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**TO: Senate Judiciary Committee**

**FROM: Kansas Judicial Council – Christy Molzen**

**DATE: March 22, 2017**

**RE: Judicial Council Testimony on HB 2240 – Written only**

The Judicial Council supports House Bill 2240, a bill which is based on the work product of a Judicial Council Advisory Committee. The attached report provides some background on the study process that resulted in the drafting of HB 2240 and how that bill differs from last year's 2016 HB 2639.

**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

1 crisis intervention center if the officer is in a crisis intervention  
2 center service area. The crisis intervention center shall not refuse  
3 to accept any person for evaluation if such person is brought to  
4 the crisis intervention center by a law enforcement officer and  
5 such officer's jurisdiction is in the crisis intervention center's  
6 service area. If a law enforcement officer is not in a crisis  
7 intervention center service area or chooses not to transport the  
8 person to a crisis intervention center, then the officer shall follow  
9 the procedures set forth in the care and treatment act for mentally  
10 ill persons or the care and treatment act for persons with an  
11 alcohol or substance abuse problem.  
12  
13

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

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

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

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

29 (3) the applicant's belief that the person may be a mentally ill  
30 person subject to involuntary commitment as defined in K.S.A. 59-  
31 2946, and amendments thereto, a person with an alcohol or  
32 substance abuse problem subject to involuntary commitment as  
33 defined in K.S.A. 59-29b46, and amendments thereto, or a person  
34 with co-occurring conditions, and because of such mental illness,  
35 alcohol or substance abuse problem or co-occurring conditions is  
36 likely to cause harm to self or others if not immediately detained;

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

1 custody including any known pending criminal charges; and  
2 (5) whether the person has a wellness recovery action plan or  
3 psychiatric advance directive, if known.

4

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

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

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

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

19 (3) the applicant's belief that the person may be a mentally ill  
20 person subject to involuntary commitment as defined in K.S.A. 59-  
21 2946, and amendments thereto, a person with an alcohol or  
22 substance abuse problem subject to involuntary commitment as  
23 defined in K.S.A. 59-29b46, and amendments thereto, or a person  
24 with co-occurring conditions, and because of such mental illness,  
25 alcohol or substance abuse problem or co-occurring conditions is  
26 likely to cause harm to self or others if not immediately detained;

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

30 (5) any known pending criminal charges;

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

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

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New Sec. 8.

(a) The head of the crisis intervention center shall evaluate a person admitted pursuant to this act within four hours of admission to determine whether the person is likely to be 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 because of such mental illness, alcohol or substance abuse problem or co-occurring conditions is likely to cause harm to self or others if allowed to remain at liberty.

The head of the crisis intervention center shall inquire whether the person has a wellness recovery action plan or psychiatric advance directive.

(b) A behavioral health professional shall evaluate a person admitted pursuant to this act not later than 23 hours after admission and again not later than 48 hours after admission to determine if the person continues to meet the criteria described in subsection (a). The 23-hour evaluation must be performed by a different behavioral health professional from the one who conducted the initial evaluation under subsection (a).

(c) Not later than 48 hours after admission, if the head of the crisis intervention center determines that the person continues to meet the criteria described in subsection (a), then the head of the crisis intervention center shall file an affidavit to that effect for review by the district court in the county where the crisis intervention center is located. The affidavit shall include or be accompanied by the written application for emergency observation and treatment, information about the person's original admission to the crisis intervention center, the care and treatment provided to the person, and the factual circumstances in support of the evaluating professional's opinion that the person meets the criteria described in subsection (a). After reviewing the affidavit and any accompanying documentation, the court shall order release of the 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.

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

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

12  
13 New Section 11.

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

35 (b) The provisions of subsection (a) shall not prevent, for a period  
36 not exceeding 2 hours without review and approval thereof by the  
37 head of the crisis intervention center or a physician or  
38 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. 1 2 .

- 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.

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

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

15  
16 New Sec. 13.

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

23  
24  
25 New Sec. 14.

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

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**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 (ed) “Department” means the department for aging and disability  
7 services.
- 8 (de) “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 (ef) “Hospital” means a psychiatric hospital.
- 14 (fg) “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 (gh) “Licensee” means one or more persons or entities licensed by  
18 the secretary under this act.
- 19 (hi) “Licensing agency” means the secretary for aging and disability  
20 services.
- 21 (ij) “Other disabilities” means any condition for which individuals  
22 receive home and community based waiver services.
- 23 (jk) “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~~) "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

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

11  
12 Sec. 19. K.S.A. 2015 Supp. 59-2978 is hereby amended to  
13 read as follows: 59-2978. (a) Every patient being treated in any  
14 treatment facility, in addition to all other rights preserved by the  
15 provisions of this act, shall have the following rights:

