

Crisis Intervention Act; Senate Sub. for HB 2053

Senate Sub. for HB 2053 creates the Crisis Intervention Act (Act) and amends law related to mental health to reflect the provisions of the Act, as follows.

Crisis Intervention Act

Definitions

For purposes of the Act, the bill defines “crisis intervention center” (center) to mean an entity licensed by the Kansas Department for Aging and Disability Services that is open 24 hours a day, 365 days a year, equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse, or a co-occurring condition, and that uses certified peer specialists. “Crisis intervention center service area” is defined as the counties to which the crisis intervention center has agreed to provide service. The bill also defines “behavioral health professional,” “head of a crisis intervention center,” “law enforcement officer,” “licensed addiction counselor,” “physician,” “psychologist,” “qualified mental health professional,” “treatment,” “domestic partner,” “physician assistant,” “immediate family,” “restraints,” and “seclusion.”

Effect on Rights

The Act states the fact a person has been detained for emergency observation and treatment (EOT) under the Act cannot be construed to mean the person has lost any civil right, property right, or legal capacity, except as specified in any court order or as limited by the Act or reasonable policies the head of a center may, for good cause, find necessary to make for the orderly operation of the facility. No person in custody under the Act can be denied the right to apply for a writ of *habeas corpus*. No judicial action taken as part of the 48-hour court review [described below] constitutes a finding by the court. There is no implication or presumption a patient under the Act is, for that reason alone, a person in need of a guardian or conservator, or both, under the Act for Obtaining a Guardian or a Conservator, or Both.

Effect on Voluntary Admission

The Act states it cannot be construed to prohibit a person with capacity from applying for admission as a voluntary patient to a center, and any person desiring to do so is given an opportunity to consult with the person’s attorney prior to applying. If the head of the center accepts the application and admits the person as a voluntary patient, the head of the center must provide written notification to the person’s legal guardian, if known.

Custody and Transportation by Law Enforcement Officer

The bill allows any law enforcement officer (LEO) who takes a person into custody 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 to transport such person to a center if the LEO is in a crisis intervention center service area. The center cannot refuse to accept any person brought by an LEO for evaluation if the LEO’s jurisdiction is in the center’s service area. If the

LEO is not in a center service area or chooses not to transport the person to a center, the LEO must follow the procedures under the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem or the Care and Treatment Act for Mentally Ill Persons.

Admission and Detention Upon Application by Law Enforcement Officer

The Act allows a center to admit and detain any person 18 years of age or older who is presented for EOT upon the written application of an LEO. Such application is made on a form set forth or approved by the Secretary for Aging and Disability Services (Secretary). The Act specifies certain information to be included in the application, including the applicant's belief (and factual circumstances supporting that belief and under which the person was taken into custody) that the person may be a mentally ill person or person with an alcohol or substance abuse problem (or co-occurring conditions) subject to involuntary commitment under the care and treatment acts for such persons and that, due to such problem or condition, is likely to cause harm to self or others if not immediately detained.

The original application is kept in the regular course of business with the law enforcement agency and a copy is provided to the center and to the patient.

Admission and Detention Upon Application by Adult

The Act allows a center to evaluate, admit, and detain any person 18 years of age or older who is presented for EOT upon the written application of any adult. Such application is made on a form set forth or approved by the Secretary. The Act specifies certain information to be included in the application, including the applicant's belief (and factual circumstances supporting that belief and under which the person was presented to the crisis intervention center) that the person may be a mentally ill person or person with an alcohol or substance abuse problem (or co-occurring conditions) subject to involuntary commitment under the care and treatment acts for such persons and, due to such problem or condition, is likely to cause harm to self or others if not immediately detained.

The original application is kept by the applicant and a copy is provided to the center and to the patient.

