

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Jan Meyers at  
Chairperson

10 a.m. on February 1, 1983 in room 526-S of the Capitol.

All members were present except:

Senator Roitz, excused and Senator Morris

Committee staff present:

Emalene Correll and Norman Furse

Conferees appearing before the committee:

Randy Hearrell, Research Director, Kansas Judicial Center  
Ben Janacek, Chief of Police, Emporia, Kansas

Others present: see attached list

SB 11 - act for obtaining a guardian or conservator, or both

Randy Hearrell, Research Director, Kansas Judicial Center, presented a report of the Kansas Judicial Council on the Guardianship and Conservatorship Code. (Attachment #1). Mr. Hearrell said the work of the Judicial Council is in the form of comments and proposed amendments to SB 11, which was drafted by the Special Committee on Public Health and Welfare.

The report is divided into three sections. The first section lists the policy changes with which the Judicial Council agrees; the second section lists the policies with which the Judicial Council agrees, but would implement in a different manner; the third section contains proposals by the Judicial Council which are not a part of SB 11.

Mr. Hearrell also distributed to committee members a balloon of SB 11, showing the amendments proposed, (Attachment #2), and a copy of the Proposed Supreme Court Rule No. 185 or Supreme Court Administrative Order. (Attachment #3).

Ben Janacek, Chief of Police, Emporia, Kansas, testified in support of SB 11, and distributed to the committee a memorandum recommending certain changes and additions to SB 11. (Attachment #4). Mr. Janacek said he was aware of no legislation that causes a guardian to provide the ward who is housed in a private home the same treatment mandated to patients in licensed care facilities, and that there is nothing in the statutes giving SRS authority to investigate and/or intercede on behalf of the ward upon complaint of alleged abuses by a guardian.

Senator Hayden moved that the committee reconsider approval of the minutes of January 27, 1983, in order to make some language changes. Senator Francisco seconded the motion and it carried.

Senator Hayden moved that the minutes of January 27, as amended, and January 31, 1983, be approved. Senator Vidricksen seconded the motion and it carried.

The meeting was adjourned.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-1-83

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

Ken Schatermeyer

KS Pharmacists Assoc.

Jim Luksey

Kansas Admngl Protection <sup>Service</sup>

Robert Schladsky

KPCDD

Ruth Wilkin

Gil Scouts

Mimi Prohens

Kans Bar Assn

Michele Hinds

Legislative Interd

KEITH R LANDIS

CHRISTIAN SCIENCE COMMITTEE

WAYNE J. ZUCK

ON PUBLICATION FOR KANSAS

R Heanell

ARCARE, INC.

M. Daniels

KS Jud Council

Haupt, Popping

Senator

Charles L. Lamm

KINH

Van Froom

S.R.S.

Marilyn Bratt

SRS

Al Brumble

KINH

Millie Schroeder

KCOA, KCCA, SHL, AARP

Rudy Wylie

KANSAS DEPT ON AGING

Stu Entz

KAMA

Judy Gertrich

KDOA

Dorcas Prakash

ARC of Johnson County

Peta Oehl

KINH

Denise Hilwe

OJA

2-1-83

(#1)

REPORT OF THE KANSAS JUDICIAL COUNCIL  
ON THE GUARDIANSHIP AND CONSERVATORSHIP CODE

On December 30, 1981 Senate President Ross O. Doyen wrote the Kansas Judicial Council and requested that the Judicial Council ". . . review and study the present guardianship-conservatorship code contained in Article 30 of Chapter 59 of the Kansas Statutes Annotated and recommend appropriate legislative changes for improvement of the code."

At the January 29, 1982 meeting of the Judicial Council the request of Senator Doyen was considered. The Council agreed to undertake the requested study. At the March 19, 1982 meeting of the Judicial Council the following persons were appointed to serve on the Judicial Council Guardianship and Conservatorship Advisory Committee:

ROBERT H. COBEAN, Chairman of the Committee, Wellington; member of the Judicial Council and practicing lawyer.

HONORABLE NORMA L. DANIELS, Valley Center; member of the Senate.

HONORABLE JOSEPH A. KNOPP, Manhattan; member of the House of Representatives and practicing lawyer.

DR. JIM LACKEY, Manhattan; Guardianship Coordinator for Kansas Advocacy and Protective Services for the Developmentally Disabled, Inc.

HONORABLE SAMUEL H. MASON, Fort Scott; District Magistrate Judge.

HONORABLE VIC MILLER, Topeka; member of the House of Representatives and practicing lawyer.

HONORABLE MARY SCHOWENGERDT, Topeka; Associate District Judge.

WAYNE T. STRATTON, Topeka; practicing lawyer.

HONORABLE JOSEPH H. SWINEHART, Kansas City; Judge of the Court of Appeals.

DAVID J. WAXSE, Olathe; practicing lawyer.

Atch. 1

## METHOD OF STUDY

The Committee began the study with a review of K.S.A. Chapter 59, Article 30, the act for obtaining a guardian or conservator, or both. The Committee members also familiarized themselves with the act for obtaining treatment for a mentally ill person, statutes in K.S.A. Chapter 79 relating to curatorship, and certain statutes in K.S.A. Chapter 59 relating to decedents' estates, absentees estates, special representatives' estates, and trusteeships.

The Committee reviewed the publication Guardianship and Conservatorship, which was prepared by the Developmental Disabilities State Legislative Project of the American Bar Association Commission on the Mentally Disabled. The book contains a survey of the guardianship and conservatorship statutes of all states and a proposed model statute.

After the preliminary work the Committee members discussed perceived problems with the present code and areas in which it can be improved.

