

House Judiciary Committee Meeting
Wednesday, January 20, 1965

The House Judiciary Committee met in joint session with the Senate Judiciary Committee in Room 529 at 11:25 A.M. with Chairman Steadman Ball, Senate Judiciary Committee, presiding. Nineteen members of the House Judiciary Committee were present. Members Hill and Tillotson were absent.

Chairman Ball called the meeting to order.

Senator Ball announced that there would be joint meetings of the two Judiciary Committees every day next week at 11:00 A.M. in Room 529. He stated that there are a number of problems to be considered which are not the ordinary run of Senate bills and House bills. There should be a large measure of agreement concerning these matters before they go to the floor. Monday and Tuesday members of the Kansas Bar Association will be heard. Wednesday and Thursday will be devoted to the Uniform Commercial Code.

Senator Ball then explained to the new members the formation and procedure of the Kansas Judicial Council, which is a statutory state agency. The last session of the Legislature referred to the Judicial Council for their study the matters of care and treatment for mentally ill, the procedural matter of determining mental illness and getting these people to the right places. Also referred to them was the matter of changing the law in regard to guardianship for the mentally ill. He then introduced Robert H. Cobean of the Kansas Judicial Council to speak to the members concerning the Council's study.

Mr. Cobean read several lines from the resolution which directed the Council to make this study and submit their report. When the Council received the directive, the committee was formed. The council gave guide lines to the committee as to the basic philosophy they should use. The procedure should be court centered. The Legislature has been plagued with a number of bills in regard to these matters.

Mr. Cobean named the members of his committee: the Honorable Joe H. Swinehart of Kansas City, Roy Kirby of Coffeyville, Marvin E. Thompson of Russell, Raymond Briman of Topeka, and Donald L. Burnett of Larned. Mr. Dan Hopson, Jr. of Lawrence is the Reporter-Draftsman.

Mr. Cobean then read several definitions which are given in this act:

mentally ill person - any person who is mentally impaired, except by reason of mental deficiency only, to the extent that he is in need of "care or treatment" and

A. who lacks sufficient understanding or capacity to make responsible decisions with respect to his need for "care or treatment," or;

B. who refuses to seek "care or treatment."

patient - a person who is an "informal patient," a "voluntary patient" a "proposed patient," or an "involuntary patient."

care or treatment - such necessary services as are in the best interests of physical and mental health of the patient and rendered by or under the supervision of a physician

convalescent - describe the status of any patient who has not been discharged, but who is permitted by the head of the hospital to live apart from a psychiatric hospital

voluntary patient - a person, other than an informal patient who is receiving care or treatment as a psychiatric hospital other than by order of court.

involuntary patient - a mentally ill person who is receiving care or treatment under an order of a probate court

informal patient - a person either receiving out-patient care or treatment, which includes day or night hospitalization at a psychiatric hospital or who is admitted therein pursuant to Section 4

Mr. Cobean went on to explain that the two acts which are before the committees are companion bills and if one is adopted, the other one must be adopted too.

He stated that under this act, in the case of voluntary admission, that person does not lose civil or property rights and therefore, more people will avail themselves of treatment sooner. Sequal to care and treatment--when a mentally ill person is also incapacitated, they have selected the word incapacitated in place of incompetent. The term mentally ill is used in place of insane. The complete procedures in the probate court for the determination of a mentally ill person are going to be treated as hospital records and would never be open to public for inspection or appear on an abstract, etc. as are juvenile records and adoption records. Of course, there must be a record established when a person is not capable, therefore there is a completely separate procedure that we have in determining a person as incapacitated. Because we have this conservator concept, we have defined the guardian to be a guardian of a person. Conservator is used as the guardian of the estate. These may be the same and may be introduced in the same hearing. In that event, two separate care case files will be established, but these can be combined for hearing.

Mr. Cobean went on to explain that another new feature is the provision for an individual making application for himself for a conservator for his estate. He can be physically incapacitated in that he isn't physically capable. A physically incapacitated person can select whomever he wants. There are many new aspects of procedure, but these are quite detailed and this is no place to go into that. In the guardian and conservator act, we tried to change as little as possible. We are not changing the administration when you once get the conservator appointed in place of the guardian of the estate. A study will be made as to how these changes will affect other sections of the statutes if these acts are passed. The language has to be repealed.

Senator Ball asked Mr. Cobean to again name the members of the committee who worked on these acts. He also asked Mr. Cobean to be a little more specific in pointing out the forms of mental illness.

Mr. Cobean reread the definitions given earlier in these minutes.

A question and answer session followed.

Mr. Davis asked if there must be two separate suits for the guardian and the conservator. Mr. Cobean answered no and went on to explain that it would depend upon the person involved. If you wish both remedies, then you file them both at the same time.

Senator Arthur asked if there would be one petition. Mr. Cobean stated that there would be two petitions, but one hearing. There are two proceedings, guardian and conservator. You ask for either or both. The hospitalization proceeding is separate.

When asked if they are attempting to codify, Mr. Cobean said that this will replace all of them.

The question was raised in regard to a person who volunteers himself and then later on wants out of a deal and says he was incompetent and was taken advantage of. Mr. Cobean said that in the case of a voluntary commitment, there will not be a matter of court record. There was a great deal of discussion concerning this matter by the members of the committees. Mr. Cobean stated that all these matters had been discussed with the title people and they had raised no question.

Mr. Fatzer asked what could be done if someone goes off and goes to another state. Mr. Cobean said that a provision has been made for unauthorized absences.

Senator Ball pointed out that this is not a uniform law and will not be introduced now. We will take this section by section. He also informed the members of the committees that a great deal of studying and arguing has been done before this final decision was reached by the Judicial Council. He said that it is obvious that something should be done. He said that unless there are general questions, we should not go into any more details at this time.

Mr. Cobean pointed out that there are other states who have already enacted and tried every feature of this. He explained that early in their study they called in representatives of the Kansas Medical Society, State Department of Welfare, Motor Vehicle Department, Kansas

Association for Retarded Children, Menninger Foundation and all other parties involved. Senator Ball asked if there are any of these organizations which we should call in before the committees. Mr. Cobean pointed out that out of all of these agencies, the only one which questioned what they are doing was the drivers' license people. He said Dr. Haines is very much in favor of it.

Mr. Cobean also pointed out that if a court makes a finding and orders that person entered for care or treatment in a state hospital, the state must receive that patient within fifteen days. Later in the act, there is provision that the state hospital may retain patients under convalescent type.

Senator Ball emphasized one more point. He said they had to determine whether this should be court centered. These matters should all be handled by the courts.

Senator Ball thanked Mr. Cobean for his presentation and reminded the members of the committees of the joint meetings next week.

There being no further business, the meeting adjourned at 12:15 P.M.

Respectfully submitted,
Jack R. Euler

Minutes approved: