to be filed. It appears this was not the intent of the bill, but it can be read that way.

Information was presented to the Committee that clinicians believe giving them 72 hours to stabilize a patient in hopes of avoiding involuntary commitment to a state hospital is reasonable and necessary. Some Committee members with lived experience shared this belief. The problem is, what happens if a person continues to meet criteria for involuntary commitment at the end of that 72-hour period, but the court is not open to accept the filing of a petition at that time? In that case, there must be a provision allowing the person to be held until the next business day that the court is open and a petition can be filed.

It was noted that the day-counting provision in Section 3 is the same one used in the Care and Treatment Act and in the Civil Code, but it is confusing in the context of the emergency observation and treatment act because time periods under the bill are stated in terms of hours rather than days. The Committee determined that it would be more helpful to use language similar to the language used in the Care and Treatment Act, which requires action to be taken by the end of the next business day.

Evaluation and Judicial Review

In addition to clarifying what happens at the end of the 72-hour detention period, the Committee added provisions about how often a person must be evaluated during the 72-hour period and by whom and requiring court review if a person continued to be detained at 48 hours. Under the Committee's proposed legislation, the head of the crisis center would be required to evaluate the admitted person within 4 hours, a separate mental health professional would be required to evaluate the person within 23 hours, and again within 48 hours. If the admitted person still meets criteria for detention at 48 hours, the head of the crisis intervention center would be required to submit an affidavit to the court for review. This review process would be similar to the process used for search warrants and might be done electronically. Then, if the person still meets criteria for detention at 72 hours, a petition for involuntary commitment under the care and treatment act would need to be filed.

These provisions represent a compromise position. Some Committee members would have preferred no judicial review, while others would have preferred judicial review to occur earlier than 48 hours, such as at 24 or 30 hours.

Who May Present a Person for Emergency Observation and Treatment

While the Committee initially discussed eliminating provisions that would allow any "reliable individual" to present a person for emergency observation and treatment, the Committee ultimately concluded that it was important to allow an individual other than a law enforcement officer to bring a person in crisis to an intervention center. Again, this represents a compromise position, as some Committee members would have preferred to limit who can present a person for emergency observation and treatment, while others would have preferred to include a provision allowing anyone to apply to the court for an order requiring law enforcement to pick up a person and transport them to a crisis intervention center. The additional protections of mandatory evaluations and judicial review at 48 hours also contributed to the Committee's compromise.

## Standard for Detention

The Committee also discussed whether the standard for detaining a person for emergency observation and treatment under the new act should be the same as the standard for involuntary commitment under the Care and Treatment Acts. While the drafters of the bill may not have intended to create a different standard, the bill uses an "imminent harm" standard which is different from the current Care and Treatment Acts. Some Committee members would prefer that the definition of "likely to cause harm to self or others" not include "substantial damage to property"; however, that definition comes from the current Care and Treatment Acts. A majority of the Committee agreed it would not make sense to have law enforcement officers applying two different standards depending upon the location where the person will be taken for treatment.

## Other Changes

The Committee added a number of provisions that parallel similar provisions in the current Care and Treatment Acts. These include provisions regarding voluntary patients; provisions requiring the head of the crisis intervention center to advise the patient of his or her rights immediately upon admission; provisions regarding the use of forced medication and restraints and seclusion; and a provision regarding the confidentiality of records.

The Committee also added provisions requiring a behavioral mental health professional to ask whether a person has a wellness recovery action plan (WRAP) or other psychiatric advance directive. Also, the written application from law enforcement should include the same information, if known.

## Reporting Requirements

While the Committee did not include any specific reporting requirements in its proposed bill, it does recommend that KDADS gather information from crisis intervention centers so that

their efficacy can be reviewed in the future. Attachment #2 contains a list of the kinds of data that the Committee recommends be gathered and reported.

## RECOMMENDATION

The Committee recommends the attached proposed legislation as an alternative to HB 2639.

1 New Section 1. The provisions of sections 1 through 16, and
2 amendments thereto, shall be known and may be cited as the
3 crisis intervention act.
4
5 New Sec. 2. When used in the crisis intervention act:
6 (a) "Behavioral health professional" includes a physician,
7 psychologist, qualified mental health professional or licensed
8 addiction counselor.
9 (b) "Head of a crisis intervention center" means the
10 administrative director of a crisis intervention center or a
11 behavioral health professional designated by such person.
12 (c) "Law enforcement officer" shall have the meaning ascribed to
13 it in K.S.A. 22-2202, and amendments thereto.
14 (d) "Licensed addiction counselor" shall have the meaning
15 ascribed to it in K.S.A. 59-29b46(d), (e), or (f), and amendments
16 thereto.
17 (e) "Crisis intervention center" means any entity licensed by the
18 Kansas department for aging and disability services that is open
19 24 hours a day, 365 days a year, equipped to serve voluntary and
20 involuntary individuals in crisis due to mental illness, substance
21 abuse or a co-occurring condition, and which uses certified peer
22 specialists.
23 (f) "Crisis intervention center service area" means the counties to
24 which the crisis intervention center has agreed to provide service.
25 (g) "Physician" means a person licensed to practice medicine and
26 surgery as provided for in the Kansas healing arts act or a person
27 who is employed by a state psychiatric hospital or by an agency of
28 the United States and who is authorized by law to practice medicine
29 and surgery within that hospital or agency.
30 (h) "Psychologist" means a licensed psychologist, as defined by
31 K.S.A. 74-5302, and amendments thereto.
32 (i) "Qualified mental health professional" shall have the meaning
33 ascribed to it in K.S.A. 59-2946(j), and amendments thereto.
34 (j) "Treatment" means any service intended to promote the mental
35 health of the patient and rendered by a qualified professional,
36 licensed or certified by the state to provide such service as an
37 independent practitioner or under the supervision of such
38 practitioner; and the broad range of emergency, outpatient,
39 intermediate and inpatient services and care, including diagnostic
40 evaluation, medical, psychiatric, psychological and social service

1 care, vocational rehabilitation and career counseling, which may be
2 extended to persons with an alcohol or substance abuse problem.
3 (k) "Domestic partner" means a person with whom another person
4 maintains a household and an intimate relationship, other than a
5 person to whom he or she is legally married.
6
7 New Sec. 3. (a) The fact that a person has been detained for
8 emergency observation and treatment under this act shall not be
9 construed to mean that such person shall have lost any civil right
10 they otherwise would have as a resident or citizen, any property
11 right or their legal capacity, except as may be specified within any
12 court order or as otherwise limited by the provisions of this act or
13 the reasonable rules and regulations which the head of a crisis
14 intervention center may, for good cause, find necessary to
15 make for the orderly operations of that facility. No person held in
16 custody under the provisions of this act shall be denied the right to
17 apply for a writ of habeas corpus.
18 (b) There shall be no implication or presumption that a patient
19 within the terms of this act is for that reason alone a person in need
20 of a guardian or a conservator, or both, as provided in K.S.A. 59-
21 3050 through 59-3097, and amendments thereto.
22
23 New Sec 4.
24 Nothing in this act shall be construed to prohibit a person with
25 capacity to do so from making an application for admission as a
26 voluntary patient to a crisis intervention center. Any person
27 desiring to do so shall be afforded an opportunity to consult with
28 their attorney prior to making any such application. If the head of
29 the crisis intervention center accepts the application and admits the
30 person as a voluntary patient, then the head of the crisis
31 intervention center shall notify, in writing, the person's legal
32 guardian, if known.
33
34 New Sec. 5.
35 (a) Any law enforcement officer who takes a person into custody
36 pursuant to K.S.A. 59-2953, and amendments thereto, or K.S.A.
37 59-29b53, and amendments thereto, may transport the person to a

crisis intervention center if the officer is in a crisis intervention center service area. The crisis intervention center shall not refuse to accept any person for evaluation if such person is brought to the crisis intervention center by a law enforcement officer and such officer's jurisdiction is in the crisis intervention center's service area. If a law enforcement officer is not in a crisis intervention center service area or chooses not to transport the person to a crisis intervention center, then the officer shall follow the procedures set forth in the care and treatment act for mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse problem.

New Sec. 6. (a) A crisis intervention center may admit and detain any person 18 years of age or older who is presented for e mergency observation and treatment upon the written application of a law enforcement officer.

(b) An emergency observation and treatment application shall be made on a form set forth by the secretary for aging and disability services or a locally-developed form approved by the secretary. The original application shall be kept in the regular course of business with the law enforcement agency, and a copy shall be provided to the crisis intervention center and to the patient. The application shall state:

(1) The name and address of the person sought to be admitted, if known;

(2) the name and address of the person's spouse, domestic partner, or nearest relative, if known;

(3) the applicant's belief that the person may be a mentally ill person subject to involuntary commitment as defined in K.S.A. 59-2946, and amendments thereto, a person with an alcohol or substance abuse problem subject to involuntary commitment as defined in K.S.A. 59-29b46, and amendments thereto, or a person with co-occurring conditions, and because of such mental illness, alcohol or substance abuse problem or co-occurring conditions is likely to cause harm to self or others if not immediately detained;

(4) the factual circumstances in support of that belief and the factual circumstances under which the person was taken into

custody including any known pending criminal charges; and

(5) whether the person has a wellness recovery action plan or psychiatric advance directive, if known.