Other matters and items considered by the Committee were the number of guardianships or conservatorships in the State; the federal district court case of Powell v. Harder, (Case No. 78-4217); one guardian with multiple wards; voluntary admissions of wards, by guardians, to institutions; compliance with the statute requiring filing of annual accountings by conservators and the desirability of requiring guardians to file a similar report, and providing notice and a form for both; changing the definitions in the code; defining partial disability; providing for voluntary guardians, limited guardians, corporate guardians, standby guardians, and emergency guardians; the rights of "incapacitated" persons; providing a statutory list of powers and duties of guardians and conservators; the work of the Special Committee on Public Health and Welfare; proposed legislation in other states; the Model Guardianship Act; and various publications and articles.

It should be noted that SRS, the Department of Aging, various mental health agencies, the Veterans Administration, the Revisor of Statutes, and the Legislative Research Department all provided assistance in the study.

## FORM OF REPORT

Studies of Judicial Council Advisory Committees usually result in proposed legislation. In this instance, the work of the Judicial Council Guardianship and Conservatorship Advisory Committee is in the form of comments and proposed amendments to S.B. 11, a bill drafted by the Special Committee on Public Health and Welfare. This style of report was deemed advisable because the Special Committee on Public Health and Welfare also made a

study of the Guardianship and Conservatorship Act, and their recommendations were very similar to those this Committee was planning to make.

The report of the Judicial Council is divided into three sections. The first section lists policy changes contained in S.B. 11 with which the Council agrees. The second section sets out policy changes contained in S.B. 11 with which the Council agrees, but would implement in a different manner. The third section contains proposals of the Judicial Council which are not a part of S.B. 11.

- ✓ I. The Judicial Council agrees with the following policy changes contained in S.B. 11:
- (1) Policy changes and additions should be accomplished through amendment and supplementation of the Act for Obtaining a Guardian or Conservator, or Both, rather than through enactment of a new or model act.
  - (2) The term "incapacitated person" should be changed to "disabled person" as used in the Act for Obtaining a Guardian or Conservator, or Both.
  - (3) A new definition of "disabled person" should be drafted.
  - (4) The terms "manage financial resources" and "meet essential requirements for physical health or safety" should be defined.
  - (5) The statutes should be amended to provide for voluntary guardianship.
  - (6) "Clear and convincing evidence" should be added to 59-3013 and 59-3027 as the required standard of proof.
  - (7) The court should consider the appointment of a guardian who is sympathetic to such system of healing for a person who is an adherent of a religion whose practices call for reliance on prayer alone for healing.
  - (8) The amount of money vested in a minor which a court may order to be deposited in a savings account without appointing a conservator for the minor or giving bond be raised from \$2,000 to \$5,000.
  - (9) 59-3026 be amended to delete the requirement that due regard be given to the assets of a creditor in paying the expenses of a conservatee's last illness and death.

(10) A guardian should file an annual report with the court on a form prescribed by rule of the Supreme Court, unless such requirement has been expressly waived by the court

(11) Certain nonprofit corporations should be authorized to act as guardians. Such corporations would have to be certified by SRS.

✓ II. There are certain other policies contained in S.B. 11 with which the Judicial Council agrees, but would implement in a different manner.

(1) The Judicial Council proposes that guardian be defined as follows:

"Guardian means an individual or a nonprofit corporation certified in accordance with section 24 which has been appointed by the court to act on behalf of a ward and possessed of some or all of the powers and duties set out in K.S.A. 59-3018, as amended. Guardian does not mean natural guardian unless specified."

The definition of guardian proposed by the Judicial Council makes reference to the statute setting forth the powers and duties of the guardian. The definition of guardian includes the concept of limited guardian. The last sentence is intended to clarify that guardian does not include a natural guardian.

(2) The Judicial Council proposes that conservator be defined as follows:

"Conservator means an individual or a corporation appointed by the court to act on behalf of a conservatee and possessed of some or all of the powers and duties set out in K.S.A. 59-3019."

The definition of conservator proposed by the Judicial Council makes reference to the statute setting forth the powers and duties of the conservator. The definition also includes the concept of limited conservator.

(3) S.B. 11 sets out the rights and duties of a guardian and further amends 59-3018 to include powers a guardian may exercise unless such powers have been limited by the court at the time of appointment. S.B. 11 also sets out certain powers that a guardian is prohibited from exercising except in those circumstances delineated in the statute. The Judicial Council agrees, but would amend 59-3018 to read as follows:

59-3018. Guardian; rights and duties. A guardian shall be subject to the control and direction of the court at all times and in all things. He or she 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 ward either within or without the state.

(A) A guardian shall be subject to the control and direction of the court at all times and in all things. It is the general duty of an individual or corporation appointed to serve as a guardian to carry out diligently and in good faith the specific duties and powers assigned by the court. In carrying out these duties and powers, the guardian shall assure that personal, civil, and human rights of the ward or minor whom the guardian serves are protected.

(B) The guardian of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support, and maintenance.

(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 59-3013(d) and as shall also be specifically set forth in letters of limited guardianship pursuant to 59-3014.

(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, 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 and other services that are needed;

(3) promoting and protect 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 of 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 other than through a formal commitment proceeding in which the ward has independent counsel and a separate guardian ad litem, or with the consent of the ward. Wards may voluntarily admit themselves 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;

(4) To consent on behalf of a ward to the performance of any experimental biomedical or behavioral medical procedure or to participation in any biomedical or behavioral experiment unless:

(a) It is intended to preserve the life or prevent serious impairment of the physical health of the ward; or

(b) It is intended to assist the ward to develop or regain that person's abilities and has been approved for that person by the court.

