

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

## SENATE BILL No. 116

By Committee on Public Health and Welfare

1-26

12. AN ACT *relating to certain facilities*; concerning social and rehabilitation  
13. services; providing injunctive authority against unlicensed facilities;  
~~14. [Authorizing the state protection and advocacy system access~~  
~~15. to certain facilities, individuals receiving care from such facilities~~  
16. *and records of such individuals*; amending K.S.A. 75-3307b  
17. *and K.S.A. 2004 Supp. 65-5603* and repealing the existing section  
18. *sections*.
19. *Be it enacted by the Legislature of the State of Kansas:*
20. Section 1. K.S.A. 75-3307b is hereby amended to read as follows: 75-  
21. 3307b. (a) The enforcement of the laws relating to the hospitalization of  
22. mentally ill persons of this state in a psychiatric hospital and the diagnosis,  
23. care, training or treatment of persons in community mental health centers  
24. or facilities for the mentally ill, ~~mentally retarded or other handicapped~~  
25. *persons with mental illness, developmental disabilities or other persons*  
26. *with disabilities* is entrusted to the secretary of social and rehabilitation  
27. services. The secretary may adopt rules and regulations on the  
28. following matters, so far as the same are not inconsistent with any laws  
29. of this state:
30. (1) The licensing, certification or accrediting of private hospitals as  
31. suitable for the detention, care or treatment of mentally ill persons, and  
32. the withdrawal of licenses granted for causes shown;
33. (2) the forms to be observed relating to the hospitalization, admission,  
34. transfer, custody and discharge of patients;
35. (3) the visitation and inspection of psychiatric hospitals and of all  
36. persons detained therein;
37. (4) the setting of standards, the inspection and the licensing of all  
38. community mental health centers which receive or have received any  
39. state or federal funds, and the withdrawal of licenses granted for causes  
40. shown;
41. (5) the setting of standards, the inspection and licensing of all facilities  
42. ~~for the mentally ill, mentally retarded or other developmentally dis~~

**Re-Insert:**

*Authorizing the state protection and  
advocacy system access  
to certain facilities, individuals receiving  
care from such facilities  
and records of such individuals;*

1. ~~abled~~ persons **with mental illness, developmental disabilities or other**
2. **persons with disabilities** receiving assistance through the department
3. of social and rehabilitation services which receive or have received after
4. June 30, 1967, any state or federal funds, or facilities where ~~mentally ill,~~
5. ~~mentally retarded or other developmentally disabled~~ persons **with mental**
6. **illness or developmental disabilities** reside who require supervision
7. or require limited assistance with the taking of medication, and the withdrawal
8. of licenses granted for causes shown. The secretary may adopt
9. rules and regulations that allow the facility to assist a resident with the
10. taking of medication when the medication is in a labeled container dispensed
11. by a pharmacist. No license for a residential facility for eight or
12. more persons may be issued under this paragraph unless the secretary of
13. health and environment has approved the facility as meeting the licensing
14. standards for a lodging establishment under the food service and lodging
15. act. No license for a residential facility for the elderly or for a residential
16. ~~facility for persons with disabilities not related to mental illness or mental~~
17. ~~retardation~~ **developmental disability**, or both, or related conditions
18. shall be issued under this paragraph;
19. (6) reports and information to be furnished to the secretary by the
20. superintendents or other executive officers of all psychiatric hospitals,
21. community mental health centers or facilities for the mentally retarded
22. **persons with developmental disabilities** and facilities serving other
23. ~~handicapped~~ persons **with disabilities** receiving assistance through the
24. department of social and rehabilitation services.
25. (b) An entity holding a license as a community mental health center
26. under paragraph (4) of subsection (a) on the day immediately preceding
27. the effective date of this act, but which does not meet the definition of a
28. community mental health center set forth in this act, shall continue to be
29. licensed as a community mental health center as long as the entity remains
30. affiliated with a licensed community mental health center and continues
31. to meet the licensing standards established by the secretary.
32. (c) ~~Notwithstanding the existence or pursuit of any other remedy,~~
33. ~~the secretary of social and rehabilitation services, as the licensing agency,~~
34. ~~in the manner provided by the act for judicial review and civil enforcement~~
35. ~~of agency actions, may maintain an action in the name of the state~~
36. ~~of Kansas for injunction against any person or facility to restrain or prevent~~
37. ~~the operation of a psychiatric hospital, community mental health~~
38. ~~center or facility for the mentally ill, mentally retarded or other handicapped~~
39. **persons with mental illness, developmental disabilities**
40. **or other persons with disabilities** operating without a license.
41. ~~[ ] (d) The state protection and advocacy system shall have reasonable~~
42. ~~unaccompanied access to public and private facilities and~~
43. ~~programs in the state which render care, treatment or services for~~

Insert new #D

(d) The state protection and advocacy system as defined in 42 U.S.C. 15041, 42 U.S.C. 10801, 29 U.S.C. 794e shall

- (1) have reasonable unaccompanied access to individuals with disabilities in any facility licensed under this section, and
- (2) have reasonable unaccompanied access to facilities licensed under this section, and
- (3) have access to the records of an individual with a disability when the protection and advocacy agency has a complaint of abuse or neglect, or probable cause to suspect the abuse or neglect of an individual with a disability in any facility licensed under this statute.