- 16 (1) To wear the patient's own clothes, keep and use the patient's  
17 own personal possessions including toilet articles and keep and  
18 be allowed to spend the patient's own money;
- 19 (2) to communicate by all reasonable means with a reasonable  
20 number of persons at reasonable hours of the day and night,  
21 including both to make and receive confidential telephone calls,  
22 and by letter, both to mail and receive unopened correspondence,  
23 except that if the head of the treatment facility should deny a  
24 patient's right to mail or to receive unopened correspondence  
25 under the provisions of subsection (b), such correspondence shall  
26 be opened and examined in the presence of the patient;
- 27 (3) to conjugal visits if facilities are available for such visits;
- 28 (4) to receive visitors in reasonable numbers and at reasonable  
29 times each day;
- 30 (5) to refuse involuntary labor other than the housekeeping  
31 of the patient's own bedroom and bathroom, provided that  
32 nothing herein shall be construed so as to prohibit a patient from  
33 performing labor as a part of a therapeutic program to which the  
34 patient has given their written consent and for which the patient  
35 receives reasonable compensation;
- 36 (6) not to be subject to such procedures as psychosurgery,  
37 electroshock therapy, experimental medication, aversion therapy  
38 or hazardous treatment procedures without the written consent of  
39 the patient or the written consent of a parent or legal guardian,

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

1 psychologist on duty at the facility. If no physician or  
2 psychologist is on duty at the time the person is transported to the  
3 facility, the person shall be examined within a reasonable time not  
4 to exceed 17 hours. If a written statement is made by the  
5 physician or psychologist at the facility that after preliminary  
6 examination the physician or psychologist believes the person  
7 likely to be a person with an alcohol or substance abuse problem  
8 subject to involuntary commitment for care and treatment and is  
9 likely to cause harm to self or others if allowed to remain at  
10 liberty, and if the facility is a treatment facility and is willing to  
11 admit the person, the law enforcement officer shall present to that  
12 treatment facility the application provided for in subsection (b) of  
13 K.S.A. 59-29b54(b), and amendments thereto. If the physician  
14 or psychologist on duty at the facility does not believe the person  
15 likely to be a person with an alcohol or substance abuse problem  
16 subject to involuntary commitment for care and treatment, the law  
17 enforcement officer shall return the person to the place where the  
18 person was taken into custody and release the person at that  
19 place or at another place in the same community as requested by  
20 the person or if the law enforcement officer believes that it is  
21 not in the best interests of the person or the person's family or  
22 the general public for the person to be returned to the place the  
23 person was taken into custody, then the person shall be released  
24 at another place the law enforcement officer believes to be  
25 appropriate under the circumstances. The person may request to  
26 be released immediately after the examination, in which case the  
27 law enforcement officer shall immediately release the person,  
28 unless the law enforcement officer believes it is in the best  
29 interests of the person or the person's family or the general public  
30 that the person be taken elsewhere for release.

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

1 file the petition provided for in subsection ~~(a)~~ of K.S.A. 59-  
2 29b57(a), and amendments thereto, by the close of business of  
3 the first day that the district court is open for the transaction  
4 of business or shall release the person. No person shall be  
5 detained by a law enforcement officer pursuant to this subsection  
6 in a nonmedical facility used for the detention of persons charged  
7 with or convicted of a crime unless no other suitable facility at  
8 which such person may be detained is willing to accept the  
9 person.

10  
11 Sec. 22. K.S.A. 2015 Supp. 59-29b78 is hereby amended to  
12 read as follows: 59-29b78. (a) Every patient being treated in any  
13 treatment facility, in addition to all other rights preserved by the  
14 provisions of this act, shall have the following rights:

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

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

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

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

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

35 (6) not to be subject to such procedures as psychosurgery,  
36 electroshock therapy, experimental medication, aversion therapy  
37 or hazardous treatment procedures without the written consent of  
38 the patient or the written consent of a parent or legal guardian,  
39 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.

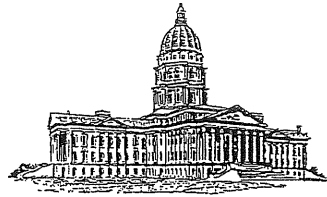
25

26 Sec. 25. This act shall take effect and be in force from and  
27 after its publication in the statute book.

28

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 10<sup>th</sup> 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**

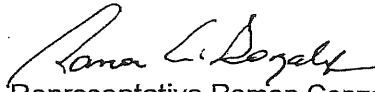
HB 2639 would allow a licensed crisis recovery center to admit and detain a person 18 years of age or older who is presented for emergency observation and treatment upon written application of a law enforcement officer, behavioral health professional, or other reliable individual having contact with 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) the representation of any credible individual.

