

A Summary of

The Rights of Persons With Mental Illness in Kansas



Disability Rights Center of Kansas, Inc.

**The Official Protection and Advocacy
System of Kansas.**

This information is intended to be a general guide and the information herein should not be taken in lieu of specific legal advice.

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INTRODUCTION

Any person who becomes either voluntarily or involuntarily involved with the mental health treatment system in Kansas has certain legal rights. The sources of those rights may be state or federal laws or regulations, decisions by state or federal courts, or accreditation requirements.

The purpose of this booklet is to summarize the rights, under Kansas law, of persons with mental illness who are undergoing residential mental health treatment. Federal law, regulations or court cases establish other rights, such as the right to refuse treatment. This booklet is a discussion of Kansas law only.

The rights discussed in this booklet are found in The Care and Treatment Act for Mentally Ill Persons. (Kan. Stat. Ann. §§ 59-2945-2986) We will review “Rights Before Commitment” and “Rights After Hospitalization.”

DEFINITIONS

The Care and Treatment Act for Mentally Ill Persons defines several terms. Three of those terms have the following definitions:

1.) Mentally Ill Persons Subject to Involuntary Commitment

Any individual who:

- (a) has a serious mental disorder that includes significant behavior or psychological problems, and the disorder impairs the individual's functioning to the extent that treatment is necessary,
- (b) lacks capacity to make an informed decision concerning treatment,
- (c) is likely to cause harm to self or others, and
- (d) The individual's diagnosis is not solely one from a list of conditions that is generally considered non-responsive to psychiatric treatment.

2.) Treatment Facility - This means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed to provide either inpatient or outpatient treatment to any person.

3.) Qualified Mental Health Professional - This refers, generally, to professional persons (physicians, psychologists, social workers, registered nurses) who have achieved certain levels of training. Mental health centers employ these persons or they work for mental health centers under contract. (Kan. Stat. Ann. § 59-2946)

RIGHTS BEFORE COMMITMENT

In 1990, the Kansas Legislature passed the Mental Health Reform Act. This law created a "gate keeping" or screening function for the mental health centers in Kansas.

The law provides that no person may be admitted to a state psychiatric hospital for evaluation or treatment unless a qualified mental health professional employed by a mental health center has screened the person. The mental health professional must authorize the admission in writing.

Voluntary Admission for Treatment - A person may be voluntarily admitted to a treatment facility if certain conditions exist. Besides the mental health center screening, treatment facility staff must decide that the person is in need of treatment and has the capacity to consent to treatment.

Before leaving a treatment facility, a voluntary patient must submit a written request for discharge. The treatment facility staff then has three days to decide to file a petition for determination of mental illness that could result in involuntary treatment. Treatment facility staff also may file a petition if the voluntary patient refuses reasonable treatment efforts.

In some situations, a legal guardian may admit a ward for voluntary treatment. Such admissions occur only when a court has previously granted this power to the guardian. Authority to make this type of voluntary admission expires automatically if it is not used during a two-year period. (Kan. Stat. Ann. §§ 59-2949-2951).

Emergency Observation - For some individuals, their first contact with the mental health system may be through a period of emergency observation. A person may be admitted for emergency observation after a law enforcement officer has taken the person into custody, or after “any individual” files a written application that the person be admitted.

Law enforcement officers may transport a person to a treatment facility for emergency observation only after reasonably concluding that the person has a mental illness, and is likely to cause harm to self or others. A physician or psychologist must evaluate the individual within a reasonable time.

Whenever “any individual” applies to have a person detained for emergency observation, the application must describe the facts supporting the conclusion that the person with mental illness is likely to cause harm to self or others. The individual requesting an emergency observation order must also agree to file an application for determination of mental illness (see p. 7).

While undergoing emergency observation, an individual has additional specific rights:

1.) The facility staff must inform the person of the right to contact, among others, an attorney or family member, and the staff must give the person reasonable means for making the contact.

2.) The facility staff must inform the person about his or her legal rights. (Kan. Stat. Ann. §§ 59-2954-2956)

Ex Parte Emergency Order - A request for an Ex Parte Order may accompany a petition that someone is a person with mental illness subject to involuntary commitment (see p.7). The order, if granted by a judge, may authorize a facility to continue to detain a person being held for emergency observation. For others not already in custody, the Ex Parte Order allows law enforcement officers to transport a person to a designated treatment facility or other suitable facility.