New Sec. 7. (a) A crisis intervention center may evaluate, admit and detain any person 18 years of age or older who is presented for emergency observation and treatment upon the written application of any adult individual.

(b) An emergency observation and treatment application shall be made on a form set forth by the secretary for aging and disability services or a locally-developed form approved by the secretary. The original application shall be kept by the applicant, and a copy shall be provided to the crisis intervention center and to the patient. The application shall state:

(1) The name and address of the person sought to be admitted, if known;

(2) the name and address of the person's spouse, domestic partner, or nearest relative, if known;

(3) the applicant's belief that the person may be a mentally ill person subject to involuntary commitment as defined in K.S.A. 59-2946, and amendments thereto, a person with an alcohol or substance abuse problem subject to involuntary commitment as defined in K.S.A. 59-29b46, and amendments thereto, or a person with co-occurring conditions, and because of such mental illness, alcohol or substance abuse problem or co-occurring conditions is likely to cause harm to self or others if not immediately detained;

(4) the factual circumstances in support of that belief and the factual circumstances under which the person was presented to the crisis intervention center;

(5) any known pending criminal charges;

(6) any known prior psychiatric, medical or substance use history; and

(7) whether the person has a wellness recovery action plan or psychiatric advance directive, if known.

1
2
3 New Sec. 8.
4 (a) The head of the crisis intervention center shall evaluate a
5 person admitted pursuant to this act within four hours of
6 admission to determine whether the person is likely to be a
7 mentally ill person subject to involuntary commitment for care
8 and treatment, as defined in K.S.A. 59-2946, and amendments
9 thereto, is a person with an alcohol or substance abuse problem
10 subject to involuntary commitment for care and treatment, as
11 defined in K.S.A. 59-29b46, and amendments thereto, or is a
12 person with co-occurring conditions, and because of such mental
13 illness, alcohol or substance abuse problem or co-occurring
14 conditions is likely to cause harm to self or others if allowed to
15 remain at liberty.
16 The head of the crisis intervention center shall inquire whether the
17 person has a wellness recovery action plan or psychiatric advance
18 directive.
19 (b) A behavioral health professional shall evaluate a person
20 admitted pursuant to this act not later than 23 hours after
21 admission and again not later than 48 hours after admission to
22 determine if the person continues to meet the criteria described in
23 subsection (a). The 23-hour evaluation must be performed by a
24 different behavioral health professional from the one who
25 conducted the initial evaluation under subsection (a).
26 (c) Not later than 48 hours after admission, if the head of the crisis
27 intervention center determines that the person continues to meet
28 the criteria described in subsection (a), then the head of the crisis
29 intervention center shall file an affidavit to that effect for review
30 by the district court in the county where the crisis intervention
31 center is located. The affidavit shall include or be accompanied
32 by the written application for emergency observation and
33 treatment, information about the person's original admission to
34 the crisis intervention center, the care and treatment provided to
35 the person, and the factual circumstances in support of the
36 evaluating professional's opinion that the person meets the criteria
37 described in subsection (a). After reviewing the affidavit and any
38 accompanying documentation, the court shall order release of the
39 person or order that the person may continue to be detained and

1 treated at the crisis intervention center, subject to subsections (d)
2 and (e).
3 (d) The head of the crisis intervention center shall discharge a
4 person admitted pursuant to this act at any time the person no
5 longer meets the criteria described in subsection (a) and, except
6 as provided in subsection (e), not later than 72 hours after
7 admission. Upon discharge, the crisis intervention center shall
8 make reasonable accommodations for the person's transportation.
9 (e) Not later than 72 hours after admission, if the head of the
10 crisis intervention center determines that a person admitted
11 pursuant to this act continues to meet the criteria described in
12 subsection (a), then the head of the crisis intervention center
13 shall immediately file the petition provided for in K.S.A.
14 59-2957, and amendments thereto, or K.S.A. 59-29b57, and
15 amendments thereto, and shall find appropriate placement for the
16 individual, including, but not limited to, community hospitals
17 equipped to take involuntary commitments or the designated state
18 hospital. If the 72-hour period ends after 5 p.m., then the petition
19 must be filed by the close of business of the first day thereafter
20 that the district court is open for the transaction of business.
21
22 New Section 9.
23 (a) Whenever any person is involuntarily admitted to or detained
24 at a crisis intervention center pursuant to this act, the head of the
25 crisis intervention center shall:
26 (1) Immediately advise the person in custody that such person is
27 entitled to immediately contact the person's legal counsel, legal
28 guardian, personal physician or psychologist, minister of religion,
29 including a Christian Science practitioner, or immediate family as
30 defined in subsection (b) or any combination thereof. If the person
31 desires to make such contact, the head of the crisis intervention
32 center shall make available to the person reasonable means for
33 making such immediate communication;
34 (2) provide notice of the person's involuntary admission
35 including a copy of the document authorizing the involuntary
36 admission to that person's attorney or legal guardian, immediately
37 upon learning of the existence and whereabouts of such attorney
38 or legal guardian, unless that attorney or legal guardian was the

1 person who signed the application resulting in the patient's
2 admission. If authorized by the patient pursuant to K.S.A. 65-
3 5601 through 65-5605 and amendments thereto, the head of the
4 crisis intervention center also shall provide notice to the patient's
5 immediate family, as defined in subsection (b), immediately upon
6 learning of the existence and whereabouts of such family, unless
7 the family member to be notified was the person who signed the
8 application resulting in the patient's admission; and

9 (3) immediately advise the person in custody of such person's
10 rights provided for in Section 14, and amendments thereto.

11 (b) "Immediate family" means the spouse, domestic partner,
12 adult child or children, parent or parents, and sibling or siblings,
13 or any combination thereof.

14

15 New Section 10.

16 (a) Medications and other treatments shall be prescribed, ordered
17 and administered only in conformity with accepted clinical
18 practice. Medication shall be administered only upon the written
19 order of a physician or upon a verbal order noted in the patient's
20 medical records and subsequently signed by the physician. The
21 attending physician shall review regularly the drug regimen of
22 each patient under the physician's care and shall monitor any
23 symptoms of harmful side effects. Prescriptions for psychotropic
24 medications shall be written with a termination date not exceeding
25 30 days thereafter but may be renewed.

26 (b) During the course of treatment the responsible physician or
27 psychologist or such person's designee shall reasonably consult
28 with the patient or the patient's legal guardian and give
29 consideration to the views the patient or legal guardian expresses
30 concerning treatment and any alternatives, including views
31 expressed in any wellness recovery action plan or psychiatric
32 advance directive. No medication or other treatment may be
33 administered to any voluntary patient without the patient's consent
34 or the consent of such patient's legal guardian.

35 (c) Consent for medical or surgical treatments not intended
36 primarily to treat a patient's mental disorder shall be obtained in
37 accordance with applicable law.

(d) Whenever a patient receiving treatment pursuant to Section 5 and amendments thereto, objects to taking any medication prescribed for psychiatric treatment, and after full explanation of the benefits and risks of such medication continues their objection, the medication may be administered over the patient's objection; except that the objection shall be recorded in the patient's medical record.

(e) In no case shall experimental medication be administered without the patient's consent, which consent shall be obtained in accordance with subsection (a)(6) of Section 10 and amendments thereto.

New Section 11.

(a) Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the crisis intervention center or a physician or psychologist to be necessary to prevent immediate substantial bodily injury to the patient or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. Restraint or seclusion shall never be used as a punishment or for the convenience of staff. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent such injury to the patient or others, and the use of restraint or seclusion in a crisis intervention center shall not exceed 3 hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12:00 midnight and 8:00 a.m. When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or psychologist, which shall be no less than once per each 15 minutes. The head of the crisis intervention center or a physician or psychologist shall sign a statement explaining the treatment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the patient.

(b) The provisions of subsection (a) shall not prevent, for a period not exceeding 2 hours without review and approval thereof by the head of the crisis intervention center or a physician or psychologist:

1 (1) the use of such restraints as necessary for a patient who is
2 likely to cause physical injury to self or others without the use of
3 such restraints;

4 (2) the use of restraints when needed primarily for examination or
5 treatment or to insure the healing process; or

6 (3) the use of seclusion as part of a treatment methodology that
7 calls for time out when the patient is refusing to participate in a
8 treatment or has become disruptive of a treatment process.

9 (c) "Restraints" means the application of any devices, other than
10 human force alone, to any part of the body of the patient for the
11 purpose of preventing the patient from causing injury to self or
12 others.

13 (d) "Seclusion" means the placement of a patient, alone, in a
14 room, where the patient's freedom to leave is restricted and where
15 the patient is not under continuous observation.

