



Learn the Law:

The Rights of Kansans with Mental Illness in Treatment Facilities



EQUALITY ♦ LAW ♦ JUSTICE

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If you have a question about your rights, need advocacy services, or legal assistance – please contact us!

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Please Note: This information is a general guide. The information in this guide should not be taken in the place of specific legal advice. Sources include: The Care and Treatment Act for Mentally Ill Persons. (Kan. Stat. Ann. §§ 59-2945-2986) This booklet reviews "Rights Before Commitment" and "Rights After Hospitalization."

Introduction

Kansans who get mental health treatment in treatment facilities have legal rights. They have these rights at public or private treatment facilities. Those legal rights come from state and federal laws, court decisions, and facility rules.

This booklet has information about rights of people with mental illness who are getting treatment in a treatment facility in Kansas. There are more rights that individuals have under federal law, like the right to say “No” to treatment. This booklet is not about federal law. This booklet is only about Kansas law.

We want you to know that you have rights. You have rights even if you have a mental illness and have been forced to get treatment. Legally, your mental illness does not mean that you can't think for yourself.



Learning about your rights is the best way to make sure your rights aren't violated.

Definitions in Kansas Law

Terms to understand:

Mentally Ill Persons Subject to Involuntary Commitment -

This is a person who can be forced to get treatment in a treatment facility.

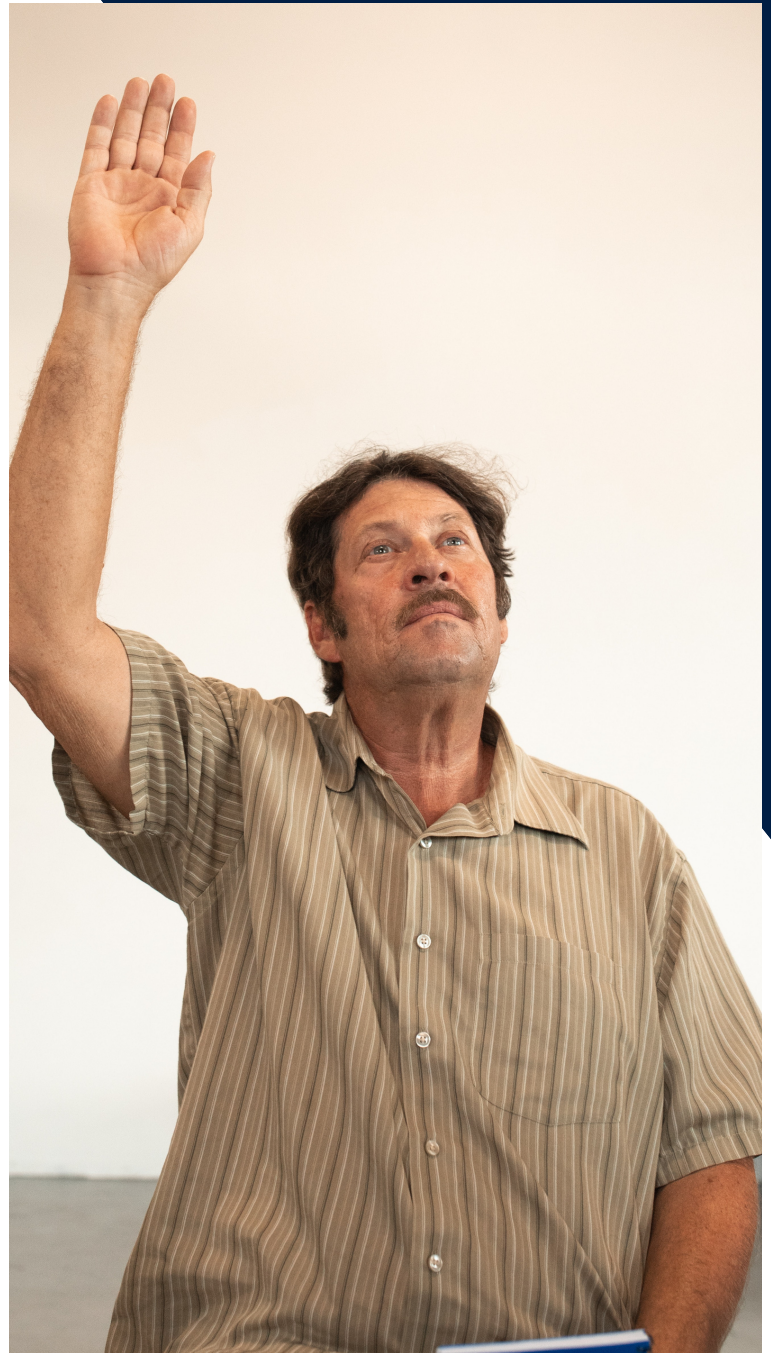
All of the below must be true.