(5) To prohibit the marriage or divorce of a ward.

(6) To consent on behalf of a ward to the termination of the ward's parental rights.

(H) The guardian shall at least annually file a report concerning the personal status of the ward as provided by K.S.A. 59-3029 as amended.

The amendment to 59-3018 proposed by the Judicial Council is similar to the proposal in S.B. 11, with some differences. S.B. 11 lists powers a guardian has if a conservator has not been appointed, the Judicial Council proposal does not. The Judicial Council proposal contains a statement that a guardian is not obligated to use the guardian's own financial resources for the support of the ward, S.B. 11 does not. The Judicial Council



includes language in this section requiring the filing of the annual report of the guardian. There also are slight differences in the sections listing the prohibited powers of the guardian.

- (4) S.B. 11, in new section 14, authorizes the court to limit the rights and duties of a conservator by endorsement upon the letters of conservatorship. The Judicial Council agrees to the concept of limited conservatorships, but would insert the concept by amending 59-3013 and 59-3014.

The Judicial Council recommends that in 59-3013, the paragraph beginning at line 0472 be rewritten to read as follows:

"If, upon the completion of the hearing, the court or jury finds by clear and convincing evidence that the proposed ward or proposed conservatee is an incapacitated a disabled person in need of a guardian or conservator, or both, or if the court or jury finds that the proposed ward or proposed conservatee is a minor in need of a guardian or conservator, or both, the court shall appoint one or more suitable persons, who are not minors, as guardian or conservator, or both, of such incapacitated person or minor as the case may be make a finding as to what extent the disabled person is able to, and should be permitted to, make decisions which affect that person and the court shall specifically set forth such findings of fact in the court's order and pursuant to K.S.A. 59-3014, as amended, shall appoint one or more suitable individuals or corporations as guardian or conservator, or both, of such disabled person."

This proposed change would require the judge to set forth findings of fact relating to the extent that the proposed ward or proposed conservatee is disabled.

The Judicial Council also recommends that subsection (d) of K.S.A. 59-3014 be rewritten to read as follows:

"(d) Upon the filing of an oath according to law, letters of guardianship shall be granted. If the court, pursuant to K.S.A. 59-3013, has made a finding that a disabled person is able to and should be permitted to make some decisions which affect the person, a guardian shall be appointed and "Letters of Limited Guardianship" shall specify which of the powers and duties of a guardian shall be assigned to the limited guardian. If the court, pursuant to K.S.A. 59-3013, has made a finding that a disabled person is unable to, and should not be permitted to, make any decisions which will affect the person of said disabled person, or if the ward is a minor, a guardian shall be appointed and the guardian shall be possessed of all the powers and duties of a guardian as set out in K.S.A. 59-3018. Upon the

filing of a bond in such amount as the court shall direct and an oath according to law, letters of conservatorship shall be granted. If the court, pursuant to K.S.A. 59-3013 has made a finding that a disabled person is able to and should be permitted to make some decisions which affect the person's property, a limited conservator shall be appointed and the "Letters of Limited Conservatorship" shall specify which of the powers and duties of a conservator shall be assigned to the limited conservator. If the court, pursuant to K.S.A. 59-3013, has made a finding that the disabled person is unable to make any decisions which affect the property of said disabled person, or the ward is a minor, a conservator shall be possessed of all powers and duties of a conservator as set out in K.S.A. 59-3019. If there is no property, the court may waive the filing of a bond, but if the conservator receives or becomes entitled to any property, he-or-she the conservator shall immediately file a report thereof and a bond in such amount as the court may direct. -Provided, That. If the guardian or conservator appointed is the one named by a testator under the provisions of K.S.A. 59-3004 and amendments thereto and the testator has provided by ~~his-or-her~~ will that no bond be required, unless the court shall otherwise direct. If either the guardian or the conservator dies, resigns, or is removed, the court, with or without notice, may appoint a successor."

The proposed change in this subsection provides for "Letters of Limited Guardianship" and "Letters of Limited Conservatorship" in addition to "Letters of Guardianship" and "Letters of Conservatorship".

- (5) The Judicial Council recommends that in 59-3014(b), all before the comma in line 0500 be stricken. The reason is that, as drafted, the section could be interpreted to state that the workload and capabilities of the proposed guardian or conservator shall be considered only if such person is serving 15 or more wards or conservatees. The implication could be that if a person is serving less than 15 wards or conservatees that such person's workload and capabilities need not be considered.
- (6) S.B. 11, in new section 20, mandates periodic review by the court of a guardianship or conservatorship. The Judicial Council agrees with the intent of S.B. 11 to hold the guardian and conservator more accountable, but believes that new section 20 should be stricken. The Council believes that other actions taken by this bill, and proposed by the Judicial Council, meet the need for more accountability by guardians and conservators. The other actions are the requirement by this bill that guardians file annual reports and the requirement by this bill that the Supreme Court designate by rule the

form for the annual report of the guardians. Also, the Judicial Council recommends, in section 19, that K.S.A. 59-3029 be amended in new subsection (b) to not allow waiver of annual reports of conservators.

The Judicial Council also has pending before it the recommendation of the Guardianship and Conservatorship Advisory Committee that a Supreme Court Rule be adopted that provides that unless the court waives a hearing after having received the annual accounting a hearing shall be held. The rule also requires notice of failure to file annual accountings be given to the fiduciary and attorney of record.

- (7) Section 21 of S.B. 11 provides for emergency appointment of a guardian in certain circumstances, for the appointment of a temporary guardian, and for designation of another person who may assume the duties and powers of a guardian in the event of resignation, disability, temporary absence, or death of the guardian. The Judicial Council agrees that the provisions relating to emergency appointment should be enacted, but does not find the necessity for the "standby" guardian or conservator.