16

17 New Sec. 12.

18 (a) Every patient being treated in any crisis intervention
19 center, in addition to all other rights preserved by the provisions
20 of the crisis intervention act, shall have the following rights:
21 (1) To wear the patient's own clothes, keep and use the patient's
22 own personal possessions, including toilet articles, and keep and
23 be allowed to spend the patient's own money;
24 (2) to communicate by all reasonable means with a reasonable
25 number of persons at reasonable hours of the day and night,
26 including both to make and receive confidential telephone calls,
27 and by letter, both to mail and receive unopened correspondence,
28 except that if the head of the crisis intervention center should
29 deny a patient's right to mail or to receive unopened
30 correspondence under the provisions of subsection (b), such
31 correspondence shall be opened and examined in the presence of
32 the patient;
33 (3) to conjugal visits if facilities are available for such visits;
34 (4) to receive visitors in reasonable numbers and at reasonable
35 times each day;
36 (5) to refuse involuntary labor other than the housekeeping
37 of the patient's own bedroom and bathroom, provided that

1 nothing herein shall be construed so as to prohibit a patient from
2 performing labor as a part of a therapeutic program to which the
3 patient has given their written consent and for which the patient
4 receives reasonable compensation;
5 (6) not to be subject to such procedures as psychosurgery,
6 electroshock therapy, experimental medication, aversion therapy
7 or hazardous treatment procedures without the written consent of
8 the patient;
9 (7) to have explained, the nature of all medications
10 prescribed, the reason for the prescription and the most common
11 side effects and, if requested, the nature of any other treatments
12 ordered;
13 (8) to communicate by letter with the secretary for aging and
14 disability services, the head of the crisis intervention center and
15 any court, attorney, physician, psychologist, qualified mental
16 health professional, licensed addiction counselor or minister of
17 religion, including a Christian Science practitioner. All such
18 communications shall be forwarded at once to the addressee
19 without examination and communications from such persons shall
20 be delivered to the patient without examination;
21 (9) to contact or consult privately with the patient's physician or
22 psychologist, qualified mental health professional, licensed
23 addiction counselor, minister of religion, including a Christian
24 Science practitioner, legal guardian or attorney at any time;
25 (10) to be visited by the patient's physician, psychologist,
26 qualified mental health professional, licensed addiction counselor,
27 minister of religion, including a Christian Science practitioner,
28 legal guardian or attorney at any time;
29 (11) to be informed orally and in writing of such patient's rights
30 under this section upon admission to a crisis intervention center;
31 and
32 (12) to be treated humanely, consistent with generally accepted
33 ethics and practices.
34 (b) The head of the crisis intervention center may, for good
35 cause only, restrict a patient's rights under this section, except
36 that the rights enumerated in subsection (a)(5) through (12),
37 and the right to mail any correspondence which does not violate
38 postal regulations, shall not be restricted by the head of the
39 crisis intervention center under any circumstances.

Each crisis intervention center shall adopt regulations governing the conduct of all patients being treated in such crisis intervention center, which regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and copies of such statement shall be made available to the patient, and to the patient's attorney. In addition, notice of any restriction of a patient's rights shall be communicated to the patient in a timely fashion.

(c) Any person willfully depriving any patient of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b) or in accordance with a properly obtained court order, shall be guilty of a class C misdemeanor.

New Sec. 13.

Any district court records, and any treatment records or medical records of any person who has been admitted to a crisis intervention center pursuant to this act that are in the possession of any district court or crisis intervention center treatment facility shall be privileged and shall not be disclosed except as provided under K.S.A. 59-2979.

New Sec. 14.

Any person or law enforcement agency, governing body, crisis intervention center, community mental health center or personnel acting in good faith and without negligence shall be free from all liability, civil or criminal, which might arise out of acting or declining to act pursuant to the crisis intervention act. Any person who, for a corrupt consideration or advantage, or through malice, shall make or join in making or advise the making of any false petition, report or order provided for in the crisis intervention act shall be guilty of a class A misdemeanor.

## CONFORMING AMENDMENTS TO EXISTING KANSAS STATUTES

Sec. 15. K.S.A. 39-2001 is hereby amended to read as follows: 39-2001. The purpose of this act is the development, establishment and enforcement of standards:

(a) For the care, treatment, health, safety, welfare and comfort of individuals residing in or receiving treatment or services provided by residential care facilities, residential and day support facilities, private and public psychiatric hospitals, psychiatric residential treatment facilities, community mental health centers, *crisis intervention centers*, and providers of other disability services licensed by the secretary for aging and disability services; and

(b) for the construction, maintenance or operation, or any combination thereof, of facilities, hospitals, centers and providers of services that will promote safe and adequate accommodation, care and treatment of such individuals.

Sec. 16. K.S.A. 39-2002 is hereby amended to read as follows: 39-2002. As used in this act, the following terms shall have the meanings ascribed to them in this section:

(a) "Center" means a community mental health center *or a crisis intervention center.*

(b) "Community mental health center" means a center organized pursuant to article 40 of chapter 19 of the Kansas Statutes Annotated, and amendments thereto, or a mental health clinic organized pursuant to article 2 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

1 *(c) "Crisis intervention center" means an entity that is open 24*
2 *hours a day, 365 days a year, equipped to serve voluntary and*
3 *involuntary individuals in crisis due to mental illness, substance*
4 *abuse or a co-occurring condition, and which uses certified peer*
5 *specialists.*

6 (~~c~~*d*) "Department" means the department for aging and disability
7 services.

8 (~~d~~*e*) "Facility" means any place other than a center or hospital that
9 meets the requirements as set forth by regulations created and
10 adopted by the secretary, where individuals reside and receive
11 treatment or services provided by a person or entity licensed under
12 this act.

13 (~~e~~*f*) "Hospital" means a psychiatric hospital.

14 (~~f~~*g*) "Individual" means a person who is the recipient of behavioral
15 health, intellectual disabilities, developmental disabilities or other
16 disability services as set forth in this act.

17 (~~g~~*h*) "Licensee" means one or more persons or entities licensed by
18 the secretary under this act.

19 (~~h~~*i*) "Licensing agency" means the secretary for aging and disability
20 services.

21 (~~i~~*j*) "Other disabilities" means any condition for which individuals
22 receive home and community based waiver services.

23 (~~j~~*k*) "Provider" means a person, partnership or corporation
24 employing or contracting with appropriately credentialed persons
25 that provide behavioral health, excluding substance use disorder
26 services for purposes of this act, intellectual disability,
27 developmental disability or other disability services in accordance
28 with the requirements as set forth by rules and regulations created
29 and adopted by the secretary.

1 (~~k~~*l*) "Psychiatric hospital" means an institution, excluding state
2 institutions as defined in K.S.A. 76-12a01, and amendments thereto,
3 that is primarily engaged in providing services, by and under the
4 supervision of qualified professionals, for the diagnosis and
5 treatment of mentally ill individuals, and the institution meets the
6 licensing requirements as set forth by rules and regulations created
7 and adopted by the secretary.

8 (~~l~~*m*) "Psychiatric residential treatment facility" means any non-
9 hospital facility with a provider agreement with the licensing agency
10 to provide the inpatient services for individuals under the age of 21
11 who will receive highly structured, intensive treatment for which the
12 licensee meets the requirements as set forth by regulations created
13 and adopted by the secretary.

14 (~~m~~*n*) "Residential care facility" means any place or facility, or a
15 contiguous portion of a place or facility, providing services for two
16 or more individuals not related within the third degree of
17 relationship to the administrator, provider or owner by blood or
18 marriage and who, by choice or due to functional impairments, may
19 need personal care and supervised nursing care to compensate for
20 activities of daily living limitations, and which place or facility
21 includes individual living units and provides or coordinates personal
22 care or supervised nursing care available on a 24-hour, seven-days-
23 a-week basis for the support of an individual's independence,
24 including crisis residential care facilities.

25 (~~n~~*o*) "Secretary" means the secretary for aging and disability
26 services.

27 (~~o~~*p*) "Services" means the following types of behavioral health,
28 intellectual disability, developmental disability and other disability
29 services, including, but not limited to: Residential supports, day
30 supports, care coordination, case management, workshops, sheltered
31 domiciles, education, therapeutic services, assessments and

1 evaluations, diagnostic care, medicinal support and rehabilitative
2 services.

3 Sec. 17. K.S.A. 39-2003 is hereby amended to read as follows: 39-
4 2003. (a) In addition to the authority, powers and duties otherwise
5 provided by law, the secretary shall have the following authority,
6 powers and duties to:

7 (1) Enforce the laws relating to the hospitalization of mentally ill
8 individuals of this state in a psychiatric hospital and the diagnosis,
9 care, training or treatment of individuals receiving services through
10 community mental health centers, *crisis intervention centers,*
11 psychiatric residential treatment facilities for individuals with
12 mental illness, residential care facilities or other facilities and
13 services for individuals with mental illness, intellectual disabilities,
14 developmental disabilities or other disabilities.

15 (2) Inspect, license, certify or accredit centers, facilities, hospitals
16 and providers for individuals with mental illness, intellectual
17 disabilities, developmental disabilities or other disabilities pursuant
18 to federal legislation, and to deny, suspend or revoke a license
19 granted for causes shown.

20 (3) Set standards for centers, facilities, hospitals and providers for
21 individuals with mental illness, intellectual disabilities,
22 developmental disabilities or other disabilities pursuant to federal
23 legislation.

24 (4) Set standards for, inspect and license all providers and facilities
25 for individuals with mental illness, intellectual disabilities,
26 developmental disabilities or other disabilities receiving assistance
27 through the Kansas department for aging and disability services
28 which receive or have received after June 30, 1967, any state or
29 federal funds, or facilities where individuals with mental illness,
30 intellectual disabilities or developmental disabilities reside who
31 require supervision or require limited assistance with the taking of

1 medication. The secretary may adopt rules and regulations that
2 allow the facility to assist an individual with the taking of
3 medication when the medication is in a labeled container dispensed
4 by a pharmacist.