- (a) The person has a serious mental problem that affects how they behave and think. The mental problem is severe and makes it hard to do basic things.
- (b) The person is not able to make choices about their treatment.
- (c) The person is likely to hurt themselves or others.
- (d) The person's mental problem can be helped by treatment.

Treatment Facility -

This is any place or person that offers mental health treatment.

The two state psychiatric hospitals at Osawatomie and Larned, mental health centers, clinics, psychiatric units at a medical care hospital, psychologists, and physicians are all "treatment facilities" under Kansas law. Other institutions or individuals authorized or licensed to provide either inpatient or outpatient treatment can also count as treatment facilities.



Source: Kan. Stat. Ann. § 59-2946

Qualified Mental Health Professional -

This is professional people (physicians, psychologists, social workers, registered nurses) who have training.

Mental health centers employ these people or they are contracted by mental health centers.

Petition-

This is a formal request seeking a court order and stating the reasons why it is needed.

Rights Before Involuntary Commitment to a State Psychiatric Treatment Facility

In 1990, Kansas passed the Mental Health Reform Act.



This law requires community mental health centers (CMHC) to conduct a “screening” before someone can be admitted to a state psychiatric hospital (like Osawatomie or Larned State Hospitals) without their permission.

Screening means that a person has to be talked to by a professional at a CMHC before they get treatment at a state psychiatric hospital.

- The professional must be qualified.
- The professional decides if the person needs treatment.
- The professional has to write down their permission for a person to get treatment at a state psychiatric hospital.

A person can also be involuntarily committed to a treatment facility that is not a state psychiatric hospital. The process for being committed to one of these treatment facilities is different. Being committed to a different type of treatment facility is not common because the treatment facility has to agree to take the person.

Deciding to Get Treatment at a Treatment Facility Yourself

A person can admit themselves to get treatment at a treatment facility if they meet some conditions. This is called “voluntary admission for treatment”. Treatment facility staff must decide that the person is in need of treatment. Treatment facility staff must decide that the person is able to consent to treatment.

A voluntary patient must ask in writing to leave a treatment facility. The treatment facility staff then has three days to decide if the patient can leave or needs more treatment. The staff must file a petition for a patient to be forced to stay. The staff may also file a petition if the voluntary patient says “No” to some treatments.

Sometimes, legal guardians can make a patient go for treatment. This happens when a court gives someone the power of guardian. After the person is discharged from treatment, the guardian may lose the power to make the person get treatment again if they don’t use the power in two years. The legal guardian would have to go back to court. Source: Kan. Stat. Ann. §§ 59-2949-2951, §§ 59-3077

Emergency Observation

Treatment at treatment facility begins for some people through a period of emergency observation. Law enforcement officers can bring a person to a facility for emergency observation. The person can be placed under emergency observation if the law enforcement officer takes them into custody and submits a written application that says they may be a mentally ill person who can be involuntarily committed because their mental illness is likely to cause harm to themselves or others if they are not immediately detained.

Kansas law also allows someone other than a law enforcement officer to file a similar written application requesting that the person be held for emergency observation at a treatment facility. They must have proof the person with mental illness is likely to hurt someone or themselves. The person submitting the application must also file an application for a screening of mental illness.