✓ III. The following are sections proposed by the Judicial Council which are not a part of S.B. 11.

- (1) In line 74 of S.B. 11, the word "application" appears. The word "applicant" also appears throughout the bill and article 30 of chapter 59. The Judicial Council proposes that in article 30 of chapter 59 of K.S.A., each time the word "application" appears the word "petition" be substituted therefore and that each time the word "applicant" appears the word "petitioner" be substituted therefore. Under most, if not all, other codes the document originally filed before the court is called a petition. K.S.A. 59-2201 of the probate procedure indicates that "every application . . . shall be by petition. . .".
- (2) The Judicial Council proposes that guardian ad litem be defined as follows:

Guardian ad litem" means an individual appointed by the court to assist the proposed ward or proposed conservatee to determine the proposed ward's or proposed conservatee's interests in regard to the proceeding, or to make that determination if the subject of the proceeding is unconscious or otherwise wholly incapable of determining the subject's interests."
- (3) The Judicial Council recommends 59-3003 be rewritten to read as follows:

"59-3003. Natural guardian; powers and duties. A natural guardian shall have the right to the custody of the natural guardian's minor child and the right to exercise control over the person of the natural guardian's minor child as provided by law, unless a guardian has been appointed for the minor. The natural guardian of such minor has the right and duty, for the benefit of the minor, to manage, mortgage, sell or otherwise dispose of all the personal estate vested in such minor when the total of such estate does not exceed \$5,000 in value, unless a guardian or conservator has been appointed for the minor."

The section, as rewritten, reorganizes the language and raises the dollar figure from \$4,000 to \$5,000.

- (4) The Judicial Council recommends that 59-3005 be repealed. It is the opinion of the Council that because of court unification and K.S.A. 20-301, relating to jurisdiction of the district court, the section is unnecessary.
- (5) The Judicial Council recommends that in section 4 of S.B. 11 in line 0129, after the word "that", the phrase "the petitioner has knowingly and voluntarily requested the appointment and" be inserted.
- (6) The Judicial Council proposes that the following language be inserted at the end of subsection (a)(2) of K.S.A. 59-3010:

"The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed ward or proposed conservatee at the hearing would be injurious to such person's welfare. Notwithstanding the foregoing provisions of this subsection, if the proposed ward or proposed conservatee requests in writing to the court or to such person's attorney that the proposed ward or proposed conservatee be present at the hearing then such person's presence cannot be waived."

This proposal requires the court to make a finding if it enters an order that the presence of the proposed ward or proposed conservatee is injurious to such person's welfare and provides such person's presence cannot be waived in certain circumstances.

- (7) The Judicial Council recommends that reference to the commission procedure be stricken from K.S.A. 59-3013. The proposal is made because the procedure is seldom used and removes decision making authority from the judge.

- (8) The Judicial Council recommends striking, "Except where expressly waived by the court" from 59-3029.
- (9) The Judicial Council proposes that 59-3031 be amended to read as follows:

"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 or 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."

- (10) The Judicial Council recommends that K.S.A. 59-3032 be amended to add the petitioner as one of the parties to whom costs of the action may be taxed.

The Judicial Council proposes no other amendments to  
S.B. 11.

2-1-83

PROPOSED SUPREME COURT RULE NO. 185  
OR SUPREME COURT ADMINISTRATIVE ORDER

The district court shall fix the time and place for the filing of annual accountings in each Conservatorship, Trusteeship, Absentee Estate, Convict's Estate, Curatorship, and Special Personal Representatives Estates. Unless the district court shall expressly waive such a hearing after having reviewed the annual accounting, notice of the time and place for hearing shall be given each fiduciary and attorney of record.

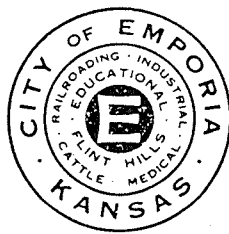
Notice of the failure to file an annual accounting shall be sent to the fiduciary and attorney of record and if a hearing is set notice of such hearing shall also be sent to the fiduciary and attorney of record with the requirements that notice be given by the fiduciary or attorney of record to such other persons as the court may direct.

Statistics on accountings filed and hearings held shall be reported quarterly to the office of the Judicial Administrator.

Atch. 3

2-1-83

#4



# THE CITY OF EMPORIA, KANSAS

66801

BEN JANACEK  
CHIEF OF POLICE

POLICE DEPARTMENT • PHONE (316) 342-1766 • EMPORIA, KANSAS  
522 MECHANIC STREET

TO: Members of the Special Committee  
On Public Health and Welfare

FROM: Ben Janacek  
Chief of Police  
City of Emporia

SUBJECT: SENATE BILL NUMBER 11

DATE: February 1, 1983

The action proposed by Senate Bill No. 11 is welcomed and long overdue. There are, however, still some areas that need to be addressed to make the bill fulfill the optimum intent.

K.S.A.39-923 adequately covers the situation involving persons confined to or cared by licensed nursing facilities. Many adults, however, are the wards of legal guardians and are housed at private homes under the care of the guardians. There exists no legislation that I am aware of that causes a guardian to provide to the ward the same treatment mandated to patients in licensed care facilities.

The statute being examined under Senate Bill No. 11, in its original form and in its drafted form, still does not address the basic tenent of causing the guardian to act in the best interest of the ward. Under the section citing reasons for removal of a guardian, there is no provision made to include "not acting in the best interests of the ward."

A further failing in the statutes is the lack of investigatory powers for S.R.S. to investigate and/or intercede on behalf of the ward upon complaint of alleged abuses by a guardian.

