Approved 4-7-83
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Marvin Littlejohn, Chairperson at

1:30 a.m./p.m. on March 23, 1983 in room 423-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Research Department
Bruce Hurd, Revisor's Office
Sue Hill, Secretary to Committee

Conferees appearing before the committee:

Sylvia Hougland, Secy./ Department on Aging
Rep. Leary Johnson
Randall Morgan, M.D. from Hays, Kansas
Randy Hearrell, Judicial Counsel
Jim Lackey, Ks. Advocacy & Protection Services/Developmentally Disabled, Inc.
Sister Judith Sutera, Association of Home Health Agencies
Marilyn Bradt, Kansans for Improvement of Nursing Homes
Al Bramble, Coalition on Aging
Ethel May Miller, Association for Retarded Citizens
Bruce Roby, Legal Counsel for Dept. of Social Rehabilitation Services
Brian Krantz, American Civil Liberties Union
Dick Morrissey, Department of Health and Environment
Dick Hummel, Kansas Health Care Association
Rebecca Kupper, Kansas Hospital Association

Visitor's register, see (Attachment No. 1.)

Chairman called meeting to order, and directed committee's attention to printed information for members. See (Attachment No. 2.) for printed statement from Kansans for Improvement of Nursing Homes, and (Attachment No. 3.) for details of letters from the Kansas State Board of Nursing to Rep. Niles and Rep. Littlejohn in regard to HB 2143.

Chairman noted meetings will be held at 1:00 p.m. on Thursday and Monday, and a special meeting is being called for Friday, March 25, 1983, after adjournment of the House.

Hearings began on SB 11:--

Sylvia Hougland, Secy. Department on Aging presented printed testimony, see (Attachment No. 4.) for details. SB 11 which amends existing Guardianship statutes and Ms. Hougland pointed out some major provisions in the bill. i.e.- Definition of disability, Purpose of the guardian, Standard of proof of need of a guardian, Consideration of workload of a guardian, limited guardianship, Duties and limits of the guardians, Annual filing by guardians, Review of guardianship--tri-annually. In summary, she stated KDOA is encouraged by the bill and the progress made thus far. Anticipating further legal and ethical questions in the care of the disabled, she stated we will be proud that Kansas has forged new ground through SB 11. She urged committee, though the bill is complex, to support it favorably. Ms. Hougland answered questions.

Rep. Leary Johnson, presented printed testimony to committee, see (Attachment No. 5.) for details. He had previously addressed one aspect of SB 11 in House Judiciary, and it was his understanding that consideration would be given to the marriage of SB 11 and HB 2318 upon receipt from the Senate. Further, the primary difference between these two bills, is the safeguards involved. It is time for Kansas to address the problem of seeing that provisions are made to sterilize mentally retarded females of child bearing age only under the most guarded circumstances.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Hearings on SB 11 continue:-

Rep. Johnson continued, when a life and death situation occurs, no one can now speak in their behalf. He answered questions from committee.

(See Attachment No. 6.) for details on letter from attorneys to Senate Committee in regard to sterilization for a mentally retarded girl from a Western Kansas community.

Dr. Randall Morgan from Hays, Kansas spoke briefly in regard to physicians not having a clear cut pattern of action, and they would like to see a way in cases of pregnancy which might be life-threatening to the patient, they could as physicians legally sterilize that patient. It would be done with approval of medical evidence, and not indiscriminate sterilization. Great care should be taken. Dr. Morgan answered questions from committee.

Mr. Randy Hearrell, of Judicial Counsel spoke to the changes made as recommended to the Senate committee and they made most of these, however, there are 3 items that were not added to amendments that Mr. Hearrell feels most important to SB 11. i.e.- strike new Sec. 20 relating to annual review, strike Subsection (c) of new Section 21, relating to "standby" guardians, and add 59-3031, as amended. (Please see Attachment No. 7.) for details. In summary, he stated they overwhelming support SB 11, with the suggested changes. Mr. Hearrell answered many questions from committee.

Mr. Jim Lackey, Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc. distributed printed statement to committee. (See Attachment No. 8.) for details, on 10 points of strength in SB 11. They feel the language in the bill is prudent. Feels it appears to provide sensitive and right headed statutes. With conscientious practice, if these amendments become law, it can give Kansas a wise and caring system to attend the needs of some today and possibly others tomorrow.

Sister Judith Sutera, Association of Home Health Agencies spoke to committee commending introduction of limited guardianship as it will be very helpful in cases where persons need help with some of their affairs. Further, the courts take on-going interest in wards and believe the annual report and the 3 year review will provide the protection necessary. Urged the committee to accept these improvements and support SB 11.

Marilyn Bradt, see (Attachment No. 9.) for details of printed statement. KINH strongly supports SB 11 in its present form, but would like to call attention to a few possible changes. There were four detailed points that Ms. Bradt noted. i.e.- concern on whether the terminology should refer to "disabled persons" or "incapacitated persons", limit the number of wards a guardian may have, the wording to specifically require court review before putting a ward in a nursing home, no reason to waive filing of an annual report. She feels these are all concerns.

Mr. Al Bramble, Coalition on Aging spoke to the needs and rights of elderly citizens. Feels they have the right to make their own decisions as long as possible. This legislation is very important to the elderly, and asked the provisions established here will be done with respect to rights and dignity of these elderly citizens. (See Attachment No. 10.) for details.

Printed statement from Ms. Kathryn M. Wahlmeier, Hays, Ks. (See Attachment No. 11.) for details. She did not make a statement in person.

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 1:30 a.m./p.m. on March 23, 1983

Hearings on SB 11 continue:-

Mrs. Ethel May Miller, Association for Retarded Citizens would like to go on record in support of SB 11.

Mr. Bruce Roby, Counsel representing legal division of SRS in current litigation, presented only a limited number of handouts for committee. See (Attachment No. 12.), for details of handout. He stated SB 11 has already received extensive modification since its introduction, however in its present form fails to address the central issues of the Powell case in litigation. Some suggestions for modification are detailed in this attachment No. 12.

Mr. Roby had distributed a very limited number of copies of a balloon on SB 11 to committee. See (Attachment No. 13.) for details of these suggested amendments. Questions by committee and staff of Mr. Roby on several specifics.

Brian Krantz, American Civil Liberties Union stated he would like to see some language changes in the bill for sterilization of the mentally retarded. He answered questions from committee.

Hearings on SB 11 closed:

Copies of HB 2318 were distributed to committee members for their review when considering amendments. See (Attachment No. 14.) for details on HB 2318.

Chair noted discussion and final action on SB 11 will take place on Friday, March 25, 1983.

Hearings on SB 247 began:-

Rep. Buehler, chairman of sub-committee on SB 247 explained the deletions suggested refer only to registration and licensing.

Sen. Roy Ehrlich planned to testify on SB 247, but was detained in Senate Chambers. Rep. Buehler stated that Sen. Ehrlich is in agreement with the sub-committee on SB 247 recommendations.

Motion made by Rep. Spaniol to adopt the sub-committee report. Seconded by Rep. Roenbaugh, and to add back the overstrike in the title as well. Motion carried.

Mr. Dick Morrissey, Dept. of Health and Environment stated they have no objections with SB 247, though do have concerns for taking action to enforce or descipline of medication-aides when some indication of illegal practice or misconduct occurs. There is concern with the interpretation of the existing language of K.S.A. 39-936, i.e.- Intent with regard to continuing education. All nurse aide training now provided is in Vo-Tech schools and Jr. Colleges. If any version passed it would give them authority to establish requirements for continuing education. It is their intent to maintain that commitment and in an attempt to devise a program that would be delivered by the same Ju-Co's Vo-Techs across the state, feel SB 247 addresses this.

Dick Hummel, Health Care Association supports SB 247. Supports continuing education for medication aides and calls attention of the committee to an amendment on the last page of the bill which amplifies that medication aides may be permitted to be employed by hospital based long term care units. This provision was in SB 26, and we encourage the retention of this amendment in SB 247.

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 1:30 a.m./p.m. on March 23, 1983.

Hearings on SB 247 continue:-

Rebecca Kupper, Kansas Hospital Association would like to to on record in support of SB 247. She noted the education requirements for medication aides and feels this insures quality care in Kansas institutions. The Kansas Hospital Association cupports continuing education for medication aides, and urges committee to support SB 247.

Hearings on SB 247 concluded.

Rep. Roenbaugh moved to pass SB 247 out favorably as amended. Motion seconded by Rep. Friedeman, and motion carried.