 **A physician or psychologist must evaluate you within 17 hours after you are detained for emergency observation.**

A person has specific rights while under emergency observation at a treatment facility. The facility staff must tell the person of their right to contact an attorney or family member. The staff must give the person a way to contact them. The staff must inform the person about their legal rights. **Source: Kan. Stat. Ann. §§ 59-2954-2956**

Ex Parte Emergency Order

An “Ex Parte Emergency Order” can allow a treatment facility to force a person to stay for emergency observation. A request for this order may come with a petition saying that the person has a mental illness and needs to be forced to get treatment. If a judge signs the order, a treatment facility can keep a person being held for emergency observation. If a person is not already in custody, the order allows an officer to take them to a facility.

The judge cannot sign the order unless a qualified mental health professional supports it in writing. People who have this order cannot be put in jails or other non-medical facilities used to hold people charged with crimes. This order expires at the end of the second day the district court is open after the court issues the order. Courts can only do one of these orders at a time. They cannot do two orders back to back. **Source: Kan. Stat. Ann. §§ 59-2957-2958**

Temporary Custody Order

When someone files a request to force a person to get treatment, they can also ask the court for a “Temporary Custody Order”. This means the person is made to stay in custody at the treatment facility until their hearing. The person making the request has to give a good reason they think this is necessary. The district court has to schedule a hearing about the request.

If the person does not have an attorney, the court must give them one. The person can usually go to the hearing. The hearing is not formal.

The court will grant a Temporary Custody Order only if it makes the following two decisions after listening to the evidence:

1. There are reasons to believe that the person has mental illness. The mental illness is severe and they need to be forced to get treatment; and
2. The best thing for the person is to be kept until their hearing.

People subject to this type of order cannot be put in jails or other non-medical facilities used to hold people charged with crimes. This order expires at the end of the second day the district court is open after the court issues the order. Courts can only do one of these orders. They cannot do two orders back to back. **Source: Kan. Stat. Ann. § 59-2959**

Order for Treatment

Some steps have to happen before an “involuntary treatment” hearing.

First, a petition must be filed that says a person is mentally ill and can be forced to get treatment. This is done in the district court of the county where the person lives.

Usually, a signed certificate from a physician, psychologist, or mental health professional has to be filed with the petition. This certificate must state that they talked to the person and they believe the person needs treatment in a treatment facility. There will not be a signed certificate, however, if the person would not get an evaluation.

i The person must be told that a decision about their mental illness is in progress.

They must let the person know through a notice given to the person with this information:

1. Someone has filed a petition saying the person needs court-ordered treatment;
2. The day, time and place when the court will have a hearing;
3. The name of the attorney who the court appointed to represent them and the place where the person will meet the attorney; and
4. The person has the right to ask for a jury trial.

To get a jury trial, the person must write a request. The request has to be sent in at least four days before the hearing.

The court has to issue more orders after the petition is filed. These orders will be issued before the person receives the notice about the petition.

1. The first is an **order setting the day, time and place for the hearing**. The hearing may take place in a courtroom, at a treatment facility, or another approved place. The court should hold the hearing 7 to 14 days after the petition is filed. If a person asks for a jury trial, the court can set the hearing more than 14 days after the petition is filed, but it cannot be more than 30 days after asking for the jury trial. A person can ask for a jury trial only after they get an attorney.

2. The court must **give the person an attorney to represent them** in the proceeding. The attorney will help the person through the whole court process. The attorney appointed by the court will help the person until all of the orders end.

3. The court must **order that the person meet with their attorney**. This meeting should be at least five days before the hearing.

4. The court must **order the person to attend the hearing**.

5. The court must **sign an “Order for a Mental Evaluation”**. This order says the person has to get a psychological evaluation. An individual who is not subject to a “Temporary Custody Order” has the right to say “No” to an evaluation, but they must request a hearing on this issue. At the hearing, the court may still order the evaluation if they think the person needs to be forced to get it. If the court decides that the person does not need to be forced to get an evaluation, the judge will not sign the order. The judge will then will dismiss the petition, and the case is over.

Order for Treatment Cont.

For hearings in these cases, there are rules about medicine if a person is at a treatment facility. The staff at the treatment facility cannot give the person any medicine 48 hours before a hearing that harms the person's ability to make decisions or get ready for the hearing. An exception can be made if the medicine is necessary to keep the person alive or it protects the person or others.