Specifically recommended changes and additions are:

1. On Page 17 of Senate Bill No. 11 between lines numbered 0606 and 0607 an additional section number ( ) should be added, to wit:

*Atch. 4*

"( ) The guardian shall act, at all times, in the best interests of the ward in all matters concerning the ward."

2. On page 17 in line number 0615 the word may should be changed to the word shall.

3. On page 19 of Senate Bill No. 11 between lines 0697 and 0698 an additional section number ( ) should be added, to wit:

"( ) To place the ward in any nursing home or other care facility other than that originally specified in (1) without permission of the Court appointing the guardian."

4. On page 21 between lines 0780 and 0781 an additional section number ( ) should be added, to wit:

"( ) Upon the order of the Court after a finding that the guardian has not acted in the best interests of the ward."

5. An additional section should be added in the appropriate place to empower the S.R.S. to investigate allegations of misconduct on the part of guardians towards the best interests of their wards; such investigative reports and recommendations to be presented to the Court appointing the guardian.

I can cite some specific examples where lack of such statutes endangered the lives of wards. S.R.S. officials had to bluff their way to ascertain the substance of some allegations and then were powerless to intervene on behalf of the ward or their families.

Not all guardians relish the responsibilities of an invalid and, in many instances, shirk their humane responsibilities and duties through apathetic omission. Often such guardians do only what is necessary to basic care, but are willing to disregard such things as therapy, clothing, social activities, and other amenities. These guardians usually do not wish to give up guardianship, because there is usually a financial string attached.

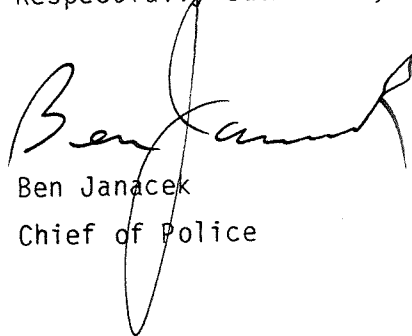


Memorandum to Special Committee on  
Public Health and Welfare  
Subject: Senate Bill No. 11  
February 1, 1983  
Page 3

Other family members more interested truly in the welfare of such a ward have a moral right to intervene, but presently lack the legal right.

Your attention to the intent of these recommendations for the best interests of wards is appreciated. Persons truly interested in the welfare of a ward cannot feel intimidated by such language.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Janacek". The signature is fluid and cursive, with a large loop at the end of the last name.

Ben Janacek  
Chief of Police

BJ:mb

**SENATE BILL No. 11**

By Special Committee on Public Health and Welfare

Re Proposal No. 28

12-20

2-1-83  
WZ

0018 AN ACT concerning the act for obtaining a guardian or conser-  
0019 vator, or both; amending K.S.A. 59-3002, 59-3006, 59-3007,  
0020 59-3008, 59-3009, 59-3010, 59-3011, 59-3013, 59-3014, 59-  
0021 3015, 59-3016, 59-3018, 59-3023, 59-3026, 59-3027, 59-3028  
0022 and 77-201 and K.S.A. 1982 Supp. 38-1505, 59-3012 and 59-  
0023 3029 and repealing the existing sections; and also repealing  
0024 K.S.A. 59-3033.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 Section 1. K.S.A. 59-3002 is hereby amended to read as fol-  
0027 lows: 59-3002. When used in this act: ~~(1) (a) The term "Incapae-~~  
0028 ~~itated Disabled person" shall mean means any adult person who~~  
0029 ~~is impaired by reason of mental illness, mental deficiency,~~  
0030 ~~physical illness or disability, advanced age, chronic narcotic~~  
0031 ~~drug addiction, chronic intoxication, or other cause to the extent~~  
0032 ~~that he or she lacks sufficient understanding or capacity to make~~  
0033 ~~or communicate responsible decisions concerning either his or~~  
0034 ~~her person or his or her estate whose ability to receive and~~  
0035 ~~evaluate information effectively or to communicate decisions, or~~  
0036 ~~both, is impaired to such an extent that the person lacks the~~  
0037 ~~capacity to manage such person's financial resources or to meet~~  
0038 ~~essential requirements for such person's physical health or~~  
0039 ~~safety, or both.~~

0040 (b) "Manage financial resources" means those actions neces-  
0041 sary to obtain, administer and dispose of real and personal  
0042 property, intangible property, business property, benefits and  
0043 income.

0044 (c) "Meet essential requirements for physical health or  
0045 safety" means those actions necessary to provide the health care,

Atch. 2

0046 food, shelter, clothing, personal hygiene and other care without  
0047 which serious physical injury or illness is more likely than not to  
0048 occur.

0049 (2) (d) The term "Guardian" shall mean any person who  
0050 means an individual or a nonprofit corporation certified in  
0051 accordance with section 24 which has been appointed by a court  
0052 of competent jurisdiction to exercise control over the person of  
0053 an incapacitated person or of a minor act on behalf of a ward and  
0054 to exercise such powers and perform such duties as may be  
0055 authorized by law.

0056 (3) (e) The term "Natural guardian" shall mean means both  
0057 the father and mother of a legitimate minor or the mother of an  
0058 illegitimate minor, provided that both such parents or parent  
0059 shall not have been found to be an incapacitated a disabled  
0060 person or had their parental rights severed by a court of compe-  
0061 tent jurisdiction. If either parent of a legitimate minor dies, or  
0062 has been found to be an incapacitated a disabled person or has  
0063 had his or her parental rights severed by a court of competent  
0064 jurisdiction, the other shall be the "natural guardian."