5 (5) Enter into contracts necessary or incidental to the performance
6 of the secretary's duties and the execution of the secretary's powers.

7 (6) Solicit and accept for use any gift of money or property, real or
8 personal, made by will or otherwise, and any grant of money,
9 services or property from the federal government, the state or any
10 political subdivision thereof or any private source and do all things
11 necessary to cooperate with the federal government or any of its
12 agencies in making an application for any grant.

13 (7) Administer or supervise the administration of the provisions
14 relating to individuals with mental illness, intellectual disabilities,
15 developmental disabilities or other disabilities pursuant to federal
16 legislation and regulations.

17 (8) Coordinate activities and cooperate with treatment providers or
18 other facilities for those with mental illness, intellectual disabilities,
19 developmental disabilities or other disabilities pursuant to federal
20 legislation and regulations in this and other states for the treatment
21 of such individuals and for the common advancement of these
22 programs and facilities.

23 (9) Keep records, gather relevant statistics, and make and
24 disseminate analyses of the same.

25 (10) Do other acts and things necessary to execute the authority
26 expressly granted to the secretary.

27 (b) Notwithstanding the existence or pursuit of any other remedy,
28 the secretary for aging and disability services, as the licensing
29 agency, in the manner provided by the Kansas judicial review act,
30 may maintain an action in the name of the state of Kansas for an

1 injunction against any person or facility to restrain or prevent the
2 operation of a residential care facility, crisis residential care facility,
3 private or public psychiatric hospital, psychiatric residential
4 treatment facility, provider of services, community mental health
5 center, *crisis intervention center,* or any other facility providing
6 services to individuals without a license.

7 (c) Reports and information shall be furnished to the secretary by
8 the superintendents, executive or other administrative officers of all
9 psychiatric hospitals, community mental health centers, *crisis*
10 *intervention centers,* or facilities serving individuals with
11 intellectual disabilities or developmental disabilities and facilities
12 serving other disabilities receiving assistance through the Kansas
13 department for aging and disability services.

14

15 Sec. 18. K.S.A. 59-2953 is hereby amended to read as follows: 59-
16 2953. (a) Any law enforcement officer who has a reasonable belief
17 formed upon investigation that a person is a mentally ill person
18 and because of such person's mental illness is likely to cause
19 harm to self or others if allowed to remain at liberty may take the
20 person into custody without a warrant. *If the officer is in a crisis*
21 *intervention center service area, as defined in section 2, and*
22 *amendments thereto, the officer may transport the person to such*
23 *crisis intervention center. If the officer is not in a crisis intervention*
24 *center service area, as defined in section 2, and amendments*
25 *thereto, or does not choose to transport the person to such crisis*
26 *intervention center, then* the officer shall transport the person to a
27 treatment facility where the person shall be examined by a physician
28 or psychologist on duty at the treatment facility, except that no
29 person shall be transported to a state psychiatric hospital for
30 examination, unless a written statement from a qualified mental
31 health professional authorizing such an evaluation at a state
32 psychiatric hospital has been obtained. If no physician or

1 psychologist is on duty at the time the person is transported to the
2 treatment facility, the person shall be examined within a
3 reasonable time not to exceed 17 hours. If a written statement is
4 made by the physician or psychologist at the treatment facility
5 that after preliminary examination the physician or psychologist
6 believes the person likely to be a mentally ill person subject to
7 involuntary commitment for care and treatment and because of the
8 person's mental illness is likely to cause harm to self or others if
9 allowed to remain at liberty, and if the treatment facility is willing
10 to admit the person, the law enforcement officer shall present to the
11 treatment facility the application provided for in ~~subsection (b) of~~
12 K.S.A. 59-2954*(b),* and amendments thereto. If the physician or
13 psychologist on duty at the treatment facility does not believe the
14 person likely to be a mentally ill person subject to involuntary
15 commitment for care and treatment the law enforcement officer
16 shall return the person to the place where the person was taken
17 into custody and release the person at that place or at another place
18 in the same community as requested by the person or if the law
19 enforcement officer believes that it is not in the best interests of
20 the person or the person's family or the general public for the
21 person to be returned to the place the person was taken into custody,
22 then the person shall be released at another place the law
23 enforcement officer believes to be appropriate under the
24 circumstances. The person may request to be released immediately
25 after the examination, in which case the law enforcement officer
26 shall immediately release the person, unless the law enforcement
27 officer believes it is in the best interests of the person or the person's
28 family or the general public that the person be taken elsewhere for
29 release.

30 (b) If the physician or psychologist on duty at the treatment
31 facility states that, in the physician's or psychologist's opinion, the
32 person is likely to be a mentally ill person subject to involuntary
33 commitment for care and treatment but the treatment facility is
34 unwilling to admit the person, the treatment facility shall

nevertheless provide a suitable place at which the person may be detained by the law enforcement officer. If a law enforcement officer detains a person pursuant to this subsection, the law enforcement officer shall file the petition provided for in ~~subsection (a) of~~ K.S.A. 59-2957*(a),* and amendments thereto, by the close of business of the first day that the district court is open for the transaction of business or shall release the person. No person shall be detained by a law enforcement officer pursuant to this subsection in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

Sec. 19. K.S.A. 2015 Supp. 59-2978 is hereby amended to read as follows: 59-2978. (a) Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear the patient's own clothes, keep and use the patient's own personal possessions including toilet articles and keep and be allowed to spend the patient's own money;

(2) to communicate by all reasonable means with a reasonable number of persons at reasonable hours of the day and night, including both to make and receive confidential telephone calls, and by letter, both to mail and receive unopened correspondence, except that if the head of the treatment facility should deny a patient's right to mail or to receive unopened correspondence under the provisions of subsection (b), such correspondence shall be opened and examined in the presence of the patient;

(3) to conjugal visits if facilities are available for such visits;

(4) to receive visitors in reasonable numbers and at reasonable times each day;

(5) to refuse involuntary labor other than the housekeeping of the patient's own bedroom and bathroom, provided that nothing herein shall be construed so as to prohibit a patient from performing labor as a part of a therapeutic program to which the patient has given their written consent and for which the patient receives reasonable compensation;

(6) not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient or the written consent of a parent or legal guardian,

if such patient is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose;

(7) to have explained, the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered;

(8) to communicate by letter with the secretary for aging and disability services, the head of the treatment facility and any court, attorney, physician, psychologist, *qualified mental health professional* or minister of religion, including a Christian Science practitioner. All such communications shall be forwarded at once to the addressee without examination and communications from such persons shall be delivered to the patient without examination;

(9) to contact or consult privately with the patient's physician or psychologist, *qualified mental health professional,* minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(10) to be visited by the patient's physician, psychologist, *qualified mental health professional,* minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(11) to be informed orally and in writing of their rights under this section upon admission to a treatment facility; and

(12) to be treated humanely consistent with generally accepted ethics and practices.

(b) The head of the treatment facility may, for good cause only, restrict a patient's rights under this section, except that the rights enumerated in subsections (a)(5) through (a)(12), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the head of the treatment facility under any circumstances. Each treatment facility shall adopt regulations governing the conduct of all patients being treated in such treatment facility, which regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and

1 copies of such statement shall be made available to the patient
2 or to the parent, or legal guardian if such patient is a minor or has
3 a legal guardian, and to the patient's attorney. In addition, notice
4 of any restriction of a patient's rights shall be communicated to
5 the patient in a timely fashion.
6 (c) Any person willfully depriving any patient of the rights
7 protected by this section, except for the restriction of such rights
8 in accordance with the provisions of subsection (b) or in
9 accordance with a properly obtained court order, shall be guilty
10 of a class C misdemeanor.
11 (d) The provisions of this section do not apply to persons civilly
12 committed to a treatment facility as a sexually violent predator
13 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.
14
15 Sec. 20. K.S.A. 59-2980 is hereby amended to read as follows:
16 59-2980. Any person *or law enforcement agency, governing body,*
17 *community mental health center or personnel* acting in good faith
18 and without negligence shall be free from all liability, civil or
19 criminal, which might arise out of acting *or declining to act*
20 pursuant to this act. Any person who for a corrupt consideration
21 or advantage, or through malice, shall make or join in making or
22 advise the making of any false petition, report or order provided
23 for in this act shall be guilty of a class A misdemeanor.
24
25 Sec. 21. K.S.A. 59-29b53 is hereby amended to read as follows:
26 59-29b53. (a) Any law enforcement officer who has a reasonable
27 belief formed upon investigation that a person may be a person
28 with an alcohol or substance abuse problem subject to involuntary
29 commitment and is likely to cause harm to self or others if
30 allowed to remain at liberty may take the person into custody
31 without a warrant. *If the officer is in a crisis intervention*
32 *center service area, as defined in section 2, and amendments*
33 *thereto, the officer may transport the person to such crisis*
34 *intervention center. If the officer is not in a crisis intervention*
35 *center service area, as defined in section 2, and amendments*
36 *thereto, or does not choose to transport the person to such*
37 *crisis intervention center, then* the officer shall transport the
38 person to a treatment facility or other facility for care or
39 treatment where the person shall be examined by a physician or

psychologist on duty at the facility. If no physician or psychologist is on duty at the time the person is transported to the facility, the person shall be examined within a reasonable time not to exceed 17 hours. If a written statement is made by the physician or psychologist at the facility that after preliminary examination the physician or psychologist believes the person likely to be a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment and is likely to cause harm to self or others if allowed to remain at liberty, and if the facility is a treatment facility and is willing to admit the person, the law enforcement officer shall present to that treatment facility the application provided for in ~~subsection (b) of~~ K.S.A. 59-29b54*(b),* and amendments thereto. If the physician or psychologist on duty at the facility does not believe the person likely to be a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment, the law enforcement officer shall return the person to the place where the person was taken into custody and release the person at that place or at another place in the same community as requested by the person or if the law enforcement officer believes that it is not in the best interests of the person or the person's family or the general public for the person to be returned to the place the person was taken into custody, then the person shall be released at another place the law enforcement officer believes to be appropriate under the circumstances. The person may request to be released immediately after the examination, in which case the law enforcement officer shall immediately release the person, unless the law enforcement officer believes it is in the best interests of the person or the person's family or the general public that the person be taken elsewhere for release.