A person has rights during the commitment hearing. The person has the right to be present at the hearing. If the person asks in writing to be at the hearing, the court cannot say "No." The person can also talk to the court and have the person's attorney ask witnesses' questions.

At the end of the hearing, the court must find good reason to force someone to get treatment before they can do an "Order for Treatment". If that happens, the court orders treatment for the person at a treatment facility. A "treatment facility" is usually a state-run facility (like Osawatomie or Larned State hospitals), but it can be a different facility if the director at that facility agrees to provide the treatment.

Source: Kan. Stat. A. §§ 59-2957, 2960-2966, 2976



Order for Outpatient Treatment

The court can also order treatment that allows for a person to not have to get treatment overnight at a treatment facility. If this happens, they only go for visits. This is called outpatient treatment. The court will do this if they decide a person will show up to the visits. They also must decide that the person won't be a danger to the community and won't hurt themselves or someone else. In most cases, the order can only happen if the facility accepts the person for outpatient treatment.

The order for outpatient treatment has rules. If the patient breaks a rule, the court may call off the order and the patient may be sent for in-patient treatment. If this happens, the person can have a hearing to dispute the change. The person has to ask to dispute the change within two days. In the hearing, the person has to convince the court. A qualified mental health professional must allow whatever treatment is decided by the court. **Source: Kan. Stat. Ann. §59-2967**

Rights After Commitment

Any patient in a treatment facility has legal rights.

A graphic of the state of Kansas in a dark blue color. Inside the outline of the state, the text "Kansas" is at the top, and "Patient's Bill of Rights" is written in a larger font below it, all in white.

Kansas
"Patient's Bill
of Rights"

1. You have the right to **wear your own clothes**, to keep and use your personal items, and to spend your money.
2. You have the right to **talk at normal times on the telephone**, including confidential calls. You have the right to send and get unopened letters.
3. You have the right to **visit alone with a spouse**, if there is a space available.
4. You have the right to **get visitors** at normal times each day.
5. You have the right to say **"No" to labor you don't want to do**, other than cleaning your own bedroom and bathroom. You have the right to get paid for any work you agree to do.
6. You have the right to **refuse specific procedures**, like psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures.
7. You have the right to have the facility **tell you what medications they are giving you**. The explanation should include the reason for giving you the medicine and the most common side effects. You can also ask the facility to explain any other treatments they have ordered you to receive.
8. You have the right to **write freely** to the secretary of the Department for Aging and Disability Services, the head of the treatment facility, any court, physician, psychologist, minister or attorney. The facility must mail your letters at once and cannot open them before mailing them.
9. You have the right to contact or visit alone with your physician, psychologist, minister, guardian or attorney **at any time**.
10. You have the right to get information about your rights under Kansas law when you are admitted. **Your rights should be both told to you and given to you in writing.**
11. You have the right to be **treated humanely**, with ethical practices.

The head of the treatment facility may take away some of these rights if they have a good reason. The right to say "No" to forced work and the right to be treated humanely can never be taken away. The right to mail letters can never be taken away either as long as the mail does not violate the postal service's rules. If rights are taken away, the facility must write an explanation and have it in the patient's records. Copies of their reason why must be able to be seen by the patient, their parent/guardian, and attorney. If the right to unopened mail is taken away, the mail still has to be opened and read to the patient.

Patients have other rights in Kansas.

Restraints and Seclusion –

“Restraints” means the use of a device to a part of a patient’s body to stop the patient from hurting themselves or someone else. “Seclusion” is placing a patient alone, in a room. Seclusion takes away the person’s freedom to leave and they are not consistently watched.

Treatment facilities cannot use restraints or seclusion unless they are necessary. They may be necessary to stop instant harm to themselves or others. They are necessary if there is no other option. Restraint or seclusion are never allowed to punish a patient or because it is the easiest option for staff.