Evaluation, Court Review, Discharge, and Further Placement

The head of the center is required to evaluate a person admitted under the Act within four hours of admission to determine whether the person is likely to be a mentally ill person or a person with an alcohol and substance abuse problem subject to involuntary commitment under the care and treatment acts for such persons and whether, due to such problem or condition, the person is likely to cause harm to self or others if not immediately detained. The head of the center is required to inquire whether the person has a wellness recovery action plan or psychiatric advance directive.

The Act requires evaluation of a person admitted under the Act by a behavioral health professional not later than 23 hours after admission and again not later than 48 hours after admission to determine whether the person continues to meet the criteria described in the

paragraph above. The 23-hour evaluation must be conducted by a different professional than the professional who conducted the initial evaluation.

Within 48 hours of admission, if the head of the center determines the person continues to meet the criteria above, the head of the center is required to file an affidavit to that effect for review by the district court in the county where the center is located. The affidavit must include or be accompanied by the written application for EOT, information about the person's original admission, the care and treatment provided, and the factual circumstances supporting the evaluating professional's opinion that the person meets the criteria described above. After reviewing the affidavit and accompanying information, the court must order the release of the person or order that the person may continue to be detained and treated at the center, subject to the limitations described below.

The head of the center is required to discharge a person admitted under the Act at any time the person no longer meets the criteria described above, and not later than 72 hours after admission, unless the head of the center determines the person continues to meet the criteria described above, in which case the head of the center is required to immediately file a petition under the appropriate care and treatment act and find appropriate placement for the person (including community hospitals equipped to take involuntary commitments or the designated state hospital). If the 72-hour period ends after 5 p.m., the Act requires such petition be filed by the close of business of the first day thereafter that the district court is open.

The center is required to make reasonable accommodations for the person's transportation upon discharge from the center.

Requirements of the Head of the Center

When a person is involuntarily admitted to or detained at a center under the Act, the head of the center is required to immediately advise the person that the person is entitled to immediately contact the person's legal counsel, legal guardian, personal physician or psychologist, minister of religion, or immediate family. If the person desires to make such contact, the head of the center is required to make available reasonable means for such communication.

The head of the center is also required to provide notice of the person's involuntary admission, including a copy of the documentation authorizing the admission, to the person's attorney or legal guardian (once known), unless the attorney or guardian was the person who signed the application. If authorized by the patient under the act governing confidential communications and information of treatment facility patients, the head of the center is also required to provide notice to the patient's immediate family (once known), unless the family member to be notified was the person who signed the application.

Finally, the head of the center is required to immediately advise the person in custody of the person's rights as detailed in the Act.

Medications and Treatment

The Act requires medications and other treatments be prescribed, ordered, and administered only in conformity with accepted clinical practice. Medications can be administered

only by written order of a physician or by verbal order noted in the patient's records and subsequently signed by the physician, and the attending physician is required to regularly review the drug regimen and monitor any symptoms or side effects. Prescriptions for psychotropic medications can be written for no longer than 30 days but can be renewed.

During treatment, the responsible physician or psychologist (or designee) is required to reasonably consult with the patient or patient's legal guardian and give consideration to the views expressed by such persons regarding treatment and any alternatives, including views in a wellness recovery action plan or psychiatric advance directive. No medication or other treatment can be administered to any voluntary patient without the consent of such patient or the patient's legal guardian.

The Act requires consent for medical or surgical treatments not intended primarily to treat a patient's mental disorder be obtained in accordance with applicable law.

If a patient objects to taking any medication prescribed for psychiatric treatment, and after full explanation of the benefits and risks of such medication such objection continues, the medication can be administered over the patient's objection, with the objection recorded in the patient's medical record.

The administration of experimental medication is prohibited without the patient's written consent.

Restraints or Seclusion

Restraints or seclusion is prohibited unless the head of the center or a physician or psychologist determines such measures are necessary to prevent immediate substantial bodily injury to the patient or others and alternative methods are not sufficient to accomplish this purpose. Restraints or seclusion cannot be used as punishment or for the convenience of staff. When restraint or seclusion is used, the Act requires use of the least restrictive measure necessary to prevent injury, and the use cannot exceed three hours without medical reevaluation, except between the hours of midnight and 8:00 a.m. The Act requires monitoring of the use of restraint or seclusion no less than once per each 15 minutes. The head of the center or a physician or psychologist is required to sign a statement explaining the treatment necessity for the use of seclusion or restraint, which is added to the patient's permanent treatment record.