Meeting adjourned at 3:10 p.m. Next meeting will be 1:00 p.m. on Thursday, March 24, 1983.

Date: 3-23-3

GUEST REGISTER

HOUSE

PUBLIC HEALTH AND WELFARE

89.1.72.

Please Print

NAME	ORGANIZATION	ADDRESS
Jim Lackey	KAPS	Manhattan
Joan Stuchlik	KAPS	Manhattan
Catherine Wahlmeier	Private citizen	Hays
Brenda Crawford	Private citizen	Plainville
Cecil Crawford	Private Citizen	Plainville
Millie Schroeder	KDOA	TOPEKA
Sr. Judith Sutera	Ks. Assoc. Home Health Agencies	Atchison
Randy Hearrell	KANSAS Judicial Council	Topeka
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	"
BETTY L. JONES	Eagle Forum PO Box 3366	Shawnee Mission Ks
Marilyn Bradt	KINH	Lawrence
Nickie Stein	KSNA	Topeka
Pat Goodson	Right To Life	Shawnee
Mary Poyzer	Private citizen	El Dorado Ks
[illegible]	KCCA/AHRD/KCOA	Lawrence, Ks.
Sylvia Hanford	KDOA	Topeka Ks
Kent Price		Reading Ks
Rebecca Kupper	Ks. Hospital Assoc.	Topeka
Ken Schafermeyer	KS Pharmacists Assoc.	Topeka
Larry J. Johnson	Rep.	118th District

(attachment No. 1.)

Date: 3-23-83

GUEST REGISTER

HOUSE

PUBLIC HEALTH AND WELFARE

Pg 2.72.

NAME	ORGANIZATION	ADDRESS
Randall Law		Wakeeney
Clarene Law		RR1 Wakeeney Ks.
Lynelle King	Ks St. Nurses' Assn	Topeka
Dick Morrissey	KDH&E	"
Ethel Mayfuller	Ks ARC	Topeka

#2

KINH

Kansans for Improvement of Nursing Homes, Inc.

927½ MASSACHUSETTS ST. #1 LAWRENCE, KANSAS 66044 842-3088 — Area Code 913

March 22, 1983

TESTIMONY SUBMITTED TO THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE CONCERNING SENATE BILL 10

A bigger nursing home corporation is not necessarily a better nursing home corporation, as we are all well aware. When the operation of these large corporations also becomes more distant geographically and more complex organizationally, we must begin to ask how we can be assured that such large, distant, complex corporations will be held accountable for providing an adequate level of service at an acceptable cost. Legislation passed last session was a small first step toward accountability. KINH believes that SB 10, limiting the number of layers of corporate ownership and management to three, is a reasonable and useful further step.

In studying the SRS cost reports of nursing homes involved with more than one out of state corporation, it becomes clear that this involvement is reflected in abnormally high costs to the state Medicaid program, especially in the areas of management contract fees and leases. It is apparent from the unusually high leases that the cost of ownership to the out of state owner corporation must be substantially less than the income received from the lease; and the out of state lessee corporation, in turn, derives its benefits from the unusually high management contract fees. Further, it would appear that the more layers of management involved, the greater the cost as every layer takes its share of the income.

SRS has, in several of these cases, disallowed a portion of these costs, but has allowed the majority so that they remain a larger fraction of the Medicaid reimbursement fee than is the case for most of the other nursing homes.

(attachment no. 2.)

KINH can see no reason why there should be more than three business entities involved in any nursing home. We urge you to give favorable consideration to Senate Bill 10.

3

STATE OF KANSAS • HOUSE OF REPRESENTATIVES

MARVIN L. LITTLEJOHN
District 119, Norton, Phillips, Part of Rooks Counties
14 Southwest Second, Phillipsburg, Kansas 67661

memorandum

To: Public Health and Welfare Committee

Date: March 23, 1983

Anita and I wish to share with you a report we have received from the State Board of Nursing in regard to the problems which brought on HB 2143.

(attachment no. 3.)

KANSAS STATE BOARD OF NURSING

BOX 1098, 503 KANSAS AVENUE, SUITE 330
TOPEKA, KANSAS 66601
Telephone 913/296-4929

March 17, 1983

The Honorable Marvin Littlejohn, Chairman
House Public Health and Welfare Committee
Room 422-S, Statehouse
Topeka, Kansas 66612

Dear Marvin:

Wanted you to know how much we have appreciated your suggestions and your support regarding House Bill 2143. Know that it took a lot of time and appreciate your efforts and your interest.

As an update, wanted you to know that Mrs. O. Patricia Diamond, President of the Board, and I met over lunch on March 4, 1983 with representatives, Dr. Willie Dunlap and Dean Prohaska, from the Department of Education. At that time we reviewed the document sent to you regarding the Board of Nursing plans to deal with some of the problems discussed in committee hearings. They were enthusiastic about the document and set plans in motion to appoint people to the joint committee. Our plan is to have a joint meeting the last week in May. Dean Prohaska suggested that this time would be best because the Department of Education is currently working on a master plan for vo-tech and community college education. The report will be ready in June. I will share this information with Representative Niles.

Thank you again for your most helpful assistance. With best personal regards. Thought you might also be interested in the enclosed, regarding an action taken by Tennessee.

Sincerely,

Lois Rich Scibetta, Ph.D., R.N.
Executive Administrator

LRS/amm

Enclosure

BRIEFS

continued from page 13

QUICKLY NOTED

New Jersey's second-largest hospital tried to file under Chapter 11 bankruptcy law—and failed. The nonprofit, city-owned, 600-bed Jersey City Medical Center, which largely serves the poor, was deemed by a federal judge to be "clearly a governmental unit," and therefore ineligible to file. Hundreds of laid-off workers were recalled.

An Institute on Arthritis, Musculoskeletal and Skin Diseases has been created under the aegis of the National Institutes of Health. The skin disease category was added to the title toward the end of discussions preceding the bill's approval.

Drug therapy may make regression of atherosclerosis possible in a few years, says a Chicago scientist. A combination of probucol and cholestyramine greatly reduced the disease in Rhesus monkeys—which develop it much as humans do—even while they were kept on a high-cholesterol diet.

Medicare reimbursement for personal emergency response systems is being considered by Congress. The systems for homebound, high-risk patients sound an alarm to alert a local ambulance or emergency squad that the person needs assistance.

There were no nurses on a commission appointed by the mayor of St. Louis to help solve the city's health care problems.

A moratorium on new nursing schools until September 1 has been declared by the Tennessee Board of Nursing. The reason: a shortage of clinical practice sites.

Sickle-cell anemia may be reversible with the experimental cancer drug 5-azacytidine, researchers report in the *New England Journal of Medicine*. The treatment has been called the first successful attempt to control specific human genes.

Nursing gets new federal umbrella. The federal Bureau of Health Professions, which includes the Division of Nursing, is now part of a new public health service umbrella agency called the Health Resources and Services Administration.

atric disorders and aberrations of behavior that actually result from medical-biological or drug problems," asserted APA representative John Bowman, MD, president of the Indiana Psychiatric Society. There are appropriate roles psychiatric nurses, psychologists, and others can play in the treatment of mental illness, he conceded, but only after a medical evaluation, differential diagnosis, and comprehensive treatment planning by a physician.

Rx drug abuse behind most drug emergencies

It's legal prescription drugs, not illegal "street" drugs, that account for three-fourths of drug-related emergency department admissions and deaths, reports the General Accounting Office in Washington, D.C. Thefts, illegal pharmacy sales, misprescribing by physicians for profit or in error, and forged prescriptions all contribute to such abuse, according to data collected by the Drug Abuse Warning Network.

State association won't bargain anymore

Bucking the trend towards collective bargaining in many state nursing associations, the Vermont State Nurses' Association voted overwhelmingly at its recent convention to discontinue all collective bargaining "for the foreseeable future," according to its publication, *Vermont Registered Nurse*. "We feel we should attempt to have better rapport with nurses in hospital administration, so we'll be more welcome in hospital settings," Hilary Smith, VSNA spokesperson, told a reporter from the Burlington *Free Press*. "There are other ways to reach economic goals."

OTC contraceptive sponge awaits FDA action

Approval by FDA seemed imminent at press time for a nonprescription, one-size-fits-all, polyurethane sponge contraceptive to be manufactured by the VLI Corporation of Costa Mesa, Calif. The product, called "2day," contains enough spermicide to permit unlimited intromissions for 48 hours; it's then removed and discarded (but can't be flushed down a toilet). The device was originally intended to be washed and reused, a VLI spokesperson told *RN*. But women washed out the spermicide, too, and the idea was scrapped. The FDA's Maternal Health Advisory Committee has recommended approval of 2day, which will cost about a dollar and reportedly provide the same high efficacy rate as a diaphragm.

