

**To:** House Corrections and Juvenile Justice Committee

**From:** Bill Rein, KDADS Commissioner of Behavioral Health Services

**Date:** February 16, 2016

**Subject:** HB 2639, Enacting the emergency observation and treatment act; using licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders and co-occurring conditions

Chairman Rubin and members of the Committee:

I appreciate the opportunity to submit testimony in support of HB 2639, the Emergency Observation and Treatment Act. As an attorney, I have been involved with Kansas mental health law for 40 years. And as a Kansan who cares deeply about the individuals our agency serves, I am pleased to share with you KDADS' strong commitment to this legislation – due to its impact both in addressing a critical component of the behavioral health continuum, and in providing crisis treatment as an alternative to detention.

Without citation, virtually every state allows law enforcement officers to assume custody of persons in need of immediate assistance to prevent harming themselves or others due to a mental illness. The right of a law enforcement officer to take a person into emergency custody for a mental evaluation has been authorized by Kansas law since at least 1976.

HB 2639 deals almost exclusively with the need to provide for emergency custody, observation, and treatment of persons who have been taken into custody by a law enforcement officer upon a finding that the person meets the criteria for involuntary hospitalization as that term is defined in the care and treatment act for mentally ill persons; KSA 59-2945, et seq.

The current statutes dealing with emergency detention pending a mental evaluation, emergency observation and treatment in a treatment facility, notice of rights upon admission to a treatment facility, and discharge from emergency observation and treatment are found at KSA 59-2953 through KSA 59-2956.

A Kansas law enforcement officer may take an individual into custody without a warrant whenever the officer has a reasonable belief that the person is mentally ill and is likely to cause harm to self or others if not detained. Officers may act to protect a person upon their personal observation in addition to the statements of others who witnessed a person's conduct before the officer arrived on the scene. More specifically, Kansas law authorizes officers to form an opinion concerning the exercise of emergency custody upon "an investigation that a person is a mentally ill person and because of such person's mental illness is likely to cause harm to self or others if allowed to remain at liberty."

Where emergency custody is exercised, the person must be taken to a treatment facility for a mental evaluation. The person may only be admitted to a treatment facility for emergency observation and treatment if a qualified

mental health professional conducts an examination and determines that the person is likely to be a mentally ill person subject to involuntary commitment.

As explained above, the authority to admit a person for emergency observation and treatment is usually based upon the observations of a law enforcement officer and the professional opinion of a qualified mental health professional. As a result, emergency admission is not based upon the decision of one person and always requires the opinion of a qualified mental health professional.

Upon presentation of a proposed patient to a treatment facility, the individual must be examined by an appropriate mental health professional as soon as possible. If the examiner believes that the individual is a mentally ill person who is likely to cause harm to self or others unless observed and treated, the person may be admitted to a treatment facility on written application by the law enforcement officer. This has been standard procedure in Kansas and other states for decades.

When House Bill 2050 was enacted by the Kansas Legislature in 1986, an application for determination of mental illness was required to be filed in court no later than close of the next court day. This was a very conservative standard as other states allowed much longer periods of time for emergency evaluations when a person was undergoing a mental health crisis. The current requirement of one court day does not allow mental health professionals enough time to determine the nature of the person's crisis and attempt to resolve it before involving the courts or state hospitals.

To the extent that an extension of time from 48 hours to 72 hours is seen as depriving a person of procedural due process, it should be noted that 72 hours or longer is the law in many other states. As one example, the State of Rhode Island allows emergency observation and treatment for a period of time not to exceed 10 days. As another example, the State of Oklahoma allows for a period of time no to exceed 120 hours. Indiana, Kentucky, and Colorado authorize 72 hours for emergency observation and treatment. A Texas court determined that 72 hours was not unconstitutionally impermissible as early as 1982. *Luna v. Van Zandt*, 554 F. Supp. 68)

The presence of a judge, sworn testimony of witnesses, and the assistance of legal counsel are not necessary when the person has been recently examined and the maximum period of emergency observation is only 72 hours. In fact, the ability of mental health professionals to divert persons from the trauma of a court proceeding or unnecessary admission to a state hospital depends upon allowing the initial contact phase to focus on the clinical issues causing the person's crisis.

KDADS fully supports HB 2639. This legislation will allow interested communities to better provide their citizens with the right care, in the right place, at the right time. We appreciate the Committee's consideration.