(b) If the physician or psychologist on duty at the facility states that, in the physician's or psychologist's opinion, the person is likely to be a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment but the facility is unwilling or is an inappropriate place to which to admit the person, the facility shall nevertheless provide a suitable place at which the person may be detained by the law enforcement officer. If a law enforcement officer detains a person pursuant to this subsection, the law enforcement officer shall

file the petition provided for in ~~subsection (a) of~~ K.S.A. 59-29b57*(a)*, and amendments thereto, by the close of business of the first day that the district court is open for the transaction of business or shall release the person. No person shall be detained by a law enforcement officer pursuant to this subsection in a nonmedical facility used for the detention of persons charged with or convicted of a crime unless no other suitable facility at which such person may be detained is willing to accept the person.

Sec. 22. K.S.A. 2015 Supp. 59-29b78 is hereby amended to read as follows: 59-29b78. (a) Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear the patient's own clothes, keep and use the patient's own personal possessions including toilet articles and keep and be allowed to spend the patient's own money;

(2) to communicate by all reasonable means with a reasonable number of persons at reasonable hours of the day and night, including both to make and receive confidential telephone calls, and by letter, both to mail and receive unopened correspondence, except that if the head of the treatment facility should deny a patient's right to mail or to receive unopened correspondence under the provisions of subsection (b), such correspondence shall be opened and examined in the presence of the patient;

(3) to conjugal visits if facilities are available for such visits;

(4) to receive visitors in reasonable numbers and at reasonable times each day;

(5) to refuse involuntary labor other than the housekeeping of the patient's own bedroom and bathroom, provided that nothing herein shall be construed so as to prohibit a patient from performing labor as a part of a therapeutic program to which the patient has given their written consent and for which the patient receives reasonable compensation;

(6) not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient or the written consent of a parent or legal guardian, if such patient is a minor or has a legal guardian provided that

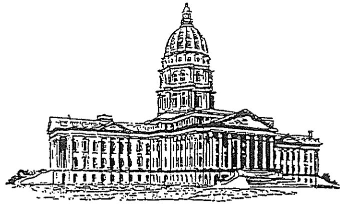
1 the guardian has obtained authority to consent to such from the
2 court which has venue over the guardianship following a
3 hearing held for that purpose;
4 (7) to have explained, the nature of all medications
5 prescribed, the reason for the prescription and the most common
6 side effects and, if requested, the nature of any other treatments
7 ordered;
8 (8) to communicate by letter with the secretary for aging and
9 disability services, the head of the treatment facility and any
10 court, attorney, physician, psychologist, *licensed addiction*
11 *counselor* or minister of religion, including a Christian Science
12 practitioner. All such communications shall be forwarded at once
13 to the addressee without examination and communications from
14 such persons shall be delivered to the patient without
15 examination;
16 (9) to contact or consult privately with the patient's physician or
17 psychologist, *licensed addiction counselor,* minister of religion,
18 including a Christian Science practitioner, legal guardian or
19 attorney at any time and if the patient is a minor, their parent;
20 (10) to be visited by the patient's physician, psychologist,
21 *licensed addiction counselor,* minister of religion, including a
22 Christian Science practitioner, legal guardian or attorney at any
23 time and if the patient is a minor, their parent;
24 (11) to be informed orally and in writing of their rights under
25 this section upon admission to a treatment facility; and
26 (12) to be treated humanely consistent with generally accepted
27 ethics and practices.
28 (b) The head of the treatment facility may, for good cause only,
29 restrict a patient's rights under this section, except that the
30 rights enumerated in subsections (a)(5) through (a)(12), and the
31 right to mail any correspondence which does not violate postal
32 regulations, shall not be restricted by the head of the treatment
33 facility under any circumstances. Each treatment facility shall
34 adopt regulations governing the conduct of all patients being
35 treated in such treatment facility, which regulations shall be
36 consistent with the provisions of this section. A statement
37 explaining the reasons for any restriction of a patient's rights shall
38 be immediately entered on such patient's medical record and
39 copies of such statement shall be made available to the patient

1 or to the parent, or legal guardian if such patient is a minor or has
2 a legal guardian, and to the patient's attorney. In addition, notice
3 of any restriction of a patient's rights shall be communicated to
4 the patient in a timely fashion.
5 (c) Any person willfully depriving any patient of the rights
6 protected by this section, except for the restriction of such rights
7 in accordance with the provisions of subsection (b) or in
8 accordance with a properly obtained court order, shall be guilty
9 of a class C misdemeanor.
10
11 Sec. 23. K.S.A. 59-29b80 is hereby amended to read as follows:
12 59-29b80. Any person *or law enforcement agency, governing*
13 *body, community mental health center or personnel* acting in
14 good faith and without negligence shall be free from all liability,
15 civil or criminal, which might arise out of acting *or declining to*
16 *act* pursuant to this act. Any person who for a corrupt
17 consideration or advantage, or through malice, shall make or join
18 in making or advise the making of any false petition, report or
19 order provided for in this act shall be guilty of a class A
20 misdemeanor.
21
22 Sec. 24. K.S.A. 39-2001, 39-2002, 39-2003, 59-2953, 59-2980,
23 59-29b53 and 59-29b80 and K.S.A. 2015 Supp. 59-2978 and
24 59-29b78 are hereby repealed.
25
26 Sec. 25. This act shall take effect and be in force from and
27 after its publication in the statute book.
28

Attachment #1

State of Kansas
House of Representatives

State Capitol
Topeka, Kansas 66612
(785) 296-7500
ramon.gonzalez@house.ks.gov



P.O. Box 12
Perry, Kansas 66073
(785) 597-5917

Ramon C. Gonzalez, Jr.
Representative, 47th District

May 13, 2016

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Topeka, Kansas 66612

Dear Nancy:

I am writing to request Judicial Council study of a topic that arose during the consideration of legislation by the House Committee on Corrections and Juvenile Justice during the 2016 Session. After considering this bill, the Committee and I believed that a more in-depth consideration of the issues raised by the legislation would be appropriate and desirable before advancing the legislation.

**HB 2639 – Enacting the Emergency Observation and Treatment Act**

HB 2639 would allow a licensed crisis recovery center to admit and detain a person 18 years of age or older who is presented for emergency observation and treatment upon written application of a law enforcement officer, behavioral health professional, or other reliable individual having contact with the person. This bill was introduced by the House Committee on Corrections and Juvenile Justice following study of alternatives to detention or incarceration for offenders with mental health and substance abuse issues by the Joint Committee on Corrections and Juvenile Justice Oversight (JCCJJO) during the 2015 interim. JCCJJO heard testimony regarding the legislation (under development by a workgroup at the time) and recommended legislative consideration of emergency observation and treatment in communities with designated crisis receiving centers.

In a hearing in February on HB 2639, the House Committee on Corrections and Juvenile Justice heard from numerous proponent, neutral, and opponent conferees. It became evident during the Committee's consideration of the bill that it is a comprehensive bill with many moving parts that implicates serious constitutional due process issues. In light of this, we would request the Judicial Council study the language of the bill, particularly how it would fit within the current system and how it implicates constitutional due process rights, and make recommendations for improvement to the language to address these issues.