Courts enter Ex Parte Orders and state hospitals enforce the orders only if a qualified mental health professional authorizes the admission. Persons subject to Ex Parte Orders may not be admitted to jails or other non-medical facilities used to confine persons charged with crimes. An Ex Parte Order expires at the end of the second day the district court is open after the court issues the order and courts may not issue successive Ex Parte Orders. (Kan. Stat. Ann. §§ 59-2957-2958)

Temporary Custody Order - When someone files a petition to involuntarily commit a person (see p. 7), the petitioner may ask that the court issue a Temporary Custody Order. An explanation of the rationale for detaining the person until the commitment hearing must accompany the petition. The district court must schedule a hearing on the request.

If the person does not have an attorney, the court must appoint one, and the person is usually entitled to attend the hearing on the request for a Temporary Custody Order. The hearing generally is informal. At the end of the hearing, the court may grant a Temporary Custody Order if the judge makes two rulings:

1.) Probable cause exists to believe that the individual is a person with mental illness subject to involuntary treatment, and

- 2) The best interests of the individual will be served by detaining him or her until the commitment hearing.

The limitations on Ex Parte Orders also apply to Temporary Custody Orders. A qualified mental health professional must authorize the individual's admission to a state hospital. No one may confine a person subject to an Ex Parte Order in a non-medical facility used to detain people charged with criminal activities. (Kan. Stat. Ann. § 59-2959)

Order for Treatment - Several preliminary steps must occur before an involuntary treatment hearing. The first of these is the filing of a petition to determine whether someone is a mentally ill person subject to involuntary commitment. This is done in the district court of the county in which the person lives, or is present.

Unless it includes a statement that the proposed patient has refused to submit to an evaluation, a signed certificate from a physician, psychologist, or mental health professional must accompany the petition. This statement should reflect the professional's conclusion that the individual is likely to be a person with mental illness subject to involuntary commitment.

The individual must be informed that a petition for determination of mental illness is pending. Specifically, the notice given to the individual must state the following:

- 1.) That someone has filed a petition asking that the individual receive court-ordered treatment,
- 2.) The time and place of the hearing,
- 3.) The name of the attorney appointed to represent the individual and the place where the individual will meet the attorney, and
- 4.) That the individual has the right to a jury trial. To exercise the right to a jury trial, however, the individual must, in writing, request that the court hold the hearing before a jury. The individual must submit this written request to the court at least four days

before the scheduled hearing

After the filing of a petition, the court must issue several preliminary orders:

1.) The first is an order setting the time and place for hearing the petition. The hearing may take place in a courtroom, at a treatment facility, or another suitable place. The court should hold the hearing 7 to 14 days after the petition is filed. If the individual demands a jury trial, the court may set the hearing more than 14 days after the petition is filed, but not more than 30 days after the individual files the jury trial demand. A jury trial may be requested after an attorney is appointed.

2.) The court must appoint an attorney to represent the individual throughout the proceeding. A court-appointed attorney continues to represent the individual until the expiration of all the case's orders.

3.) The court must order that the individual meet with his or her court-appointed attorney. This meeting should occur at least five days before the hearing.

Another order issued after the filing of a petition for determination of mental illness is an Order for a Mental Evaluation. This order requires the individual to undergo a psychological evaluation. An individual who is not subject to a Temporary Custody Order has the right to refuse to submit to an evaluation if he or she requests a hearing on this issue. At that hearing, if the court finds probable cause to believe that the individual is a person with mental illness subject to involuntary commitment, the court will order a mental evaluation. If the court does not find probable cause, it will not order an evaluation, and the proceedings are over.

Kansas Law contains a specific limitation on the administration of medication before hearings. If a particular medication or therapy will negatively affect an individual's judgment, or impair his or her ability to prepare for or participate in the hearing, no one may give the medication

to the individual within 48 hours before the hearing. The only exception to this limitation is if the medication or therapy is necessary to sustain life or protect the patient or others. (Kan. Stat. Ann. § 59-2976)

During the commitment hearing, an individual has several specific rights, including the right to be present at the hearing. This right is not absolute because a court may waive it if the judge finds that the individual's presence at the hearing would be harmful to his or her welfare. If the individual requests in writing to be present at the hearing, the court cannot exclude the individual from the hearing. The individual also has the right to present and cross-examine witnesses.