0065 (4)2 (f) The term "Conservator" shall mean any means a  
0066 person who has been appointed by a court of competent juris-  
0067 diction to exercise control over the estate of any person act on  
0068 behalf of a conservatee and to exercise such powers and perform  
0069 such duties as may be authorized by law.

0070 (5) (g) The term "Minor" shall mean means any person de-  
0071 fined by K.S.A. 38-101 and amendments thereto as being within  
0072 the period of minority.

0073 (6) (h) The term "Proposed ward" shall mean means a per-  
0074 son for whom an application for the appointment of a guardian  
0075 pursuant to K.S.A. 59-3006 and amendments thereto has been  
0076 filed.

0077 (7) (i) The term "Proposed conservatee" shall mean means a  
0078 person for whom an application for the appointment of a conser-  
0079 vator pursuant to K.S.A. 59-3006 and amendments thereto has  
0080 been filed.

0081 (8) (j) The term "Ward" shall mean means a person who has  
0082 a guardian.

The Judicial Council proposes that guardian be defined as follows:

"Guardian means an individual or a nonprofit corpora-  
tion certified in accordance with section 24 which has been  
appointed by the court to act on behalf of a ward and  
possessed of some or all of the powers and duties set out in  
K.S.A. 59-3018, as amended. Guardian does not mean natural  
guardian unless specified."

The definition of guardian proposed by the Judicial Council makes  
reference to the statute setting forth the powers and duties of  
the guardian. The definition of guardian includes the concept of  
limited guardian. The last sentence is intended to clarify that  
guardian does not include natural guardian.

The Judicial Council proposes that conservator be defined as follows:

"Conservator means an individual or a corporation  
appointed by the court to act on behalf of a conservatee and  
possessed of some or all of the powers and duties set out in  
K.S.A. 59-3019."

The definition of conservator proposed by the Judicial  
Council makes reference to the statute setting forth the powers  
and duties of the conservator. The definition also includes the  
concept of limited conservator.

In line 74 of S.B. 11, the word "application" appears. The  
word "applicant" also appears throughout the bill and article 30  
of chapter 59. The Judicial Council proposes that in article 30  
of chapter 59 of K.S.A., each time the word "application" appears  
the word "petition" be substituted therefore and that each time  
the word "applicant" appears the word "petitioner" be substituted  
therefore. Under most, if not all, other codes the document  
originally filed before the court is called a petition. K.S.A.  
59-2201 of the probate procedure indicates that "every applica-  
tion . . . shall be by petition. . .".

2

0083 (9) (k) The term "Conservatee" shall mean means a person  
0084 who has a conservator.  
0085 (10) (l) The various terms defined in K.S.A. 59-2902 and  
0086 amendments thereto of the act entitled "act for obtaining care or  
0087 treatment for a mentally ill person" shall mean the same herein  
0088 as they do in said that act.

The Judicial Council proposes that guardian ad litem be defined as follows:

"Guardian ad litem" means an individual appointed by the court to assist the proposed ward or proposed conservatee to determine his or her interests in regard to the proceeding, or to make that determination if the subject of the proceeding is unconscious or otherwise wholly incapable of determining his or her interests."

The Judicial Council recommends 59-3003 be rewritten to read as follows:

"59-3003. Natural guardian; powers and duties. A natural guardian shall have the right to the custody of his or her minor child and the right to exercise control over the person of his or her minor child as provided by law, unless a guardian has been appointed for the minor. The natural guardian of such minor has the right and duty, for the benefit of the minor, to manage, mortgage, sell or otherwise dispose of all the personal estate vested in such minor when the total of such estate does not exceed \$5,000 in value, unless a guardian or conservator has been appointed for the minor."

The section, as rewritten, reorganizes the language and raises from \$4,000 to \$5,000 the amount a natural guardian can manage, mortgage, sell or dispose of for a minor.

**59-3003.** Natural guardian; powers and duties. Unless a guardian has been appointed for the minor, a natural guardian, or either of them, shall have the right to the custody of his or her minor child and the right to exercise control over the person of his or her minor child as provided by law. Unless a guardian or conservator has been appointed for the minor, the natural guardian of such minor has the right and duty, for the benefit of the minor, to manage, mortgage, sell or otherwise dispose of all of the personal estate vested in such minor when the total of such estate does not exceed four thousand dollars (\$4,000) in value. [L. 1965, ch. 347, § 3; L. 1975, ch. 300, § 1; July 1.]

The Judicial Council recommends that 59-3005 be repealed. It is the opinion of the Council that because of court unification and K.S.A. 20-301, relating to jurisdiction of the district court, the section is unnecessary.

**59-3005.** Exclusive jurisdiction, when. The district court shall have exclusive jurisdiction of the appointment of a conservator. The district court shall have exclusive jurisdiction of the appointment of a guardian. [L. 1965, ch. 347, § 5; L. 1976, ch. 242, § 87; Jan. 10, 1977.]

**20-301.** District court in each county; jurisdiction. There shall be in each county a district court, which shall be a court of record, and shall have general original jurisdiction of all matters, both civil and criminal, unless otherwise provided by law, and also shall have such appellate jurisdiction as prescribed by law.