- ~~1. individuals with disabilities, and to those individuals with disabilities~~
- ~~2. who receive care, treatment or services from those facilities~~
- ~~3. and programs, and to the records of individuals with disabilities~~
- ~~4. who receive services from those facilities and programs.~~
5. *Sec. 2. 3. K.S.A. 2004 Supp. 65-5603 is hereby amended to read*
6. *as follows: 65-5603. (a) The privilege established by K.S.A. 65-5602*
7. *and amendments thereto shall not extend to:*
8. *(1) Any communication relevant to an issue in proceedings to*
9. *involuntarily commit to treatment a patient for mental illness, alcoholism*
10. *or drug dependency if the treatment personnel in the*
11. *course of diagnosis or treatment has determined that the patient is*
12. *in need of hospitalization;*
13. *(2) an order for examination of the mental, alcoholic, drug dependency*
14. *or emotional condition of the patient which is entered by*
15. *a judge, with respect to the particular purpose for which the examination*
16. *is ordered;*
17. *(3) any proceeding in which the patient relies upon any of the*
18. *aforementioned conditions as an element of the patient's claim or*
19. *defense, or, after the patient's death, in any proceeding in which*
20. *any party relies upon any of the patient's conditions as an element*
21. *of a claim or defense;*
22. *(4) any communication which forms the substance of information*
23. *which the treatment personnel or the patient is required by law*
24. *to report to a public official or to be recorded in a public office,*
25. *unless the statute requiring the report or record specifically provides*
26. *that the information shall not be disclosed;*
27. *(5) any information necessary for the emergency treatment of a*
28. *patient or former patient if the head of the treatment facility at*
29. *which the patient is being treated or was treated states in writing*
30. *the reasons for disclosure of the communication and makes such*
31. *statement a part of the treatment or medical record of the patient;*
32. *(6) information relevant to protect a person who has been*
33. *threatened with substantial physical harm by a patient during the*
34. *course of treatment, when such person has been specifically identified*
35. *by the patient, the treatment personnel believes there is substantial*
36. *likelihood that the patient will act on such threat in the*
37. *reasonable foreseeable future and the head of the treatment facility*
38. *has concluded that notification should be given. The patient shall*
39. *be notified that such information has been communicated;*
40. *(7) any information from a state psychiatric hospital to appropriate*
41. *administrative staff of the department of corrections whenever*
42. *patients have been administratively transferred to a state psychiatric*
43. *hospital pursuant to the provisions of K.S.A. 75-5209 and*

Section 2. The Secretary of Social and Rehabilitation Services shall license and monitor either the group home and other residential setting or the provider of such services which serve two or more residents who are not self-directing their services, unless the provider of services is already licensed to provide such services.

1. *amendments thereto;*
2. *(8) any information to the patient or former patient, except that*
3. *the head of the treatment facility at which the patient is being*
4. *treated or was treated may refuse to disclose portions of such records*
5. *if the head of the treatment facility states in writing that such*
6. *disclosure will be injurious to the welfare of the patient or former*
7. *patient;*
8. *(9) any information to any state or national accreditation, certification*
9. *or licensing authority, or scholarly investigator, but the*
10. *head of the treatment facility shall require, before such disclosure*
11. *is made, a pledge that the name of any patient or former patient*
12. *shall not be disclosed to any person not otherwise authorized by*
13. *law to receive such information;*
14. ~~*(10) any information to Kansas advocacy and protective services,*~~
15. ~~*the state protection and advocacy system which concerns individuals*~~
16. ~~*who reside in a treatment facility and which is required by*~~
17. ~~*federal law and federal rules and regulations to be available pursuant*~~
18. ~~*to a federal grant-in-aid program;*~~
19. *(11) any information relevant to the collection of a bill for professional*
20. *services rendered by a treatment facility; or*
21. *(12) any information sought by a coroner serving under the*
22. *laws of Kansas when such information is material to an investigation*
23. *or proceeding conducted by the coroner in the performance of*
24. *such coroner's official duties. Information obtained by a coroner*
25. *under this provision shall be used for official purposes only and*
26. *shall not be made public unless admitted as evidence by a court or*
27. *for purposes of performing the coroner's statutory duties;*
28. *(13) any communication and information between or among*
29. *treatment facilities regarding a proposed patient, patient or former*
30. *patient for purposes of promoting continuity of care between the*
31. *state psychiatric hospitals and the community mental health centers;*
32. *the proposed patient, patient, or former patient's consent shall*
33. *not be necessary to share evaluation and treatment records between*
34. *or among treatment facilities regarding a proposed patient, patient*
35. *or former patient; as used in this paragraph (13), "proposed patient"*
36. *and "patient" shall have the meanings respectively ascribed*
37. *thereto in K.S.A. 2004 Supp. 59-2946 and amendments thereto;*
38. *(14) the name, date of birth, date of death, name of any next of*
39. *kin and place of residence of a deceased former patient when that*
40. *information is sought as part of a genealogical study; or*
41. *(15) any information concerning a patient or former patient*
42. *who is a juvenile offender in the custody of the juvenile justice authority*
43. *when the commissioner of juvenile justice, or the commis*

1. *sioner's designee, requests such information.*
2. *(b) The treatment personnel shall not disclose any information*
3. *subject to subsection (a)(3) unless a judge has entered an order*
4. *finding that the patient has made such patient's condition an issue*
5. *of the patient's claim or defense. The order shall indicate the parties*
6. *to whom otherwise confidential information must be disclosed.*
7. ~~Sec. 2-3.~~ 4. K.S.A. 75-3307b is *and K.S.A. 2004 Supp. 65-5603 are*
8. hereby repealed.
9. ~~Sec. 3-4.~~ 5. This act shall take effect and be in force from and after its
10. publication in the statute book.