We would appreciate the Judicial Council's study and input on this topic. Please let me know if I can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,

Representative Ramon Gonzalez

Enclosure

# HOUSE BILL No. 2639

By Committee on Corrections and Juvenile Justice

2-8

1 AN ACT concerning care and treatment of certain persons; enacting the
2 emergency observation and treatment act; relating to mentally ill
3 persons, persons with an alcohol or substance abuse problem and
4 persons with co-occurring conditions; licensed crisis recovery centers;
5 amending K.S.A. 59-2953, 59-2980, 59-29b53 and 59-29b80 and
6 K.S.A. 2015 Supp. 59-2978 and 59-29b78 and repealing the existing
7 sections.
8
9 *Be it enacted by the Legislature of the State of Kansas:*
10 New Section 1. (a) The provisions of sections 1 through 9, and
11 amendments thereto, shall be known and may be cited as the emergency
12 observation and treatment act.
13 (b) It is hereby declared to be the public policy of the state of Kansas
14 to limit the trauma sustained by individuals with mental illness, substance
15 use disorders and those with co-occurring conditions that occurs when the
16 person is involuntarily committed through the state court and hospital
17 procedure. This act shall be liberally construed to effectuate that public
18 policy.
19 New Sec. 2. When used in the emergency observation and treatment
20 act:
21 (a) "Behavioral health professional" includes a physician,
22 psychologist, qualified mental health professional or licensed addiction
23 counselor.
24 (b) "Head of the treatment facility" means the administrative director
25 of a licensed crisis recovery center treatment facility or a behavioral health
26 professional designated by such person.
27 (c) "Law enforcement officer" shall have the meaning ascribed to it in
28 K.S.A. 22-2202, and amendments thereto.
29 (d) "Licensed crisis recovery center" means any facility licensed by
30 the Kansas department for aging and disability services that is open 24
31 hours a day, 365 days a year, equipped to serve voluntary and involuntary
32 individuals in crisis due to mental illness, substance abuse or a co-
33 occurring condition.
34 (e) "Licensed crisis recovery center service area" means the counties
35 which the licensed crisis recovery center has agreed to provide service to.
36 New Sec. 3. (a) In computing the date upon or by which any act must

1 be done or hearing held by under the provisions of the emergency
2 observation and treatment act, the day on which an act or event occurred
3 and from which a designated period of time is to be calculated shall not be
4 included, but the last day in a designated period of time shall be included
5 unless that day falls on a Saturday, Sunday or legal holiday, in which case
6 the next day which is not a Saturday, Sunday or legal holiday shall be
7 considered to be the last day.
8 (b) Unless the court orders otherwise, if the clerk's office is
9 inaccessible on the last day for filing, then the time for filing is extended to
10 the first accessible day that is not a Saturday, Sunday or legal holiday.
11 (c) "Legal holiday" means any day declared a holiday by the
12 president of the United States, the congress of the United States or the
13 legislature of this state, or any day observed by order of the Kansas
14 supreme court. A half holiday is considered as other days and not as a
15 holiday.
16 New Sec. 4. (a) The fact that a person may have voluntarily accepted
17 any form of psychiatric treatment or treatment for an alcohol or substance
18 abuse problem, or become subject to a court order entered under authority ?
19 of the emergency observation and treatment act, shall not be construed to
20 mean that such person shall have lost any civil right they otherwise would
21 have as a resident or citizen, any property right or their legal capacity,
22 except as may be specified within any court order or as otherwise limited
23 by the provisions of this act or the reasonable rules and regulations which
24 the head of a licensed crisis recovery center may, for good cause, find
25 necessary to make for the orderly operations of that facility. No person
26 held in custody under the provisions of this act shall be denied the right to
27 apply for a writ of habeas corpus.
28 (b) There shall be no implication or presumption that a patient within
29 the terms of this act is for that reason alone a person in need of a guardian
30 or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3097,
31 and amendments thereto.
32 New Sec. 5. (a) A licensed crisis recovery center may admit and
33 detain any person 18 years of age or older who is presented for emergency
34 observation and treatment upon written application of a law enforcement
35 officer, behavioral health professional or other reliable individual having
36 contact with such person as described in this section, except that a state
37 psychiatric hospital shall not admit or detain any such person without a
38 written statement from a qualified mental health professional authorizing
39 such admission.
40 (b) An emergency observation and treatment application shall be
41 made on a form set forth by the secretary for aging and disability services
42 or a locally-developed form approved by the secretary. The original
43 application shall be kept in the regular course of business with the law

enforcement agency, behavioral health professional or individual, and a copy shall be provided to the licensed crisis recovery center and to the patient. The application shall include, but not be limited to, the following:

(1) The name and address of the person to be admitted for emergency observation and treatment, if known;

(2) a statement that the law enforcement officer, behavioral health professional or other reliable individual has reason to believe and does believe that:

(A) Such person is a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, is a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-29b46, and amendments thereto, or is a person with co-occurring conditions; and

(B) because of such mental illness, alcohol or substance abuse problem or co-occurring condition is likely to cause harm to self or others unless such person is immediately transported for emergency observation and treatment, including a specific description of the risk of harm;

(3) a statement that the law enforcement officer, behavioral health professional or other reliable individual has reason to believe and does believe that the risk of harm is imminent unless such person is immediately transported for emergency observation and treatment;

(4) a statement that the law enforcement officer, behavioral health professional or other reliable individual's beliefs are derived from specific recent behavior, acts, attempts or threats that were observed by or reliably reported to such individual, including:

(A) A detailed description of the specific recent behavior, acts, attempts or threats; and

(B) the name and relationship to the person in need of emergency observation and treatment of any individual who reported or observed the specific recent behavior, acts, attempts or threats; and

(5) such person's psychiatric history as reported by or known to the law enforcement officer, behavioral health professional or other reliable individual.

(c) A likelihood of harm to self or others may be demonstrated by:

(1) The person's behavior, acts, attempts or threats observed by the law enforcement officer, behavioral health professional or other reliable individual; or

(2) evidence of severe emotional distress and deterioration in the person's condition to the extent that the person cannot remain at liberty.

(d) A law enforcement officer, behavioral health professional or other reliable individual may form the belief that a person meets the criteria for emergency observation and treatment from:

(1) The behavior, acts, attempts or threats of such person or the circumstances under which such person is found; or

(2) the representation of any credible individual.

New Sec. 6. A law enforcement officer who takes a person into custody pursuant to the emergency observation and treatment act shall immediately transport the person to a licensed crisis recovery center if such officer is in a licensed crisis recovery center service area. The licensed crisis recovery center shall not refuse to accept any person for treatment if such person is brought to the licensed crisis recovery center by a law enforcement officer and such officer's jurisdiction is in the licensed crisis recovery center's service area. If a law enforcement officer is not in a licensed crisis recovery center service area, then the officer shall follow the procedures set forth in the care and treatment act for mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse problem.

New Sec. 7. (a) If the requirements of section 5, and amendments thereto, are satisfied, then a law enforcement officer, behavioral health professional or other reliable person is not required to seek an ex parte order pursuant to the care and treatment act for mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse problem prior to presenting a person to a licensed crisis recovery center pursuant to the emergency observation and treatment act.

(b) The head of the treatment facility shall evaluate a person admitted pursuant to the emergency observation and treatment act within four hours of admission and at appropriate intervals thereafter as determined by best practices.

(c) The head of the treatment facility shall discharge a person admitted pursuant to the emergency observation and treatment act as soon as the individual is deemed appropriate to return to the community safely, and, except as provided in subsection (d), not later than 72 hours after admission.

(d) If the head of the treatment facility determines that a person admitted pursuant to the emergency observation and treatment act may be a mentally ill person or a person with an alcohol or substance abuse problem subject to involuntary commitment proceedings, and because of such person's mental illness or alcohol or substance abuse problem is likely to cause harm to self or others if not detained longer than 72 hours, then the head of the treatment facility shall file the appropriate petition pursuant to the care and treatment act for mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse problem and find appropriate placement for the individual, including, but not limited to, community hospitals equipped to take involuntary commitments or the designated state hospital.

1 New Sec. 8. (a) Every patient being treated in any licensed crisis
2 recovery center, in addition to all other rights preserved by the provisions
3 of the emergency observation and treatment act, shall have the following
4 rights:
5 (1) To wear the patient's own clothes, keep and use the patient's own
6 personal possessions, including toilet articles, and keep and be allowed to
7 spend the patient's own money;
8 (2) to communicate by all reasonable means with a reasonable
9 number of persons at reasonable hours of the day and night, including both
10 to make and receive confidential telephone calls, and by letter, both to mail
11 and receive unopened correspondence, except that if the head of the
12 treatment facility should deny a patient's right to mail or to receive
13 unopened correspondence under the provisions of subsection (b), such
14 correspondence shall be opened and examined in the presence of the
15 patient;
16 (3) to conjugal visits if facilities are available for such visits;
17 (4) to receive visitors in reasonable numbers and at reasonable times
18 each day;
19 (5) to refuse involuntary labor other than the housekeeping of the
20 patient's own bedroom and bathroom, provided that nothing herein shall be
21 construed so as to prohibit a patient from performing labor as a part of a
22 therapeutic program to which the patient has given their written consent
23 and for which the patient receives reasonable compensation;
24 (6) not to be subject to such procedures as psychosurgery,
25 electroshock therapy, experimental medication, aversion therapy or
26 hazardous treatment procedures without the written consent of the patient;
27 (7) to have explained, the nature of all medications prescribed, the
28 reason for the prescription and the most common side effects and, if
29 requested, the nature of any other treatments ordered;
30 (8) to communicate by letter with the secretary for aging and
31 disability services, the head of the treatment facility and any court,
32 attorney, physician, psychologist, qualified mental health professional,
33 licensed addiction counselor or minister of religion, including a Christian
34 Science practitioner. All such communications shall be forwarded at once
35 to the addressee without examination and communications from such
36 persons shall be delivered to the patient without examination;
37 (9) to contact or consult privately with the patient's physician or
38 psychologist, qualified mental health professional, licensed addiction
39 counselor, minister of religion, including a Christian Science practitioner,
40 legal guardian or attorney at any time and if the patient is a minor, such
41 patient's parent;
42 (10) to be visited by the patient's physician, psychologist, qualified
43 mental health professional, licensed addiction counselor, minister of

religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, such patient's parent;

(11) to be informed orally and in writing of such patient's rights under this section upon admission to a treatment facility; and

(12) to be treated humanely, consistent with generally accepted ethics and practices.