0089 Sec. 2. K.S.A. 59-3006 is hereby amended to read as follows:  
0090 59-3006. The district court having jurisdiction and venue of the  
0091 proceedings may appoint:

0092 ~~(A)~~ (a) A guardian for

0093 (1) *an adult who has made application pursuant to K.S.A.*  
0094 *59-3007 and amendments thereto;*

0095 ~~(1)~~ (2) ~~an incapacitated a disabled person who is unable to~~  
0096 ~~make or communicate responsible decisions concerning his or~~  
0097 ~~her person lacks the capacity to meet essential requirements for~~  
0098 *such person's physical health or safety, or both;*

0099 ~~(2)~~ (3) a minor;

0100 ~~(B)~~ (b) A conservator for

0101 (1) an adult who has made application pursuant to K.S.A.  
0102 59-3007 and amendments thereto;

0103 (2) ~~an incapacitated a disabled person who is unable to make~~  
0104 ~~or communicate responsible decisions concerning such person's~~  
0105 ~~estate lacks the capacity to manage such person's financial~~  
0106 *resources;*

0107 (3) a minor.

0108 Sec. 3. K.S.A. 59-3007 is hereby amended to read as follows:

0109 59-3007. Any adult person who is neither an adjudged ~~incapaci-~~  
0110 ~~tated disabled~~ person nor is a proposed ward or proposed con-  
0111 servatee may file in the district court of ~~his or her~~ *the* residence  
0112 *of such person* a verified application for the appointment of a  
0113 conservator *or guardian, or both*, for the applicant. The applica-  
0114 tion shall state:

0115 (1) The name, age, residence and present address of the  
0116 applicant;

0117 (2) the reasons for the need of the appointment of the con-  
0118 servator *or guardian, or both*;

0119 (3) the name and address of the person to be appointed as

0120 conservator or guardian, or both;

0121 (4) a request that the court make a determination that there is  
0122 a need for the appointment of a conservator or guardian, or both,  
0123 and appoint a conservator or guardian, or both.

0124 Sec. 4. K.S.A. 59-3008 is hereby amended to read as follows:  
0125 59-3008. Upon the filing of the application provided for in K.S.A.  
0126 59-3007 and amendments thereto, the court shall issue an order  
0127 fixing the time and place of the hearing on the application, which  
0128 hearing may be forthwith and with or without notice as the court  
0129 shall direct. If upon the hearing the court finds that it is in the  
0130 best interest of the applicant that a conservator or guardian, or  
0131 both, be appointed for such applicant, the court shall, upon the  
0132 filing of an oath according to law and of a bond, in such an  
0133 amount as the court may direct, issue letters of conservatorship  
0134 or guardianship, or both, to the person named in the application,  
0135 if a fit and proper person. If the conservator or guardian, or both,  
0136 dies, resigns or is removed, the court, after such notice to the  
0137 conservatee as the court shall direct, may appoint a successor.

0138 Sec. 5. K.S.A. 59-3009 is hereby amended to read as follows:  
0139 59-3009. Any person may file in the district court of the county of  
0140 the residence or presence of the proposed ward a verified appli-  
0141 cation for the appointment of a guardian. Any person may file in  
0142 the district court of the county of the residence of the proposed  
0143 conservatee a verified application for the appointment of a con-  
0144 servator. If the proposed conservatee resides without the state,  
0145 such application may be filed in any county in which any of the  
0146 property of the proposed conservatee is situated.

0147 (A) (a) If the proposed ward or proposed conservatee is al-  
0148 leged to be an incapacitated a disabled person the application  
0149 shall state:

0150 (1) The applicant's belief that the proposed ward or proposed  
0151 conservatee is an incapacitated a disabled person;

0152 (2) the name, age, residence and present address of the  
0153 proposed ward or proposed conservatee, if known to the appli-  
0154 cant;

0155 (3) the name and address of the nearest relatives of the  
0156 proposed ward or proposed conservatee, if known to the appli-

The Judicial Council recommends that in section 4 of S.B. 11 in line 0129, after the word "that", the phrase "the petitioner has knowingly and voluntarily requested the appointment and" be inserted.

0157 cant and if not known, that ~~said~~ *the* applicant has made diligent  
0158 inquiry to learn the name of such relatives;

0159 (4) the general character and probable value of the real and  
0160 personal property, including the amount and sources of income,  
0161 of the proposed ward or proposed conservatee, if known to the  
0162 applicant;

0163 (5) the name and address of the person, if any, having custody  
0164 and control of the proposed ward or proposed conservatee, if  
0165 known to the applicant;

0166 (6) the names and addresses of witnesses by whom the truth  
0167 of the application may be proved;

0168 (7) the reasons for the need of the appointment of a guardian  
0169 or conservator, or both;

0170 (8) a request that the court make a determination that the  
0171 proposed ward or proposed conservatee is ~~an incapacitated a~~  
0172 *disabled* person; make one or more of the orders provided for in  
0173 K.S.A. 59-3010 and 59-3011 and acts amendatory thereof; and  
0174 appoint a guardian or conservator, or both;

0175 (9) the name, address, and relationship to the proposed ward  
0176 or proposed conservatee, if any, of the person whom the court is  
0177 requested to appoint as a guardian or as a conservator. Any such  
0178 application may be accompanied, or the court may require that  
0179 such application be accompanied by a statement in writing of a  
0180 physician stating that said physician has examined the proposed  
0181 ward or proposed conservatee and the results of the examination  
0182 on the issue of whether the proposed ward or proposed conser-  
0183 vatee is ~~an incapacitated a disabled~~ person or the court may  
0184 allow such application to be accompanied by a verified state-  
0185 ment by the applicant that the proposed ward or proposed  
0186 conservatee has refused to submit to an examination by a physi-  
0187 cian.