When the hearing ends, the court or jury must find by clear and convincing evidence that the individual is a person with mental illness subject to involuntary commitment before entering an Order for Treatment. If that occurs, the court orders treatment for the individual at a treatment facility. The term "treatment facility," defined above, includes more than state psychiatric hospitals. Other than state psychiatric hospitals, however, the court can enter an Order for Treatment at a particular facility only with that facility's consent. The court may not order treatment at any facility unless a qualified mental health professional has submitted an authorization to the court. (Kan. Stat. A. §§ 59-2960-2966)

Order for Outpatient Treatment - Anytime in the court proceedings, as an alternative to inpatient hospitalization, a court may order an individual to take part in outpatient treatment. This may occur if the judge concludes that a person is likely to comply with the outpatient order, and is not likely to cause harm to self or others or be a danger to the community. Except for orders to mental health centers that contract with the state under Mental Health Reform, a condition of outpatient orders is that the treatment facility must accept the individual as an outpatient.

An order for outpatient treatment normally lists specific conditions with which the individual must comply. If the patient fails to substantially comply with those conditions, however, a process that could result in revocation of the order and the hospitalization of the patient may be initiated. If the court orders an individual to return

to the hospital, the individual is entitled to a hearing challenging the revocation of the outpatient order within two days after the court revokes the outpatient order. In such hearings, the “clear and convincing” standard applies and, as usual, a qualified mental health professional must authorize the readmission. (Kan. Stat. Ann. §59-2967).

RIGHTS AFTER HOSPITALIZATION

An individual who becomes a patient in a treatment facility has other legal rights. In fact, Kan. Stat. Ann. § 59-2978 is known as the patient’s “Bill of Rights.” This section provides that patients have the following rights:

- 1.) To wear one’s clothes, to keep and use one’s personal possessions, and to spend one’s money,
- 2.) To talk at reasonable times by telephone, including making and receiving confidential calls, and to send and receive unopened letters,
- 3.) To visit privately with a husband or wife, if facilities are available,
- 4.) To receive visitors at reasonable times each day,
- 5.) To refuse involuntary labor, other than cleaning one’s own bedroom and bathroom, and to receive payment for any work the patient agrees to do,
- 6.) To not be subject to procedures such as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient or, if applicable, the written consent of the patient’s parent or legal guardian; the guardian must have obtained authorization to consent from the court responsible for the guardianship,
- 7.) To have explained the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if re-

quested, the nature of any other treatment ordered,

8.) To prompt uncensored written communication with the Secretary of Social and Rehabilitation Services, the head of the treatment facility and any court, physician, psychologist, minister or attorney,

9.) To receive visits at anytime from and meet privately with one's physician, psychologist, minister, guardian or attorney.

10.) Upon admission to a treatment facility, to receive information both orally and in writing of a patient's rights under Kan. Stat. Ann. § 59-2978, and

11.) To receive humane treatment consistent with generally accepted ethics and practices.

For good cause only, the head of the treatment facility may restrict some patient rights. The treatment facility may not, however, under any circumstances, restrict the rights listed in numbers 5 through 11 above, or the right to mail letters that do not violate postal regulations.

When a facility restricts a patient's rights under Kan. Stat. Ann. § 59-2978, the facility must promptly include a written explanation of the restriction in the patient's medical record. The facility must make copies of the explanation available to the patient, his or her parent or guardian, and attorney. If a treatment facility restricts a patient's right to receive unopened mail, the mail must be opened and read in the patient's presence.

Beyond the rights listed in the "Bill of Rights," Kansas law also provides patients other rights, including the following:

1.) *Restraints and Seclusion* -In Kansas, "restraints" mean the application of any device to any part of a patient's body to prevent the patient from causing harm to self or others. "Seclusion" is the placement of a patient alone, in a room, where the treatment facility restricts the patient's freedom to leave and facility staff does not watch

the patient continuously.

Generally, treatment facilities should not use restraints or seclusion unless they are necessary to prevent immediate substantial injury to the patient or others, and no alternative is available. Under no circumstances are restraints or seclusion for punishment or for the convenience of staff. The use of restraints or seclusion should not exceed three hours without medical reevaluation, except that between midnight and 8:00 a.m., reevaluation is not mandatory. Whenever restraints or seclusion are in use, staff must monitor the patient's condition, at a minimum, every 15 minutes and the staff should keep a record of this monitoring. The head of the treatment facility, a physician, or a psychologist must sign a statement describing why each use of seclusion or restraints was necessary. This statement goes into the patient's treatment records. The law includes exceptions to this procedure. To prevent physical injury, restraints may be in use for a period no longer than two hours without the approval of the treatment facility head, a physician or a psychologist. (Kan. Stat. Ann. § 59-2977)