(b) The head of the treatment facility may, for good cause only, restrict a patient's rights under this section, except that the rights enumerated in subsection (a)(5) through (12), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the head of the treatment facility under any circumstances. Each treatment facility shall adopt regulations governing the conduct of all patients being treated in such treatment facility, which regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and copies of such statement shall be made available to the patient, and to the patient's attorney. In addition, notice of any restriction of a patient's rights shall be communicated to the patient in a timely fashion.

(c) Any person willfully depriving any patient of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b) or in accordance with a properly obtained court order, shall be guilty of a class C misdemeanor.

New Sec. 9. Any person or law enforcement agency, governing body, licensed crisis recovery center, community mental health center or personnel acting in good faith and without negligence shall be free from all liability, civil or criminal, which might arise out of acting pursuant to the emergency observation and treatment act. Any person who, for a corrupt consideration or advantage, or through malice, shall make or join in making or advise the making of any false petition, report or order provided for in the emergency observation and treatment act shall be guilty of a class A misdemeanor.

Sec. 10. K.S.A. 59-2953 is hereby amended to read as follows: 59-2953. (a) Any law enforcement officer who has a reasonable belief formed upon investigation that a person is a mentally ill person and because of such person's mental illness is likely to cause harm to self or others if allowed to remain at liberty may take the person into custody without a warrant. *If the officer is in a licensed crisis recovery center service area, as defined in section 2, and amendments thereto, the officer may transport the person to such licensed crisis recovery center. If the officer is not in a licensed crisis recovery center service area, as defined in section 2, and amendments thereto, or does not choose to transport the person to such licensed crisis recovery center, then* the officer shall transport the person to

a treatment facility where the person shall be examined by a physician or psychologist on duty at the treatment facility, except that no person shall be transported to a state psychiatric hospital for examination, unless a written statement from a qualified mental health professional authorizing such an evaluation at a state psychiatric hospital has been obtained. If no physician or psychologist is on duty at the time the person is transported to the treatment facility, the person shall be examined within a reasonable time not to exceed 17 hours. If a written statement is made by the physician or psychologist at the treatment facility that after preliminary examination the physician or psychologist believes the person likely to be a mentally ill person subject to involuntary commitment for care and treatment and because of the person's mental illness is likely to cause harm to self or others if allowed to remain at liberty, and if the treatment facility is willing to admit the person, the law enforcement officer shall present to the treatment facility the application provided for in ~~subsection (b) of~~ K.S.A. 59-2954*(b)*, and amendments thereto. If the physician or psychologist on duty at the treatment facility does not believe the person likely to be a mentally ill person subject to involuntary commitment for care and treatment the law enforcement officer shall return the person to the place where the person was taken into custody and release the person at that place or at another place in the same community as requested by the person or if the law enforcement officer believes that it is not in the best interests of the person or the person's family or the general public for the person to be returned to the place the person was taken into custody, then the person shall be released at another place the law enforcement officer believes to be appropriate under the circumstances. The person may request to be released immediately after the examination, in which case the law enforcement officer shall immediately release the person, unless the law enforcement officer believes it is in the best interests of the person or the person's family or the general public that the person be taken elsewhere for release.

(b) If the physician or psychologist on duty at the treatment facility states that, in the physician's or psychologist's opinion, the person is likely to be a mentally ill person subject to involuntary commitment for care and treatment but the treatment facility is unwilling to admit the person, the treatment facility shall nevertheless provide a suitable place at which the person may be detained by the law enforcement officer. If a law enforcement officer detains a person pursuant to this subsection, the law enforcement officer shall file the petition provided for in ~~subsection (a) of~~ K.S.A. 59-2957*(a)*, and amendments thereto, by the close of business of the first day that the district court is open for the transaction of business or shall release the person. No person shall be detained by a law enforcement officer pursuant to this subsection in a nonmedical facility used for the

1 detention of persons charged with or convicted of a crime.
2 Sec. 11. K.S.A. 2015 Supp. 59-2978 is hereby amended to read as
3 follows: 59-2978. (a) Every patient being treated in any treatment facility,
4 in addition to all other rights preserved by the provisions of this act, shall
5 have the following rights:
6 (1) To wear the patient's own clothes, keep and use the patient's own
7 personal possessions including toilet articles and keep and be allowed to
8 spend the patient's own money;
9 (2) to communicate by all reasonable means with a reasonable
10 number of persons at reasonable hours of the day and night, including both
11 to make and receive confidential telephone calls, and by letter, both to mail
12 and receive unopened correspondence, except that if the head of the
13 treatment facility should deny a patient's right to mail or to receive
14 unopened correspondence under the provisions of subsection (b), such
15 correspondence shall be opened and examined in the presence of the
16 patient;
17 (3) to conjugal visits if facilities are available for such visits;
18 (4) to receive visitors in reasonable numbers and at reasonable times
19 each day;
20 (5) to refuse involuntary labor other than the housekeeping of the
21 patient's own bedroom and bathroom, provided that nothing herein shall be
22 construed so as to prohibit a patient from performing labor as a part of a
23 therapeutic program to which the patient has given their written consent
24 and for which the patient receives reasonable compensation;
25 (6) not to be subject to such procedures as psychosurgery,
26 electroshock therapy, experimental medication, aversion therapy or
27 hazardous treatment procedures without the written consent of the patient
28 or the written consent of a parent or legal guardian, if such patient is a
29 minor or has a legal guardian provided that the guardian has obtained
30 authority to consent to such from the court which has venue over the
31 guardianship following a hearing held for that purpose;
32 (7) to have explained, the nature of all medications prescribed, the
33 reason for the prescription and the most common side effects and, if
34 requested, the nature of any other treatments ordered;
35 (8) to communicate by letter with the secretary for aging and
36 disability services, the head of the treatment facility and any court,
37 attorney, physician, psychologist, *qualified mental health professional* or
38 minister of religion, including a Christian Science practitioner. All such
39 communications shall be forwarded at once to the addressee without
40 examination and communications from such persons shall be delivered to
41 the patient without examination;
42 (9) to contact or consult privately with the patient's physician or
43 psychologist, *qualified mental health professional,* minister of religion,

1 including a Christian Science practitioner, legal guardian or attorney at any
2 time and if the patient is a minor, their parent;
3 (10) to be visited by the patient's physician, psychologist, *qualified*
4 *mental health professional,* minister of religion, including a Christian
5 Science practitioner, legal guardian or attorney at any time and if the
6 patient is a minor, their parent;
7 (11) to be informed orally and in writing of their rights under this
8 section upon admission to a treatment facility; and
9 (12) to be treated humanely consistent with generally accepted ethics
10 and practices.
11 (b) The head of the treatment facility may, for good cause only,
12 restrict a patient's rights under this section, except that the rights
13 enumerated in subsections (a)(5) through (a)(12), and the right to mail any
14 correspondence which does not violate postal regulations, shall not be
15 restricted by the head of the treatment facility under any circumstances.
16 Each treatment facility shall adopt regulations governing the conduct of all
17 patients being treated in such treatment facility, which regulations shall be
18 consistent with the provisions of this section. A statement explaining the
19 reasons for any restriction of a patient's rights shall be immediately entered
20 on such patient's medical record and copies of such statement shall be
21 made available to the patient or to the parent, or legal guardian if such
22 patient is a minor or has a legal guardian, and to the patient's attorney. In
23 addition, notice of any restriction of a patient's rights shall be
24 communicated to the patient in a timely fashion.
25 (c) Any person willfully depriving any patient of the rights protected
26 by this section, except for the restriction of such rights in accordance with
27 the provisions of subsection (b) or in accordance with a properly obtained
28 court order, shall be guilty of a class C misdemeanor.
29 (d) The provisions of this section do not apply to persons civilly
30 committed to a treatment facility as a sexually violent predator pursuant to
31 K.S.A. 59-29a01 et seq., and amendments thereto.
32 Sec. 12. K.S.A. 59-2980 is hereby amended to read as follows: 59-
33 2980. Any person *or law enforcement agency, governing body, community*
34 *mental health center or personnel* acting in good faith and without
35 negligence shall be free from all liability, civil or criminal, which might
36 arise out of acting pursuant to this act. Any person who for a corrupt
37 consideration or advantage, or through malice, shall make or join in
38 making or advise the making of any false petition, report or order provided
39 for in this act shall be guilty of a class A misdemeanor.
40 Sec. 13. K.S.A. 59-29b53 is hereby amended to read as follows: 59-
41 29b53. (a) Any law enforcement officer who has a reasonable belief
42 formed upon investigation that a person may be a person with an alcohol
43 or substance abuse problem subject to involuntary commitment and is