There are more rules for using restraints or seclusion. They cannot be used for more than three hours without re-evaluating except from midnight to 8:00 am. Whenever restraints or seclusion are in use, staff must check the patient’s condition at least every 15 minutes, no matter whether it is during the day or night. The staff is supposed to keep a record of this check-in. The head of the treatment facility, a physician, or a psychologist must sign a statement saying why each use of seclusion or restraints was necessary. This document goes into the patient’s records. The law has some exceptions to this process. To stop physical injury, restraints may be in use for a period no longer than two hours without approval from the treatment facility head, a physician or a psychologist. **Source Kan. Stat. Ann. § 59-2977**

Forced Medication –

Under Kansas law, people who are forced to get treatment by a court order cannot say “No” to medicine.

Patients can say they don’t want a medicine. If the patient still says they don’t want the medicine after staff explain why the medicine is necessary, they will still be made to take the medicine. Staff must note that the patient didn’t want the medicine in their record. The note must be quickly given to the medical director for review. The facility can keep giving the medicine if the medical director approves the medicine within 5 days of getting the note about the patient not wanting it. The 5 days does not include weekend days or holidays. A physician has to check in on the patient and take note of bad symptoms or side effects.

Source: Kan. Stat. Ann. § 59-2976



Patients have other rights in Kansas. (cont.)

Court Review –

After some time, a patient is able to have a hearing on continuing the involuntary treatment. This happens every 90 days during the first 6 months after the court makes an “involuntary treatment order”. After that, it happens every 180 days.

At least 14 days before the end of each period of treatment, treatment facility staff must give a written report to the court. The report must have staff’s recommendations about the patient’s need for further treatment. After the court gets the facility’s report, the court tells the patient’s attorney. Then, the attorney must talk with the patient. If the patient wants a hearing, the attorney must ask for a hearing in writing. If the patient does not want a hearing, the attorney must submit a written statement. The written statement will say that the attorney explained that the patient has a right to a hearing and that the patient decided not to ask for a hearing even if the court orders the patient to receive more treatment at the facility. The court hearing must happen no more than 10 days after the written request is given. In this case, the patient cannot ask for a jury hearing.

When the hearing is over, the court will order continued treatment only if there is much more evidence showing the need for more treatment instead of letting the patient go.

In some cases, the patient can be discharged before the 90 days if the facility decides that the patient no longer needs treatment. In these cases, the treatment facility notifies the attorneys and the court that the patient no longer needs treatment, and the court will dismiss the case without a review hearing. **Source Kan. Stat. Ann. §59-2969 and 2970**

Access to Records –

A patient has a right to copies of their medical records. The only exception to this rule is if the head of a treatment facility refuses to release some records. To do this, the head of the treatment facility must say in writing that the record would be harmful to the patient’s well-being.

Source: Kan. Stat. Ann. § 59-2979



Patients have other rights in Kansas. (Cont.)

Transportation –

When being moved, the **least amount of restraint necessary should be used**. If a person is calm and cooperative, anyone transporting the person should not apply handcuffs or shackles to them. The person moving the patient should not use a marked police or sheriff's department car if other vehicles are available.

Source: Kan. Stat. Ann. § 59-2970



Transfers –

Patients may be moved from one treatment facility to another. Patients may be moved to a more restrictive unit within the same treatment facility. The **treatment facility must tell the patient's guardian or family before the transfer**, unless it is an emergency. The guardian or family member can request a hearing to challenge the move.

Source: Kan. Stat. Ann. § 59-2972

Discharge –

The **facility must discharge that patient from the facility when the patient is no longer in need of treatment in a treatment facility**. Before the discharge, the community mental health center in the area the patient will live must make recommendations about services. Often, discharged patients must continue treatment. The terms of an order often will force outpatient treatment.

Source: Kan. Stat. Ann. § 59-2973



You have rights.

You have rights even if you have a mental illness and have been forced to get treatment. Legally, your mental illness does not mean that you can't think for yourself. **You have the same rights as everyone else.** Learning about your rights is the best way to make sure your rights aren't violated.

We hope this guide helps people with mental illness know their rights. Remember, Disability Rights Center of Kansas is here to help. If you have a specific question about your rights or any of the information in this guide, contact us.

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