The above provisions do not prevent, for a period of up to two hours without review and approval by the head of the center or a physician or psychologist, the use of restraints as necessary for a patient likely to cause physical injury to self or others without such restraint, the use of restraints primarily for examination or treatment or to ensure the healing process, or the use of seclusion as part of a treatment methodology that calls for time out due to the patient's refusal to participate or disruption.

Rights of Patients; Penalty for Deprivation of Rights

The bill includes in the Act a list of rights of patients (in addition to the rights provided elsewhere in the Act), including rights related to clothing*, possessions*, and money*; communication* and correspondence*; conjugal visits*; visitors*; refusal of involuntary labor;

prohibition of certain treatment methods without written consent of the patient; explanation of medication and treatment; communication with the Secretary, the head of the center, and any court, attorney, physician, psychologist, qualified mental health professional, licensed addiction counselor, or minister of religion; contact of, consultation with, and visitation by the patient's physician, psychologist, qualified mental health professional, licensed addiction counselor, minister of religion, legal guardian, or attorney at any time; information regarding these rights upon admission; and humane treatment, consistent with generally accepted ethics and practices.

The head of a center can, for good cause only, restrict those rights marked above with “*.” The remaining rights cannot be restricted by the head of a center under any circumstances. Each center is required to adopt policies governing patient conduct that are consistent with the above provisions. The Act requires a statement explaining the reasons for any restriction of a patient's rights be immediately entered on the patient's medical record, with copies of the statement made available to the patient and to the patient's attorney, and the bill requires notice of any restriction to be communicated to the patient in a timely manner.

Any person willfully depriving any patient of the rights listed above, except for the restriction of rights as permitted by the Act or in accordance with a properly obtained court order, is guilty of a class C misdemeanor.

Records

Any district court, treatment, or medical records of a person admitted to a center under the Act that are in the possession of a district court or center are privileged and not subject to disclosure, except as provided under the Care and Treatment Act for Mentally Ill Persons.

Immunity and Criminal Making of a Report

The Act provides immunity from civil and criminal liability for acting or declining to act pursuant to the Act for any person, law enforcement agency, governing body, center, or community mental health center or personnel.

It is a class A misdemeanor to, for corrupt consideration, advantage, or malice, make, join in making, or advise the making of a false petition, report, or order provided for in the Act.

Amendments to Law

Act Establishing Standards for Facilities Providing Residential Care and Support, Psychiatric and Mental Health Care and Treatment, and Other Disability Services

The definitions section of this act is amended to define “crisis intervention center” and include this term within the definition of “center.” The sections of this act setting forth the purpose of the Act and the authority, powers, and duties of the Secretary (for purposes of the Act) is amended to incorporate crisis intervention centers.

Care and Treatment Act for Mentally Ill Persons

This act is amended to allow an LEO within a crisis intervention center service area to transport a person covered by this act to a center. The statute setting forth the rights of patients under this act is amended to add “qualified mental health professional” to the list of persons with whom a patient has the right to communicate by letter, to contact or consult privately, or to be visited by at any time. The statute providing immunity under this act is amended to add law enforcement agencies, governing bodies, and community mental health centers or personnel to those receiving immunity, and immunity for declining to act is added.

Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem

This act is amended to allow an LEO within a crisis intervention center service area to transport a person covered by this act to a center. The statute setting forth the rights of patients under this act is amended to add “licensed addiction counselor” to the list of persons with whom a patient has the right to communicate by letter, to contact or consult privately, or to be visited by at any time. The statute providing immunity under this act is amended to add law enforcement agencies, governing bodies, and community mental health centers or personnel to those receiving immunity, and immunity for declining to act is added.