likely to cause harm to self or others if allowed to remain at liberty may take the person into custody without a warrant. *If the officer is in a licensed crisis recovery center service area, as defined in section 2, and amendments thereto, the officer may transport the person to such licensed crisis recovery center. If the officer is not in a licensed crisis recovery center service area, as defined in section 2, and amendments thereto, or does not choose to transport the person to such licensed crisis recovery center, then* the officer shall transport the person to a treatment facility or other facility for care or treatment where the person shall be examined by a physician or psychologist on duty at the facility. If no physician or psychologist is on duty at the time the person is transported to the facility, the person shall be examined within a reasonable time not to exceed 17 hours. If a written statement is made by the physician or psychologist at the facility that after preliminary examination the physician or psychologist believes the person likely to be a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment and is likely to cause harm to self or others if allowed to remain at liberty, and if the facility is a treatment facility and is willing to admit the person, the law enforcement officer shall present to that treatment facility the application provided for in ~~subsection (b) of~~ K.S.A. 59-29b54*(b)*, and amendments thereto. If the physician or psychologist on duty at the facility does not believe the person likely to be a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment, the law enforcement officer shall return the person to the place where the person was taken into custody and release the person at that place or at another place in the same community as requested by the person or if the law enforcement officer believes that it is not in the best interests of the person or the person's family or the general public for the person to be returned to the place the person was taken into custody, then the person shall be released at another place the law enforcement officer believes to be appropriate under the circumstances. The person may request to be released immediately after the examination, in which case the law enforcement officer shall immediately release the person, unless the law enforcement officer believes it is in the best interests of the person or the person's family or the general public that the person be taken elsewhere for release.

(b) If the physician or psychologist on duty at the facility states that, in the physician's or psychologist's opinion, the person is likely to be a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment but the facility is unwilling or is an inappropriate place to which to admit the person, the facility shall nevertheless provide a suitable place at which the person may be detained by the law enforcement officer. If a law enforcement officer detains a

1 person pursuant to this subsection, the law enforcement officer shall file
2 the petition provided for in ~~subsection (a) of~~ K.S.A. 59-29b57*(a)*, and
3 amendments thereto, by the close of business of the first day that the
4 district court is open for the transaction of business or shall release the
5 person. No person shall be detained by a law enforcement officer pursuant
6 to this subsection in a nonmedical facility used for the detention of persons
7 charged with or convicted of a crime unless no other suitable facility at
8 which such person may be detained is willing to accept the person.
9 Sec. 14. K.S.A. 2015 Supp. 59-29b78 is hereby amended to read as
10 follows: 59-29b78. (a) Every patient being treated in any treatment facility,
11 in addition to all other rights preserved by the provisions of this act, shall
12 have the following rights:
13 (1) To wear the patient's own clothes, keep and use the patient's own
14 personal possessions including toilet articles and keep and be allowed to
15 spend the patient's own money;
16 (2) to communicate by all reasonable means with a reasonable
17 number of persons at reasonable hours of the day and night, including both
18 to make and receive confidential telephone calls, and by letter, both to mail
19 and receive unopened correspondence, except that if the head of the
20 treatment facility should deny a patient's right to mail or to receive
21 unopened correspondence under the provisions of subsection (b), such
22 correspondence shall be opened and examined in the presence of the
23 patient;
24 (3) to conjugal visits if facilities are available for such visits;
25 (4) to receive visitors in reasonable numbers and at reasonable times
26 each day;
27 (5) to refuse involuntary labor other than the housekeeping of the
28 patient's own bedroom and bathroom, provided that nothing herein shall be
29 construed so as to prohibit a patient from performing labor as a part of a
30 therapeutic program to which the patient has given their written consent
31 and for which the patient receives reasonable compensation;
32 (6) not to be subject to such procedures as psychosurgery,
33 electroshock therapy, experimental medication, aversion therapy or
34 hazardous treatment procedures without the written consent of the patient
35 or the written consent of a parent or legal guardian, if such patient is a
36 minor or has a legal guardian provided that the guardian has obtained
37 authority to consent to such from the court which has venue over the
38 guardianship following a hearing held for that purpose;
39 (7) to have explained, the nature of all medications prescribed, the
40 reason for the prescription and the most common side effects and, if
41 requested, the nature of any other treatments ordered;
42 (8) to communicate by letter with the secretary for aging and
43 disability services, the head of the treatment facility and any court,

1 attorney, physician, psychologist, *licensed addiction counselor* or minister
2 of religion, including a Christian Science practitioner. All such
3 communications shall be forwarded at once to the addressee without
4 examination and communications from such persons shall be delivered to
5 the patient without examination;
6 (9) to contact or consult privately with the patient's physician or
7 psychologist, *licensed addiction counselor,* minister of religion, including
8 a Christian Science practitioner, legal guardian or attorney at any time and
9 if the patient is a minor, their parent;
10 (10) to be visited by the patient's physician, psychologist, *licensed*
11 *addiction counselor,* minister of religion, including a Christian Science
12 practitioner, legal guardian or attorney at any time and if the patient is a
13 minor, their parent;
14 (11) to be informed orally and in writing of their rights under this
15 section upon admission to a treatment facility; and
16 (12) to be treated humanely consistent with generally accepted ethics
17 and practices.
18 (b) The head of the treatment facility may, for good cause only,
19 restrict a patient's rights under this section, except that the rights
20 enumerated in subsections (a)(5) through (a)(12), and the right to mail any
21 correspondence which does not violate postal regulations, shall not be
22 restricted by the head of the treatment facility under any circumstances.
23 Each treatment facility shall adopt regulations governing the conduct of all
24 patients being treated in such treatment facility, which regulations shall be
25 consistent with the provisions of this section. A statement explaining the
26 reasons for any restriction of a patient's rights shall be immediately entered
27 on such patient's medical record and copies of such statement shall be
28 made available to the patient or to the parent, or legal guardian if such
29 patient is a minor or has a legal guardian, and to the patient's attorney. In
30 addition, notice of any restriction of a patient's rights shall be
31 communicated to the patient in a timely fashion.
32 (c) Any person willfully depriving any patient of the rights protected
33 by this section, except for the restriction of such rights in accordance with
34 the provisions of subsection (b) or in accordance with a properly obtained
35 court order, shall be guilty of a class C misdemeanor.
36 Sec. 15. K.S.A. 59-29b80 is hereby amended to read as follows: 59-
37 29b80. Any person *or law enforcement agency, governing body,*
38 *community mental health center or personnel* acting in good faith and
39 without negligence shall be free from all liability, civil or criminal, which
40 might arise out of acting pursuant to this act. Any person who for a
41 corrupt consideration or advantage, or through malice, shall make or join
42 in making or advise the making of any false petition, report or order
43 provided for in this act shall be guilty of a class A misdemeanor.

1 Sec. 16. K.S.A. 59-2953, 59-2980, 59-29b53 and 59-29b80 and
2 K.S.A. 2015 Supp. 59-2978 and 59-29b78 are hereby repealed.
3 Sec. 17. This act shall take effect and be in force from and after its
4 publication in the statute book.

The Committee recognizes the importance of gathering information about the operations of crisis intervention centers so that their effectiveness can be evaluated. The Committee recommends that KDADS work with practitioners to develop standards for data collection from crisis intervention centers. The following lists sets out some of the data points that various Committee members suggested might be useful:

1. The number of people detained for emergency observation and treatment broken down by county;
2. The number of people detained for emergency observation and treatment upon application by law enforcement broken down by county;
3. The number of people detained for emergency observation and treatment upon application by an individual other than law enforcement broken down by county;
4. The number of people evaluated under the act where it was determined by the behavioral health professional they did not meet criteria for EOT broken down by county and whether application was submitted by law enforcement or some other individual;
5. The number of people who have previously been subjected to emergency observation and treatment; and, if more than once, how many times they have been subjected to EOT within the reporting period;
6. The number of people detained under the act who are released within 4 hours of being detained;
7. The number of people detained under the act who are detained more than 4 hours, but released within 24 hours;
8. The number of people detained under the act who are detained more than 24 hours but released within 48 hours;
9. The number of people detained under the act who are detained more than 48 hours but released within 72 hours;
10. The number of people detained under the act who are detained more than 72 hours;
11. The number of people released after being detained more than 72 hours, but released before involuntary civil commitment process completed;
12. The number of hours each individual who is held longer than 72 hours is detained after the 72-hour period has expired;
13. If there were people detained longer than 72 hours, include a list of the reasons people were detained more than 72 hours broken down by CIC;
14. The number of people detained under the act where the CIC filed an application for involuntary civil commitment;

15. The number of people detained under the act who ultimately were subject to civil commitment after the EOT;
16. The number of people stabilized before application is made for involuntary civil commitment;
17. The number of people detained under the act who had a PAD or WRAP in place at time of admission to CIC;
18. The number of people detained under the act who accessed peer supports during their detention;
19. The number of people who were administered medication during detention;
20. The number of people who refused medication during detention;
21. The number of people who were administered medication against their will during detention;
22. The number of people subjected to physical restraint during their detention, and how long the restraint lasted;
23. The number of people subjected to seclusion during their detention, and how long the seclusion lasted; and
24. The number of serious injuries or deaths that occurred during the reporting period while in EOT and reason for the injuries or death.