How to make patients take their meds

The most effective strategies for promoting patient compliance with prescriptions include providing written instructions, "packaging" the drugs in a special way (e.g., separating pills into amounts per dose or per day), tailoring the regimen to the patient's normal schedule, suggesting that he monitor himself on a calendar or card (good for those who simply forget), and employing contingency management (positive reinforcement with "rewards"). Consideration of each patient's "physical and psychosocial functioning" is essential, the authors of a study rec published in the *Journal c American Medical Ass ation.*

Nurses protest jail duty

State Health Departn nurses who protested or to work rotating shifts a Polk County, Fla., jail whe two nurses quit last fall appealed dismissal of complaints by a district cial. He considered unfo ed their fear that disper medications left for then physicians might jeopar their licenses, calling practice "legal and of acc able standards." Becaus nurses are expected to form duties "in various settings" and to accept porary assignments in a sis," the state administ disallowed the nurses' a tion that the jail duty vio their contracts.

Pregnancy/ lactation warni due for OTC me

Starting in December, all the-counter oral drugs specifically exempted bear labels warning ag their use during pregr and lactation without the proval of a health profes al. It was the drug comp themselves that urged FDA regulation, fearing might have to provide 5 ferent sets of instructic other states took Califo cue in planning its ow quirements for such lab While California's propo which will be preempt was to suggest consulti physician or pharmacist FDA's wording can be strued to include nurses with any drug, if you are nant or nursing a baby. professional advice befor ing this product." D whose labels already inc such information or those have been proven safe exempt.

KANSAS STATE BOARD OF NURSING

BOX 1098, 503 KANSAS AVENUE, SUITE 330
TOPEKA, KANSAS 66601

Telephone 913/296-4929

March 17, 1983

The Honorable Anita G. Niles
Representative, Seventeenth District
Room 278 W, Statehouse
Topeka, Kansas 66612

Dear Representative Niles:

On behalf of the Board of Nursing, I want to thank you for bringing the problems addressed in House Bill 2143 to our attention.

I am happy to report that progress has been made. Mrs. O. Patricia Diamond, President of the Board, and I met over lunch on March 4, 1983 with representatives, Dr. Willie Dunlap and Dean Prohaska, from the Department of Education. At that time we reviewed the document sent to you regarding the Board of Nursing plans to deal with some of the problems discussed in committee hearings. They were enthusiastic about the document and set plans in motion to appoint people to the joint committee. Our plan is to have a joint meeting the last week in May. Dean Prohaska suggested that this time would be best because the Department of Education is currently working on a master plan for vo-tech and community college education. The report will be ready in June. I have made this information available to Representative Littlejohn too.

Thank you again for your interest. You will receive periodic reports from us.

With best personal regards.

Sincerely,

Lois Rich Scibetta

Lois Rich Scibetta, Ph.D., R.N.
Executive Administrator

LRS/amm

SENATE BILL 11
Testimony by Kansas Department on Aging

Bill Brief: Interim Committee Bill Amending Existing Guardianship Statutes.

Bill Provisions:

Sec. 1
- Changes the term from "incapacitated" to "disabled."
- Defines disability functionally rather than categorically.
  - New language defines incapacity as "extent of impairment" so that the person lacks capacity to meet essential requirements for physical health or safety.
  - Old wording - categorical definition such as "advanced age."
- Changes general guardian responsibilities so that the guardian is to act on behalf of the ward (as opposed to exercising control over the person).
- Allows for non-profit agencies to be appointed guardian.

Sec. 10
- Sets out a Standard of Proof at clear and convincing evidence. (No standard was set out in previous statute.)

Sec. 11
- Instructs the Court to consider the workload and capabilities of Guardians having more than 15 wards before making an appointment.

Sec. 11(d)
- Sets out the concept of Limited Guardianship.

Sec. 14
- Specifies duties and power of Guardians.
- Defines what Guardians should do and what they shall not do without court supervision.

Sec. 19
- Mandates Guardian to file an annual report unless expressly waived by the court, and requires a final report ...

Sec. 20
- Mandates the court to review all guardianship cases within three years and specifies what the review must determine.
  - If needs are being met;
  - Guardian performing ordered duties;
  - Whether limits should be set on Guardian;
  - If current limits are sufficient; and
  - If guardianship should be terminated.

(Attachment No. 4.)

Testimony:

I'd like to thank the Committee for giving me this opportunity to testify here today.

SB-11, which amends existing Guardianship statutes, may be one of the most significant pieces of Legislation in this session.

The efforts and commitment of the Interim Committee, the Judicial Council, the Senate Public Health & Welfare Committee, and a wide range of diverse citizens' and professional groups must be commended. It is only because of their diligence and hard work over several years and months that a bill of this caliber, and with this degree of consensus, was developed.

The provisions in SB-11 were developed by compromise and insight by all parties after months of deliberation. Most of the wording of the Judicial Council was accepted before final drafting.

Kansas Guardianship statutes afford many due process protections to proposed wards. There were a number of ways, however, in which current Guardianship law had failed to protect the proposed ward. SB-11 provides new safeguards in areas of long-standing concern.

The Interim Committee, Judidicial Council, and Senate Public Health & Welfare Committee addressed many of the issues we feel are essential to protect the personal and civil rights of wards while balancing the other capacities of the Judicial system.

There are six major provisions in the bill that I'd like to speak to because they will greatly strengthen the Guardianship law.

1. Definition of Disability

Section 1 - Disability is defined functionally rather than categorically. In the existing statute, there is a list of medical problems, including "advanced age" that were criteria to be used in determining incapacity. SB-11 defines disability in functional terms; whereby the ability to evaluate information and make decisions must be impaired to the extent that he or she lacks the capacity ... to meet essential requirements for physical health or safety - and further defines those terms.

2. Purpose of the Guardian

Section 1 also has changes in the definition of the guardian, as one appointed by the court to act "on the behalf of a ward." Previous wording stated to "exercise control" of the person. This change is important because it supports the concept of working in the best interest of the ward which was everyone's primary concern.

3. Standard of Proof

Section 10 of SB-11 sets the standard of proof as clear and convincing evidence of the need for a guardian. The standard of proof would require that the court find by clear and convincing evidence that a person is disabled and needs a guardian. This standard of proof is also applied in the restoration process.

4. Consideration of Workload of Guardian

Section 11 instructs the court to consider the workload and capabilities of guardians having more than 15 wards before making another appointment. In the Interim Committee extensive discussion occurred about workload. In order to balance the needs, this language was adopted.

5. Limited Guardianship

Section 11(d) establishes the concept of a Limited Guardianship. If the court finds that a person is able to and should be permitted to make some decisions, which affect the person, then a limited guardianship is established which sets out the limited guardianship perogatives. It recognizes that some persons may be able to make some decisions themselves and allows for specific procedures while continuing full guardianships for those who need them.

6. Duties and Limits of the Guardians

The powers and duties of a guardian are set out in Section 14 and certain powers are restricted. These powers and duties will further be specified in the Letters of Guardianship or the Letters of Limited Guardianship.

7. Annual Filing by Guardians

Section 14(h) is important in that guardians are put on notice that they would have to file annual reports. It also sets out the requirements for the annual report mentioned in Section 14(h). The court may also waive the report requirement.

8. Review of Guardianship - Tri-Annually

Section 20 mandates the court to review all cases every three years. The wording of this section is excellent in that it delineates what must be reviewed. The Senate Public Health & Welfare Committee retained this section because it is an actual review of the Guardianship.

1. If needs are being met;
2. If guardianship is performing ordered functions;
3. If limits shall be changed; and
4. Or, if it should be terminated.

Existing statute does not provide for any required review. Without this provision, it is possible that a full review to determine whether a ward is best served or the court's order is carried out might never happen.

In sum, KDOA is encouraged by not only this bill and the progress it's made thus far, but also by the process by which it got to this Committee. Many people have put many hours into this bill; the Interim Committee, the Judicial Council, the Senate Committee, and now this Committee. Add to that list a number of service organizations, attorneys, and advocacy groups. We are encouraged that there has been so much concern for balancing needs with rights and dignities of people that might be wards or potential wards (indeed, any of us in this room). As the older population continues to grow, and grow older, we anticipate that guardianship roles will grow. We anticipate that many more legal and ethical questions will arise around the care of disabled people; and we will be proud that Kansas has forged the new ground that it has through SB-11.