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

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

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

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

32 (d) If the head of the treatment facility determines that a person  
33 admitted pursuant to the emergency observation and treatment act may be  
34 a mentally ill person or a person with an alcohol or substance abuse  
35 problem subject to involuntary commitment proceedings, and because of  
36 such person's mental illness or alcohol or substance abuse problem is  
37 likely to cause harm to self or others if not detained longer than 72 hours,  
38 then the head of the treatment facility shall file the appropriate petition  
39 pursuant to the care and treatment act for mentally ill persons or the care  
40 and treatment act for persons with an alcohol or substance abuse problem  
41 and find appropriate placement for the individual, including, but not  
42 limited to, community hospitals equipped to take involuntary  
43 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

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

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

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

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

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

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

33 Sec. 10. K.S.A. 59-2953 is hereby amended to read as follows: 59-  
34 2953. (a) Any law enforcement officer who has a reasonable belief formed  
35 upon investigation that a person is a mentally ill person and because of  
36 such person's mental illness is likely to cause harm to self or others if  
37 allowed to remain at liberty may take the person into custody without a  
38 warrant. *If the officer is in a licensed crisis recovery center service area,*  
39 *as defined in section 2, and amendments thereto, the officer may transport*  
40 *the person to such licensed crisis recovery center. If the officer is not in a*  
41 *licensed crisis recovery center service area, as defined in section 2, and*  
42 *amendments thereto, or does not choose to transport the person to such*  
43 *licensed crisis recovery center, then the officer shall transport the person to*

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

32 (b) If the physician or psychologist on duty at the treatment facility  
33 states that, in the physician's or psychologist's opinion, the person is likely  
34 to be a mentally ill person subject to involuntary commitment for care and  
35 treatment but the treatment facility is unwilling to admit the person, the  
36 treatment facility shall nevertheless provide a suitable place at which the  
37 person may be detained by the law enforcement officer. If a law  
38 enforcement officer detains a person pursuant to this subsection, the law  
39 enforcement officer shall file the petition provided for in ~~subsection (a) of~~  
40 K.S.A. 59-2957(a), and amendments thereto, by the close of business of  
41 the first day that the district court is open for the transaction of business or  
42 shall release the person. No person shall be detained by a law enforcement  
43 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



1 likely to cause harm to self or others if allowed to remain at liberty may  
2 take the person into custody without a warrant. *If the officer is in a*  
3 *licensed crisis recovery center service area, as defined in section 2, and*  
4 *amendments thereto, the officer may transport the person to such licensed*  
5 *crisis recovery center. If the officer is not in a licensed crisis recovery*  
6 *center service area, as defined in section 2, and amendments thereto, or*  
7 *does not choose to transport the person to such licensed crisis recovery*  
8 *center, then the officer shall transport the person to a treatment facility or*  
9 *other facility for care or treatment where the person shall be examined by a*  
10 *physician or psychologist on duty at the facility. If no physician or*  
11 *psychologist is on duty at the time the person is transported to the facility,*  
12 *the person shall be examined within a reasonable time not to exceed 17*  
13 *hours. If a written statement is made by the physician or psychologist at*  
14 *the facility that after preliminary examination the physician or*  
15 *psychologist believes the person likely to be a person with an alcohol or*  
16 *substance abuse problem subject to involuntary commitment for care and*  
17 *treatment and is likely to cause harm to self or others if allowed to remain*  
18 *at liberty, and if the facility is a treatment facility and is willing to admit*  
19 *the person, the law enforcement officer shall present to that treatment*  
20 *facility the application provided for in subsection (b) of K.S.A. 59-*  
21 *29b54(b), and amendments thereto. If the physician or psychologist on*  
22 *duty at the facility does not believe the person likely to be a person with an*  
23 *alcohol or substance abuse problem subject to involuntary commitment for*  
24 *care and treatment, the law enforcement officer shall return the person to*  
25 *the place where the person was taken into custody and release the person*  
26 *at that place or at another place in the same community as requested by the*  
27 *person or if the law enforcement officer believes that it is not in the best*  
28 *interests of the person or the person's family or the general public for the*  
29 *person to be returned to the place the person was taken into custody, then*  
30 *the person shall be released at another place the law enforcement officer*  
31 *believes to be appropriate under the circumstances. The person may*  
32 *request to be released immediately after the examination, in which case the*  
33 *law enforcement officer shall immediately release the person, unless the*  
34 *law enforcement officer believes it is in the best interests of the person or*  
35 *the person's family or the general public that the person be taken elsewhere*  
36 *for release.*

37 (b) If the physician or psychologist on duty at the facility states that,  
38 in the physician's or psychologist's opinion, the person is likely to be a  
39 person with an alcohol or substance abuse problem subject to involuntary  
40 commitment for care and treatment but the facility is unwilling or is an  
41 inappropriate place to which to admit the person, the facility shall  
42 nevertheless provide a suitable place at which the person may be detained  
43 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.