2.) Court Review - Every 90 days during the first 6 months after the court makes an involuntary treatment order, and every 180 days after that, a patient is entitled to a hearing on whether he or she continues to be a person with mental illness subject to involuntary treatment. At least 14 days before the end of each period of treatment, treatment facility staff must provide a written report to the court that ordered a patient's treatment. The report should contain the staff's recommendations about the patient's need for further treatment. After the court receives the facility's report, the court notifies the patient's attorney. Then, the attorney must consult with the patient. If the patient wants a hearing, the attorney must request a hearing in writing. If the patient does not want a hearing, the attorney must submit a written statement summarizing the consultation with the patient. The Court should schedule the hearing quickly, but in any case, it must occur no more than 10 days after the attorney files the written request. The court conducts the review hearing similarly to a commitment hearing, except that the patient is not entitled to ask for a jury.

When the hearing is over, if the judge finds by clear and convincing evidence that the patient continues to be a person with men-

tal illness subject to involuntary commitment, the court will order continued treatment in an inpatient facility, or as an outpatient. (Kan. Stat. Ann. §59-2969)

3.) *Administration of Medication* - Under Kansas law, involuntarily hospitalized persons (Emergency Observation Orders, Ex Parte Custody Orders, Temporary Custody Orders, Orders of Referral, or Orders for Treatment) have no right to refuse medication. This also applies to individuals under an outpatient treatment order.

In all cases, patients may only object to taking a medication prescribed for psychiatric treatment. If the patient continues to object after a full explanation of the benefits and risks of the medication, the facility may administer the medication in spite of the objection. Staff should note the objection in the patient's record and immediately submit the objection to the medical director for review. The facility may continue to administer the medication only if approved by the medical director within five days of receiving the patient's objection. The responsible physician must regularly review each patient's prescribed medications, with specific attention to the symptoms or harmful side effects. (Kan. Stat. Ann. § 59-2976)

4.) *Access to Records* - Generally, in Kansas, a treatment facility patient is entitled to obtain copies of his or her medical records. The only exception to this rule is that the head of a treatment facility refuse to release some records. To do this, the head of the treatment facility must state in writing that disclosure would be harmful to the welfare of the patient or former patient. (Kan. Stat. Ann. § 59-2979)

5.) *Privilege Against Identification* - Under Kansas law, unless an exception applies, a patient in a treatment facility has a privilege to prevent employees of the facility from acknowledging that the patient is currently receiving or has ever received treatment. Also, under this privilege, no one associated with a treatment facility may reveal the contents of any confidential communication made for evaluation or treatment. This privilege exists unless the patient has specifically waived it in writing. (Kan. Stat. Ann. § 59-2979)

6.) *Transportation* - Kansas law provides that when transporting persons with mental illness the “least amount of restraint necessary shall be used...” This presumably means that if a person is calm and cooperative, anyone transporting the individual should not apply handcuffs or shackles to the person. The person responsible for transporting the individual should not use a marked police or sheriff’s department car if other transportation is available. (Kan. Stat. Ann. § 59-2970)

7.) *Transfers* - Patients may be transferred from one state psychiatric hospital to another or to a more restrictive unit within the same hospital. Unless it is an emergency, though, the treatment facility should notify the patient’s guardian or family before the transfer. In addition, the guardian or family member has the option of requesting a hearing to contest the transfer. (Kan. Stat. Ann. § 59-2972)

8.) *Discharge Procedures* - Once a patient is no longer in need of treatment in a treatment facility, the facility must discharge that patient from the facility. The community mental health center serving the area where the patient plans to reside should make recommendations regarding available services before the facility discharges the patient. Often, discharged patients must continue treatment subject to the terms of an order for outpatient treatment. (Kan. Stat. Ann. § 59-2973)

CONCLUSION

The reader should remember a final important point about individual rights. A finding that an individual has a mental illness and is subject to involuntary treatment does not cause that person to lose other civil or property rights outside the treatment facility. Moreover, a finding of mental illness does not imply that the individual lacks capacity in a legal sense. Thus, individuals with mental illness have the same rights as other persons. Knowledge of a person’s legal rights is an obvious prerequisite to exercising those rights. DRC hopes this booklet will contribute to increased awareness of the rights of individuals with mental illness.



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