Although the bill is complex, it is the product of competent and professional deliberation. We urge your support.

STATE OF KANSAS

LEARY J. JOHNSON
REPRESENTATIVE 118TH DISTRICT
LOGAN, GOVE, GRAHAM, TREGO
AND PARTS OF NESS AND ROOKS COUNTIES
1000 WARREN AVE
WAKEENEY, KANSAS 67672

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER AGRICULTURE AND LIVESTOCK
INSURANCE
TRANSPORTATION

Subject: Senate Bill 11

From: Representative Leary J. Johnson

Mr. Chairman, members of the committee, I previously had the opportunity to brief similar legislation addressing one aspect of SB 11 to the House Judiciary Committee. It was my understanding that consideration would be given towards the marriage of SB 11 and HB 2318 upon receipt from the Senate. The assignment of SB 11 to this committee is the reason I come before you today.

I ask for your brief indulgence and consideration in recieving HB 2318. The bill as designed would allow for provisions to sterilize mentally retarded females of child bearing age only under the most guarded of circumstances. It is very similar to the provisions contained in Section 14, paragraph (G). My intent and recommendation is that you look at this area closely to prevent potential abuse.

I believe the primary difference between the bills is the safeguards involved. You will note that HB 2318 incorporates a physician who must certify that pregnancy could be fatal to the person involved. The courts would respond based upon the medical evidence provided.

Attachment No. 5.

The reason for this legislation is that we have a limited segment of our society who the courts have ruled incompetent to make decisions for themselves yet under a life and death

situation no one can speak in their behalf. I do not anticipate the problems forseen by others who may testify. However, if there is the slightest doubt I would invite their constructive participation and recommendations. 25 other states have spoken to this problem, now is the time for Kansas to be responsible to all its citizens.

I believe that to fully understand the situation each of us must place ourselves in the position of parents of retarded children. We must understand the physical, emotional and financial stress involved and realize that a decision of this nature only comes from a genuine love and care of the one most involved.

As with any parent, we all are deeply concerned about the welfare of our children. We try, in the best way we can, to administer to all their needs. It is through this love and care for our children that we unselfishly and devotedly provide for their welfare and future. We have to keep in mind that these parental decisions are in the best interest of the ones we love, especially when their lives are at stake.

In conclusion, Mr. Chairman, members of the committee, let me acquaint you with a question so bluntly put to me immediately after submitting this bill. I was asked that if I had a retarded child who kept sticking their hand in a bucket of hot water would I cut off their hand to prevent recurrance? My answer, fellow colleagues, was a blunt "NO". The obvious answer is to simply remove the bucket.

6 6

JONES, WELLER & ELLIOTT

ATTORNEYS-AT-LAW

105 East Cherry — Hill City, Kansas 67642

Phone (913) 674-2144

CASEY JONES
(Retired)

RANDALL W. WELLER
Res. Ph. 674-5772

WILLIAM B. ELLIOTT
Res. Ph. 674-5702

March 21 1983

Senate Committee
State Capitol Building
Topeka, Kansas

Dear Sirs:

Thank you for giving me the opportunity to testify before this committee. My clients, Mr. and Mrs. Randall Law, are the parents of a nineteen year old retarded female. She and her parents have been advised by medical personnel that in the event she would get pregnant it would mean death.

This young lady attends a work shop-school for handicapped individuals at a town some seventy miles from her home. On occasions she has to walk from building to building which is along streets and a chance of exposure to boys exists.

The parents came to me quite concerned for her as she is unable to take care of a child should she have one but most importantly is the medical advice of almost certain death.

Her parents requested that I look into obtaining sterilization for her. Her retardation is sufficiently severe that she would not comprehend what a sterilization is all about and would not know the consequences of it. It would simply be completely immaterial to her. She lacks sufficient capacity to intelligently make that decision on her own.

I searched the law books but found absolutely no procedure available for sterilization even when a guardian and conservator is appointed. Incidentally, her mother is her guardian and conservator.

I asked the Judge if she would approve a petition to allow the sterilization and if she would issue an order for a doctor to do the same and the Judge refused.

At that point, I contacted our hospital administrator and visited with him about the problem and he in turn contacted a law firm in Topeka who represents the Kansas Board of Hospitals. This law firm advised that no procedure is available.

At that time I contacted Leary Johnson to introduce legislation

(attachment no. 6.)

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setting up some sort of structure to allow the sterilization.

Representative Johnson and I agreed that the procedure should be very strict and well supervised. That it should be written in such a manner so as not to allow sterilization on a mass basis. I included the following provisions in hopes of restricting it to the very few necessary cases:

1. That it be restricted to females since obviously pregnancy cannot affect the male.

2. That it be done only upon a doctor's diagnosis and recommendation that a pregnancy is harmful to the health of the female or might cause death.

a. That the degree of retardation and/or handicap be on the sole discretion of the medical doctor.

3. That a guardian and conservator be appointed who must act in the best interests of the ward and conservatee.

4. That the surgery only be authorized after a court order is issued which of course would follow a court hearing.

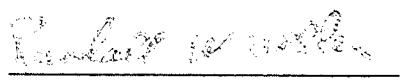
I felt that these safe guards would be sufficient to keep sterilization from occurring on a mass basis.

It is my opinion that some form of procedure is necessary although I strongly urge it to be in terms to limit it very strictly to those few who absolutely need it for preservation of their health or life and I would urge this committe to support Mr. Johnson's bill which I think does show that.

I remain

Sincerely yours,

JONES, WELLER & ELLIOTT

By: 

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PROPOSED CHANGES IN S. B. 11

Summary

1. Strike new § 20 relating to annual review.

2. Strike subsection (c) of new § 21 relating to "standby" guardians.

3. Add 59-3031, as amended.

(1) The Judicial Council proposes that § 20 of S.B. 11 be stricken. The Judicial Council agrees that guardians and conservators should be held more accountable but does not agree that the periodic review in § 20 is the best method of accomplishing that accountability. it is the opinion of the Judicial Council that other actions taken by this bill and proposed by the Judicial Council, meet the need for more accountability.

Presently, there are nine thousand guardians or conservators, or both, in the state. Only 30% of the conservators and none of the guardians file annual reports. Under S.B. 11 all guardians and conservators will be required to file annual reports on forms prescribed by rule of the Supreme Court. If this bill passes, the Judicial Council will design those forms for the Supreme Court. ~~and~~ The determination to be made under § 20 will become questions on the reports. The Judicial Council believes the filing is the key to more accountability.

It should also be noted that the Judicial Council has drafted a proposed Supreme Court Rule which will require judges to set an annual reporting date for guardians and conservators if the reports are not filed to call the guardians and conservators not filing such reports before the court. This rule will be submitted to the Supreme Court along with the rules setting forth the forms for reports and accountings. It is the opinion of the Judicial Council that a "time related" hearing after a decision has been reached will be expensive, bog down the system and not only raise costs and fees to the parties but, in terms of judge and staff time, will require heavy public expense. The Judicial Council noted that when any procedure becomes too structured and expensive the people will avoid using that procedure.

It should be noted that by not allowing conservators report to be waived there is more accountability. Also note my proposed amendment to 59-3031 that follows.

In summary, there is no conflict between the goals of § 20 and the goals of the Judicial Council, but it is the belief of the Council that the same end can be reached with less expense without § 20.

(Attachment no 7.)

(2) The Judicial Council proposes that subsection (c) of new § 21 relating to standby guardians be stricken.

The Judicial Council believes that the section relating to a standby guardian or conservator should be removed from S.B. 11. The reasons are largely because of anticipated legal problems. It is not likely that any doctor or hospital will accept the consent of a standby guardian unless letters of guardianship or letters of limited guardianships have been issued to the standby guardian or unless their is proof of resignation, disability, temporary absence, or death.

The Council sympathizes with the objective of this subsection, but questions its workability.

(3) The Judicial Council recommends that K.S.A. 59-3031 be amended as follows and be added to S.B. 11.

> "59-3031. Hearing on accounting. On the hearing, unless otherwise ordered, the conservator shall, and other persons may, be examined. The conservator shall produce for examination by the court of a duly authorized clerk or other appointee thereof, evidence of balances on deposit and investments reported in the accounting which shall be described in such account in sufficient detail so that they may be identified. If the account is correct, it shall be settled, and allowed. The order of settlement and allowance shall show the amount of the personal property remaining. Upon settlement of the final account, and upon delivery of the property on hand to the person entitled thereto, the court shall discharge the conservator and the conservator's sureties."

This proposed amendment is a part of the Judicial Council concept of making the conservator more accountable. It is somewhat similar to a procedure found in 73-509 of the curators for veterans statutes.

Representative Littlejohn

Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.

kaps

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Liaison to the Governor
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Executive Director
Joan Strickler

TO: The House of Representatives Committee
on Public Health and Welfare
Representative Marvin Littlejohn, Chairman

FROM: Kansas Advocacy and Protective Services for
the Developmentally Disabled, Inc.
R. C. Loux, Chairman

DATE: March 23, 1983

RE: S.B. 11

(attachment no. 8.)

I am Jim Lackey, one of the six full time and two part-time staff members of KAPS. Joan Strickler is our Executive Director. My part of the service is that of Coordinator of the Kansas Guardianship Program.

It is out of four years of experiences - first with a pilot guardianship/conservatorship project, and second with its successor, the Kansas Guardianship Program - that I offer this testimony in favor of S.B. 11. The KGP is a program that recruits and assists volunteers who are willing to be appointed by our District Courts as guardians/conservators/voluntary conservators for some very fragile neighbors. We have recruited 207 men and women. These volunteers have already provided guardianship/conservatorship to 185 Kansans whose abilities to care for themselves and their few possessions are unequal to their complex needs.

The language of S.B. 11 is prudent. Some of the humane values of the people of the state are expressed in terms of practical procedures that will enable our Courts to personalize guardianships/conservatorships for the welfare of the wards/conservatees, procedures that will enable those who work as substitute decision-makers for others to have clearer directions, and procedures that will assure the wards/conservatees of greater due process, advocacy and protection.

In a few sentences I want to call attention to what appears to us to be strengths of S.B. 11 that have emerged from the diligent work of the Interim Study Committee and the Judicial Council's Advisory Committee.

1. 59-3002. The essential definitions are given in functional terms. Guardians/conservators are to "act on behalf of" wards/conservatees, not "exercise control over." (lines 0063 and 0080)

2. 59-3008. Care is given to assure that the petitioner for a voluntary conservatorship has "knowingly and voluntarily requested the appointment..." (lines 0157 and 0158)

3. 59-3010. Greater care is provided for the presence of the proposed ward/conservatee at the hearing. (lines 0289-0301)

4. 59-3013. Adjudication is to rest upon a clear standard - "...by clear and convincing evidence..." (line 0519)

5. 59-3018. The section on the duties and powers of the guardian is distinguished by:

    a. the duty to "assure that personal, civil and human rights of the ward or minor whom the guardian services are protected," (lines 0819-0821)

    b. the emphasis on "promoting and protecting the care, comfort, safety, health and welfare of ward..." (lines 9843 and 0844),

c. the limitations of the guardian's authority in certain matters, (lines 0851-0874), and

d. the requirement of an annual report by the guardian to the Court. (lines 0875-0877)

6. 59-3029. Greater accountability will be required of the conservators. No waiver for the annual accounting. (lines 0985-0988)

7. 59-3029. Annual guardian reports and annual accountings can be made on uniform forms. (lines 0972-0974 and lines 0985-0988)

8. New Section 20. A mandatory three year review by the Court will enable the Court to exercise greater supervision over guardianships and conservatorships. (lines 1004-1007)

9. New Section 21. Provisions for "emergency appointment of a guardian" and for a "standby" guardian can afford more protection for those in critical need. (lines 1042-1049 and 1082-1096)

10. New Section 24. The possibility of certain private non-profit corporations that are certified by the Secretary of the Department of Social and Rehabilitation Services to serve as guardians can provide an innovative effort to meet the needs of some of our citizens. (lines 1333-1339)

S.B. 11 appears to provide us with sensitive and right headed statutes. Conscientious practice, if these amendments become laws, can give Kansas a wise and caring system to attend the needs of some of us today and possibly others of us tomorrow.

Respectfully,

Jim Lackey
Coordinator
Kansas Guardianship Program

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9

KINH

Kansans for Improvement of Nursing Homes, Inc.

927½ MASSACHUSETTS ST. #1 LAWRENCE, KANSAS 66044 842-3088 — Area Code 913

STATEMENT SUBMITTED TO THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE
CONCERNING SENATE BILL 11

March 23, 1983

Senate Bill 11 has been developed with great care through lengthy, thoughtful deliberations by the Interim Committee on Public Health and Welfare, the Judicial Council, and the Senate Public Health and Welfare Committee, with generous input from many persons and organizations deeply concerned about the guardianship statute in Kansas. The result is a good bill, supported and agreed upon in its major policy changes by all those who have thus far been involved in its evolution.

No doubt there are many small ways in which each of us might wish it to be different. However, the principal policy decisions about which there appeared to be very general agreement are:

-- Deletion of voluntary guardianship.

-- A requirement for proof by clear and convincing evidence of the need for guardianship.

-- Provision for limited guardianship.

-- A requirement that the specific duties and responsibilities of each individual guardianship be set forth in the letters of limited guardianship.

-- Recognition that the court must assure that a guardian have no more wards than he or she can give proper care and attention.

-- A requirement that the guardian report to the court annually.

(attachment no. 9.)

Kansans for Improvement of Nursing Homes
Senate Bill 11

-- Periodic review of the guardianship to ascertain whether the guardian is fulfilling his or her stated responsibilities and that the need for the guardianship still exists.

Though KINH strongly supports SB 11 in its present form, we do want to bring a few possible changes to your attention.

1. There appeared to be early confusion and disagreement concerning whether the terminology should refer to 'disabled' persons or 'incapacitated' persons. KINH prefers 'incapacitated' as more nearly describing a person who is incapable, for whatever reason, of managing his or her own affairs, rather than 'disabled', which connotes to us physical inability. This is certainly not an issue on which SB 11 should stand or fall, however.

2. In Sec. 10, which requires the court to evaluate the proposed guardian's workload and capability, we would prefer an absolute limit to the number of wards a guardian may have.

3. Sec. 14 (g)(1) states that the guardian shall not have the power "to place a ward in a facility or institution unless such a placement has been approved for that person by the court." We are assuming that a nursing home would be classified as a 'facility' for the purposes of the act. If our assumption is not correct, we would like to see wording that would specifically require court review before putting a ward in a nursing home.

4. Sec. 19 (a) reads "except where expressly waived by the court, every guardian shall file annually with the court.....a report on the condition of the guardian's ward and of the estate which has been subject to the possession and control of the guardian." We can see no reason why the filing of the

annual report should ever be waived. We would like to see that phrase stricken as in the following Sec.(b) dealing with the conservator's report.

We appreciate the study and effort that have gone into this revision of the Kansas guardianship statute and urge the committee to recommend Senate Bill 11 favorably.

Testimony on Guardianship - SB 11

March 23, 1983

I am Al Bramble.

At the outset, let me admit I am no authority on legal provisions or structures for guardianship. But I do claim some knowledge and considerable experience in the field of aging, and the aged are greatly affected by provisions for guardianship. I speak as one of them.

For the past 12 years I have been involved in and deeply concerned for the needs and rights of our elderly citizens; which rights have been violated too often by agencies and persons hurrying to impose upon many elderly, as well as on others, their ideas of what is best for them, and overlooking or discounting their abilities and desires to provide and do for themselves.

For these reasons, we who are the elderly applaud legislative efforts to improve and make more definite the rights, duties and power of guardians. For it is in this area that many older citizens are deprived of the right to make decisions for themselves - thus robbed of any sense of dignity, and denied their freedoms. This, despite the obvious fact that many among us do reach the point of disability that requires the care and decision making of guardians and conservators.

We elderly believe we have earned the right to a life of dignity, with freedom to choose for our own lives. If and when we do need the care and services of guardians and conservators, we want the certainty such is needed. Therefore we support elimination of "voluntary guardianship", for oft times we do not understand the words of another and can agree to a relationship that has not been thoroughly and clearly explained. We think our best welfare justifies and warrants a thorough examination and decision by the court. Every request for guardianship should be examined carefully and objectively.

(attachment no 10.)

And, because we have found that we can recover from disabling conditions and re-assume responsibility for our own lives, or, that some specific disability is not general or permanent, we support provisions for limited guardianship, with such limitations established through court actions.

Further, we strongly support accountability in conduct of guardianship. We elderly, especially, can become cantankerous and burdensome to our guardians, who under the burdens can become careless, inconsiderate or negligent. For this reason we support an annual court review of every ward under its jurisdiction to determine whether the disability may have ceased and to ensure that the guardian is discharging his or her responsibilities and duties.

And recognizing that our best interests require attention and time on the part of our guardians, and that one guardian can do only so much, we hope this committee will place some reasonable limitation on the number of guardianships one person can provide and adequately fulfill.

Finally, because we believe that our best welfare is served by those who are concerned for us because we are human beings, persons, we urge and support the provision that non-profit organizations be allowed to serve as guardians.

In summary, we ask that the provisions you establish governing guardianship and conservatorship respect our rights and dignity as human beings and citizens; that we, the potential wards, be the central concern and focus of your efforts and decisions.

I am confident this will be the case.

Al Bramble
1924 Louisiana
Lawrence, Kansas
66044

Representative [illegible] Littlejohn – members of the Senate Public Health and Welfare Comm.
Chairman

On March 1, I presented testimony in the House Judiciary Comm. opposing House Bill 2518 "An Act concerning sterilization of certain persons; conditions; court order; amending K.S.A. 59-3018 and repealing the existing section."

The Senate wisely struck this material from the original S.B. 11 – I urge this committee to honor that move – Hard cases make for very poor law –

We have always had those who believe sterilization to be the answer or solution to many social problems – all they need is one approved reason for court ordered sterilization to pave the way for mandatory sterilization – this has already been proven by the ~~K~~ Sterilization Act of 1919 which had shameful results – Let us not repeat this –

Sincerely,

Mrs. Catherine M. Wahlmeier
413 W. 14
Hays, Ks. 67601

(Attachment No. 11.)

12 15

March 21, 1983

SB 11

The following comments are offered by the Legal Division of S.R.S. and are partially from consultations with the Legal Aid Society of Topeka. Legal Aid represents the plaintiffs in the continuing litigation in Powell, et al. v. Harder as Secretary of Social and Rehabilitation Services et al., case no. 78-4217 in the United States District Court for the district of Kansas. The Powell case is a class action attack on applications of K.S.A. 59-2905, particularly as to due process and equal protection considerations as may be required for voluntary applications for the commitment of wards as signed by guardians. This litigation has potential effects on several subjects covered in SB 11 and vice versa.

Some considerations and effects were previously presented in the hearings before the Senate Committee on Public Health and Welfare. And SB 11 has already received extensive modification since its introduction. However, in its present form, SB 11 not only fails to address the central issues of the Powell case, but it also may potentially cause considerable other litigation due to its current lack of some critical definitions and its conflicts with other statutes which it does not yet seek to amend. At present SB 11 still has a large potential for harm. With some modification it could much better fulfill its potential for good.

Many of these problems focus on the provisions amending K.S.A. 59-3018 in lines 851-854 (page 23) that:

(attachment no. 12.)

> (g) A guardian shall not have the power: (1) to place a ward in a facility or institution unless such placement has been approved for that person by the court. A ward may voluntarily admit oneself to such a facility or institution.

Some of the particular problems are:

1. "Facility or institution" are not specifically defined in SB 11. So how far do the terms extend? K.S.A. 1982 Supp. 59-2902 includes a definition in its section (g) of "Treatment facility" and that it:

> means any mental health clinic, psychiatric unit of a medical care facility, adult care home, phusician or any other institution or individual authorized or licensed by law to give treatment to any patient.

Whether the "facility or institution" terms of SB 11 really include any, all, or how much of that K.S.A. 59-2902 definition still remains seriously unknown. Do the terms extend to adult care facilities? What types of clinics, units or physicians do they or don't they apply? Should SRS continue medicaid payments on guardian's wards in adult care homes whose placement had not had court approval?

2. The ignoring of the K.S.A. 59-2902 definitions carries on to other omissions of considering effects of Chapter 20. SB 11 in its K.S.A. 59-3018(g)(1) provisions would now allow wards to achieve their own voluntary admissions while leaving K.S.A. 1982 Supp. 59-2905 unchanged to prohibit them:

> . . . In any case, if such person is over eighteen (18) and has a guardian, the guardian shall make such application.

And if it is desired to amend K.S.A. 1982 Supp. 59-2905 to allow for such ward applications then it is probably also necessary to address K.S.A. 1982 Supp. 59-2907 if it is also

desired to giving a ward who has signed the application the later power to request his or her own discharge.

Before leaving these points it should be noted from the standpoint of the Powell litigation that while K.S.A. 59-2905 is already under attack, the present provisions of SB 11 will make no improvements to it, but will rather set it in conflict with other statutes.

3. No guidance, instruction, or requirement is given as to the proceedings or considerations necessary for the court approval of placements. No due process, evidentiary burdens, or finding requirements (as well as no medical or physiciatric considerations) are set out. Courts are simply injected into the process.

4. The provisions are also vague as to approval of "such placement". May a court simply approve placement in a generic type of institution (after it figures out what types of facilities or institutions are included) and allow the guardian to choose a particular one or ones? Or does the court have to approve each particular institution placement.

5. The provision fails to provide any orderly method of what to do with patients already in instutions on voluntary admissions signed by guardians. Are such patients to be grandfathered in or to be all kicked out on the bill's effective date? Remember that the process cares of a wards signature or the court approval cannot be validly obtained before the bill's effective date. So if the ward does not sign on that date and there is no court approval is the institution to be required

to put the ward on the street whether or not he or she has anywhere to go? And this might be most difficult on the mentally retarded wards who would not have the ability to make a signature even if they could form a desire to apply. And as difficult as this may be for state institutions, it may be even more difficult for some other facilities and adult care homes who may still be trying on the bill's effective date to determine if SB 11 and its K.S.A. 59-3018(g)(1) provisions even apply to their guardian placed patients. Some grace or transition provisions are obviously necessary.

6. The provisions of court approval also apply only to admissions and forget other serious situations such as when an institution is ready to discharge the ward but the discharge is delayed because a guardian does not or refuses to help with the outside placement.

7. There is also some conflict in intent with the K.S.A. 59-3018(g)(1) provisions and the provisions shortly before in lines 839-840(page 23) which give the guardian a duty in:

> (1) Assuring that the ward resides in the best and least restrictive setting reasonably available,

How does a guardian assure the "best" when a ward with retained powers wants to choose something else? Frankly the provision is an extreme burden and almost "Candide" in requiring a selection of the "best" in possible worlds. It opens up potential guardian liabilities for less than almost perfection rather than just reasonable action. It is questioned whether a term that may create unreasonable expectations and liabilities and may thus drive off potentially highly qualified persons from accepting guardian positions is really desireable to improve

guardianship. A realistic requirement for guardians can be achieved with less idealistic language.

SUGGESTIONS

The directly following proposals for amendments to K.S.A. 59-3018(g)(1), 59-3029(a), 59-2905, 59-2907 and 59-3018(e)(1) are submitted as a settlement proposal for the Powell litigation. The proposals are the present requirements as set forth by Legal Aid on behalf of the plaintiffs on what they would consider sufficient basis for them to seek a dismissal of the action. (Of course, court approval would also be necessary. But it would be expected to be forthcoming). SRS does not oppose any of these proposals as a burden on it, but it does have concerns as to the potential burdens for actions and finance some of these proposals would have on the judiciary and on many non wealthy guardians who serve with little or no compensation for their duties. Therefore SRS will also list another alternative in one instance which it unilaterally supports when combined with the remaining proposals as still meeting most of the above expressed concerns and as improvements for the defense of the Powell litigation.

LITIGATION SETTLEMENT PROPOSALS

1. That lines 851-854 (page 23) of the bill be struck and the following language (for K.S.A. 59-3018(g)(1) be substituted:

> (g) A guardian shall not have the power: (1) To place a ward in a facility or institution for treatment of mental illness, mental retardation or drug abuse, unless authorized to do so by court order after a hearing to the Court to determine the

need for such placement. The provisions of K.S.A. 59-3010(a)(1-5), shall be applicable to any such request by a guardian to place a ward for treatment. The hearing shall be conducted in the manner described in K.S.A. 59-3013, and may be consolidated with the hearing provided for therein. If the court finds by clear and convincing evidence that the proposed placement is necessary, after taking into account the provisions of K.S.A. 59-3018(e)(1), it shall issue an order authorizing the guardian to place the ward for treatment in a specific type of facility or institution. A ward may voluntarily admit oneself to such a facility or institution, subject to the provisions of K.S.A. 59-2905 as amended, if able and permitted to do so according to the court's findings of fact set forth in the Court's order issued at the conclusion of the hearing on the petition for guardianship, pursuant to K.S.A. 59-3013 and amendments thereto.

Any ward who is a patient at such a facility or institution on the effective date of this act on the basis of an application signed by his or her guardian shall be discharged from such facility or institution within ninety days from the effective date of this act unless the ward is readmitted in accordance with the procedures set forth in this subsection.

COMMENT: SRS expresses some concerns as to the sweeping nature of the hearing proposed as to its unexplored potential effect on court dockets and the unexplored expenses for additional or extended counsel appointments for the wards and the potential increased private expenses to some guardian to obtain their own counsel for such proceedings. Therefore, in the next section SRS also proposes a lesser requirement in 1A.

2. That the following be added after line 984 and before line 985 (page 27) (59-3029(a)):

If the ward is placed in a facility or institution by the guardian pursuant to K.S.A. 59-3018(g)(1) and amendments thereto, the guardian shall file a report to the court every ninety days on the condition of the ward. This report, as shall be prescribed by rule of the supreme court on a form prescribed for this purpose, shall include a listing by date and description of the guardian's contacts with the ward and staff of the facility or institution. The report shall also include the attachment of any notices received from the facility or institution indicating that the ward is ready for any discharge, temporary or permanent placement, or transfer and a listing by date and description of the guardian's actions in response to any such notice. A copy of such report shall also be served on the facility or institution. The facility or institution shall be allowed, but not compelled, to file its own report with the court to note any error or omission in or of any such guardian report. This report shall not be considered to be in violation of any confidentiality required for the facility or institution. The court shall review the information contained in all such reports and the court may thereupon issue such orders as it deems appropriate pursuant to K.S.A. 59-3018 as amended.

3. A new section should be added to strike the provision of K.S.A. 1982 Supp. 59-2905 and to repeat back all lines of that statute with the only changes to be in its first paragraph, indicated as follows:

Any person may be admitted to a treatment facility as a voluntary patient when there are available accomodations and in the judgment of the head of the treatment facility or his or her designee such person is in need of treatment therein. Such person, if eighteen (18) years of age or older, shall make written application for admission. If such person is less than eighteen (18) years of age, then the person in loco parentis to such person may make such written application. If such person is fourteen (14) years of age or over, such person may make such written application without the consent or written application of such person's parent, guardian or any other person, unless such person has been found to be a disabled person and not able to make decisions concerning one's need for treatment in a treatment facility, pursuant to K.S.A. 59-3013 and amendments thereto. In such case, and in all cases where the person is over eighteen and has a guardian, application for admission shall be

As Amended by Senate Committee

Session of 1983

SENATE BILL No. 11

By Special Committee on Public Health and Welfare

Re Proposal No. 28

12-20

AN ACT concerning the act for obtaining a guardian or conservator, or both; amending K.S.A. 59-3002, ***59-3003***, 59-3006, 59-3007, 59-3008, 59-3009, 59-3010, 59-3011, 59-3013, 59-3014, 59-3015, 59-3016, ***59-3017***, 59-3018, 59-3023, 59-3026, 59-3027, 59-3028, ***59-3030***, ***59-3032*** and 77-201 and K.S.A. 1982 Supp. 38-1505, 59-3012 and 59-3029 and repealing the existing sections; and also repealing K.S.A. ***59-3005*** *and* 59-3033.

, 59-2905, 59-2907

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 59-3002 is hereby amended to read as follows: 59-3002. When used in ~~this act~~ *the act for obtaining a guardian or conservator, or both:* ~~(1)~~ *(a)* ~~The term "Incapacitated~~ *Disabled* person" ~~shall mean~~ *means* any *adult* person ~~who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic narcotic drug addiction, chronic intoxication, or other cause to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning either his or her person or his or her estate~~ *whose ability to receive and evaluate information effectively or to communicate decisions, or both, is impaired to such an extent that the person lacks the capacity to manage such person's financial resources or to meet essential requirements for such person's physical health or safety, or both. A person shall not be considered to be disabled or to lack capacity to meet the essential requirements for physical health or safety for the sole reason such person relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices*

Attachment #13

(c) A limited guardian shall have only such of the general duties and powers herein set out as shall be specifically set forth in the dispositional order pursuant to K.S.A. 59-3013 and amendments thereto and as shall also be specifically set forth in "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014 and amendments thereto.

(d) A guardian shall have all of the general duties and powers as set out herein and as also set out in the dispositional order and in the letters of guardianship.

(e) The general powers and duties of a guardian shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance and to file an annual accounting. The powers and duties shall include, but not be limited to, the following:

(1) Assuring that the ward resides in the best and least restrictive setting reasonably available;

(2) assuring that the ward receives medical care or non-medical remedial care and other services that are needed;

(3) promoting and protecting the care, comfort, safety, health and welfare of the ward;

(4) providing required consents on behalf of the ward;

(5) exercising all powers and discharging all duties necessary or proper to implement the provisions of this section.

(f) A guardian of a ward is not obligated by virtue of the guardian's appointment to use the guardian's own financial resources for the support of the ward.

(g) A guardian shall not have the power: (1) To place a ward in a facility or institution unless such placement has been approved for that person by the court. A ward may voluntarily admit oneself to such a facility or institution.

(2) To consent, on behalf of a ward, to sterilization, psychosurgery, removal of a bodily organ, or amputation of a limb unless the procedure is first approved by order of the court or is necessary, in an emergency situation, to preserve the life or prevent serious impairment of the physical health of the ward.

(3) To consent on behalf of the ward to the withholding of life-saving medical procedures, except in accordance with pro-

(1) Assuring the opportunity for the ward to reside in the least restrictive setting reasonably available in accordance with the ward's resources and needs.

delete

for treatment of mental illness, mental retardation or drug abuse, unless authorized to do so by court order after a hearing to the court to determine the need for such placement. The provisions of K.S.A. 59-3010(a)(1-5) and amendments thereto shall be applicable to any such request by a guardian to place a ward for treatment. The hearing shall be conducted in the manner described in K.S.A. 59-3013 and amendments thereto and may be consolidated with the hearing provided for therein. If the court finds by clear and convincing evidence that the proposed placement is necessary, after taking into account the provisions of K.S.A. 59-3018(e)(1) and amendments thereto, it shall issue an order authorizing the guardian to place the ward for treatment in a specific type of facility or institution. A ward may voluntarily admit oneself to such a facility or institution, subject to the provisions of K.S.A. 1982 Supp. 59-2905 and amendments thereto, if able and permitted to do so according to the court's findings of fact set forth in the court's order issued at the conclusion of the hearing on the petition for guardianship, pursuant to K.S.A. 59-3013 and amendments thereto.

Any ward who is a patient at such a facility or institution on the effective date of this act on the basis of an application signed by his or her guardian shall be discharged from such facility or institution within 90 days from the effective date of this act unless the ward is readmitted in accordance with the procedures set forth in this subsection.

(c) A limited guardian shall have only such of the general duties and powers herein set out as shall be specifically set forth in the dispositional order pursuant to K.S.A. 59-3013 and amendments thereto and as shall also be specifically set forth in "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014 and amendments thereto.

(d) A guardian shall have all of the general duties and powers as set out herein and as also set out in the dispositional order and in the letters of guardianship.

(e) The general powers and duties of a guardian shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance and to file an annual accounting. The powers and duties shall include, but not be limited to, the following:

(1) Assuring that the ward resides in the best and least restrictive setting reasonably available;

(2) assuring that the ward receives medical care or non-medical remedial care and other services that are needed;

(3) promoting and protecting the care, comfort, safety, health and welfare of the ward;

(4) providing required consents on behalf of the ward;

(5) exercising all powers and discharging all duties necessary or proper to implement the provisions of this section.

(f) A guardian of a ward is not obligated by virtue of the guardian's appointment to use the guardian's own financial resources for the support of the ward.

(g) A guardian shall not have the power: (1) To place a ward in a facility or institution unless such placement has been approved for that person by the court. A ward may voluntarily admit oneself to such a facility or institution.

(2) To consent, on behalf of a ward, to sterilization, psychosurgery, removal of a bodily organ, or amputation of a limb unless the procedure is first approved by order of the court or is necessary, in an emergency situation, to preserve the life or prevent serious impairment of the physical health of the ward.

(3) To consent on behalf of the ward to the withholding of life-saving medical procedures, except in accordance with pro-

(1) Assuring the opportunity for the ward to reside in the least restrictive setting reasonably available in accordance with the ward's resources and needs.

delete

for treatment of mental illness, mental retardation or drug abuse, unless such specific type of placement has been approved for that person by the court after a review by the court resulting in a finding that there is clear and convincing medical or psychiatric evidence that there is a need for such placement. A ward may voluntarily admit oneself to such a facility or institution subject to the provisions of K.S.A. 1982 Supp. 59-2905 and amendments thereto. Any ward already admitted to such a facility or institution by a voluntary admission signed by his or her guardian prior to the effective date of this provision shall be discharged from such facility or institution within 60 days from such effective date unless within that time the ward either signs a voluntary admission to such facility or institution or the guardian signs such admission with the above indicated court approval.

the court, every guardian shall file annually with the court, on a form prescribed for this purpose by rule of the supreme court, a report on the condition of the guardian's ward and of the estate which has been subject to the possession and control of the guardian. The supreme court may require by rule that other matters relating to guardianship be contained in the report. At the termination of the guardianship or upon the guardian's removal or resignation, the guardian or the guardian's representative, in the event of the guardian's death or incapacity, shall file with the court a final report the contents of which shall be prescribed by rule of the supreme court on a form prescribed for this purpose by rule of the supreme court.

[*(b)*] ~~Except where expressly waived by the court, every~~ *Every* conservator shall annually present *on a form prescribed for this purpose by rule of the supreme court* a verified account covering the period from the date of appointment or the last account. *The supreme court may require by rule that other matters relating to conservatorship be contained in the report.* At the termination of the conservatorship or upon the conservator's removal or resignation, the conservator~~,~~ or *the conservator's representative,* in the event of the conservator's death or incapacity~~, the conservator's representative~~, shall present a verified final account with ~~an application~~ *a petition* for the settlement and allowance thereof. *The contents of the final account shall be prescribed by rule of the supreme court on a form prescribed for this purpose by rule of the supreme court.* The conservator or the conservator's estate shall not be discharged from liability until such account is presented, settled and allowed. A conservator's surety, in such surety's discretion, may perform the duties required of a conservator pursuant to this section in the event the conservator or the conservator's representative fails to perform such duties.

New Sec. 20. (a) Within three years from the date of appointment of a conservator or guardian, or both, and each three years thereafter, the court shall conduct a review of the conservatorship or guardianship, or both. The court may order a more frequent review upon its own motion, upon the request of the guardian or conservator or upon the request of the ward or

(b) If the ward is placed in a facility or institution by the guardian pursuant to K.S.A. 59-3018(g)(1) and amendments thereto, the guardian shall file a report to the court every 90 days on the condition of the ward. This report, as shall be prescribed by rule of the supreme court on a form prescribed for this purpose, shall include a listing by date and description of the guardian's contacts with the ward and staff of the facility or institution. The report shall also include the attachment of any notices received from the facility or institution indicating that the ward is ready for any discharge, temporary or permanent placement, or transfer and a listing by date and description of the guardian's actions in response to any such notice. A copy of such report shall also be served on the facility or institution. The facility or institution shall be allowed, but not compelled, to file its own report with the court to note any error or omission in or of any such guardian report. This report shall not be considered to be in violation of any confidentiality required for the facility or institution. The court shall review the information contained in all such reports and the court may thereupon issue such orders as it deems appropriate pursuant to K.S.A. 59-3018 and amendments thereto.

(c)

bound by law to support ~~him or her~~ the proposed ward or proposed conservatee or ward or conservatee, unless the court ~~shall find~~ finds that the proceedings in which such costs were incurred were instituted without probable cause and not in good faith.

Sec. 29. K.S.A. 1982 Supp. 59-2905 is hereby amended to read as follows: 59-2905. Any person may be admitted to a treatment facility as a voluntary patient when there are available accommodations and in the judgment of the head of the treatment facility or his or her designee such person is in need of treatment therein. Such person, if ~~eighteen (18)~~ 18 years of age or older, shall make written application for admission. If such person is less than ~~eighteen (18)~~ 18 years of age, then the parent or person in loco parentis to such person may make such written application. If such person is ~~fourteen (14)~~ 14 years of age or over, such person may make such written application ~~on his or her own behalf~~ without the consent or written application of such person's parent, guardian or any other person, unless such person has been found to be a disabled person and not able to make decisions concerning one's need for treatment in a treatment facility, pursuant to K.S.A. 59-3013 and amendments thereto. In ~~any~~ such case, ~~if such~~ and in all cases where the person is over ~~eighteen (18)~~ 18 and has a guardian, ~~the guardian shall make such~~ application for admission shall be subject to the provisions of K.S.A. 59-3018(g)(1) and amendments thereto. The head of the treatment facility or his or her designee may require a statement of such person's attending physician or a statement of the local health officer of the area in which such person resides that such person is in need of treatment in a treatment facility. Whenever a minor ~~fourteen (14)~~ 14 years of age or older makes written application on his or her own behalf and is admitted as a voluntary patient, the head of the treatment facility shall promptly notify the minor's parent or other person in loco parentis of the admittance of such minor.

No person shall be admitted as a voluntary patient under the provisions of this act to any treatment facility unless the head of the treatment facility or his or her designee has informed such person or such person's parent, guardian or person in loco parentis in writing of the following: (a) The rules and procedures of the treatment facility relating to the discharge of voluntary patients; (b) the legal rights of a voluntary patient receiving treatment from a treatment facility; and (c) the types of treatment which are available to the voluntary patient from the treatment facility.

Sec. 30. K.S.A. 1982 Supp. 59-2907 is hereby amended to read as follows: 59-2907. Except as hereinafter provided, the head of the treatment facility shall discharge any voluntary patient who has requested discharge, in writing, or whose discharge is requested, in writing, by another person, within a reasonable time but not to exceed three ~~(3)~~ days, excluding Sundays and legal holidays after the receipt of such request. If, however, such request is made by another person, such discharge shall be conditioned upon the written consent of the voluntary patient, except that if the voluntary patient be under ~~eighteen (18)~~ 18 years of age, such discharge shall be conditioned upon the consent of such patient's parent, guardian or person in loco parentis unless such patient made written application to become a voluntary patient on his or her own behalf. If, however, such voluntary patient is over ~~eighteen (18)~~ 18 years of age and has a guardian, who actually signed the admission, such discharge request shall be ~~conditioned~~ conditional only upon the consent of the guardian. Whenever a minor ~~fourteen (14)~~ 14 years of age or older has made written application to become a voluntary patient on his or her own behalf and has requested to be discharged, the head of the treatment facility shall promptly inform the minor's parent or other person in loco parentis of the request.

No application to determine whether a person is a mentally ill person shall be filed with respect to a voluntary patient unless such patient has requested or consented to his or her discharge or, if the voluntary patient is under ~~eighteen (18)~~ 18 years of age and did not apply to become a voluntary patient on his or her own behalf, the discharge has been requested by the parent, guardian or person in loco parentis to such patient.

Sec. ~~26~~ 29. K.S.A. 59-3002, *59-3003*, *59-3005*, 59-3006, 59-3007, 59-3008, 59-3009, 59-3010, 59-3011, 59-3013, 59-3014, 59-3015, 59-3016, *59-3017*, 59-3018, 59-3023, 59-3026, 59-3027, 59-3028, *59-3030*, *59-3032*, 59-3033 and 77-201 and K.S.A. 1982 Supp. 38-1505, 59-3012 and 59-3029 are hereby repealed.

Sec. ~~27~~ 30. This act shall take effect and be in force from and after its publication in the statute book.

31

, 59-2905, 59-2907

32

Session of 1983

HOUSE BILL No. 2318

By Representative L. Johnson

(By Request)

2-9

AN ACT concerning sterilization of certain persons; conditions; court order; amending K.S.A. 59-3018 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 59-3018 is hereby amended to read as follows: 59-3018. *(a)* A guardian shall be subject to the control and direction of the court at all times and in all things. ~~He or she~~ *A guardian* shall have charge of the person of the ward and unless otherwise limited by law shall have the right, if permission is granted by the court appointing the guardian, after hearing and notice thereof to the conservator, if any, and to such other persons and in such manner as the court shall direct, to establish the residence of ~~his or her~~ *the* ward either within or without the state.

(b) The guardian of an incapacitated person who is mentally retarded may petition the district court to order the sterilization of such ward if such person is a female of childbearing age and a physician has stated that if such person becomes pregnant, the pregnancy would be fatal or harmful to her health. The court, after notice and hearing, may order such person sterilized based upon medical evidence that sterilization is necessary and in the best interest of such person.

Sec. 2. K.S.A. 59-3018 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

(attachment No. 14.)