0188 ~~(B)~~ (b) If the proposed ward or proposed conservatee is al-  
0189 leged to be a minor the application shall state:

0190 (1) The proposed ward or proposed conservatee is a minor;

0191 (2) the name, age, residence and present address of the  
0192 proposed ward or proposed conservatee, if known to the appli-  
0193 cant;

7



0194 (3) the name and address of the natural guardian, guardian,  
0195 conservator and custodian, if any, of the proposed ward or pro-  
0196 posed conservatee, if known to the applicant, and if not known  
0197 that ~~said~~ *the* applicant has made diligent inquiry to learn their  
0198 names;

0199 (4) the general character and probable value of the real and  
0200 personal property, including the amount and sources of income,  
0201 of the proposed ward or proposed conservatee, if known to the  
0202 applicant;

0203 (5) the names and addresses of witnesses by whom the truth  
0204 of the application may be proved;

0205 (6) the reasons for the need for the appointment of a guardian  
0206 or conservator, or both;

0207 (7) a request that the court make a determination that the  
0208 proposed ward or proposed conservatee is a minor; make one or  
0209 more of the orders provided for by K.S.A. 59-3010 and 59-3011  
0210 and acts amendatory thereof; and appoint a guardian or a con-  
0211 servator, or both;

0212 (8) the name, address, and relationship to the proposed ward  
0213 or proposed conservatee, if any, of the person whom the court is  
0214 requested to appoint as a guardian or as a conservator.

0215 ~~(c)~~ (c) If the proposed conservatee has been duly adjudged  
0216 an incapacitated person, *a disabled person*, an insane person or  
0217 an incompetent person by any court of competent jurisdiction in  
0218 any other state and a domiciliary conservator or guardian for the  
0219 estate of such person has been appointed, a duly authenticated  
0220 transcript of such adjudication and appointment shall be prima  
0221 facie evidence of such incapacity and may be relied upon for the  
0222 appointment of an ancillary conservator in this state; such au-  
0223 thenticated transcript shall be attached to the application which  
0224 shall state:

0225 (1) That the proposed conservatee has been duly adjudged an  
0226 incapacitated person, *a disabled person*, an insane person or an  
0227 incompetent person by a court of competent jurisdiction of  
0228 another state and a domiciliary conservator or guardian for such  
0229 conservatee's estate has been appointed, which adjudication and  
0230 appointment are still in full force and effect;

8

0231 (2) the name, age, residence and present address of the  
 0232 proposed conservatee, if known to the applicant;  
 0233 (3) the name and address of the nearest relatives of the  
 0234 proposed conservatee, if known to the applicant and if not  
 0235 known, that ~~said~~ *the* applicant has made diligent inquiry to learn  
 0236 the name of such relatives;  
 0237 (4) the location and value of Kansas property for which an  
 0238 ancillary conservatorship is needed;  
 0239 (5) the name and address of the person, if any, having custody  
 0240 and control of the proposed conservatee, if known to the appli-  
 0241 cant;  
 0242 (6) the reasons for the need for the appointment of an an-  
 0243 cillary conservator;  
 0244 (7) a request that the court appoint an ancillary conservator as  
 0245 provided in subsection ~~(C)~~ *(c)* of K.S.A. 59-3010 *and amendments*  
 0246 *thereto*.  
 0247 Sec. 6. K.S.A. 59-3010 is hereby amended to read as follows:  
 0248 59-3010. Upon the filing of the application provided for in K.S.A.  
 0249 59-3009 *and amendments thereto*:  
 0250 ~~(A)~~ *(a)* When the proposed ward or proposed conservatee is  
 0251 alleged to be ~~an incapacitated~~ *a disabled* person, the district  
 0252 court shall issue the following:  
 0253 (1) An order fixing the time and place of the hearing on the  
 0254 application. The time designated in the order shall in no event  
 0255 be earlier than seven ~~(7)~~ days or later than ~~fourteen~~ *(14)* 14 days  
 0256 after the date of the filing of the application.  
 0257 (2) An order that the proposed ward or proposed conservatee  
 0258 appear at the time and place of the hearing unless the court  
 0259 enters an order that the presence of the proposed ward or  
 0260 proposed conservatee is injurious to ~~his or her~~ *the welfare of the*  
 0261 *proposed ward or proposed conservatee*.  
 0262 (3) An order appointing an attorney to represent the proposed  
 0263 ward or proposed conservatee at all stages of the proceedings.  
 0264 The court shall give preference, in the appointment of the  
 0265 attorney, to any attorney who has represented the proposed ward  
 0266 or proposed conservatee in other matters if the court has knowl-  
 0267 edge of the prior relationship. The proposed ward or proposed

The Judicial Council proposes that the following language be inserted at the end of subsection (a)(2) of K.S.A. 59-3010:

"The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed ward or proposed conservatee at the hearing would be injurious to such persons welfare. Notwithstanding the foregoing provisions of this subsection, if the proposed ward or proposed conservatee requests in writing to the court or to such person's attorney that he or she be present at the hearing then such person's presence cannot be waived."

This proposal requires the court to make a finding if it enters an order that the presence of the proposed ward or proposed conservatee is injurious to such person's welfare and provides such person's presence cannot be waived in certain circumstances.

9

0268 conservatee shall have the right to choose and to engage an  
0269 attorney of his or her own choice and, in such an event, the  
0270 attorney appointed herein shall be relieved of all duties by the  
0271 court.

0272 (4) An order that the proposed ward or proposed conservatee  
0273 shall appear at a time and place that is in the best interest of the  
0274 proposed ward or proposed conservatee to consult with his or her  
0275 the court appointed attorney, which time shall be prior to the  
0276 execution of the order for mental evaluation, if one is to be  
0277 issued, unless an order of protective custody provided for in  
0278 K.S.A. 59-2912, and acts amendatory thereof, has been issued  
0279 and detention of the proposed ward or proposed conservatee  
0280 thereunder is in a place outside the jurisdiction of the court.

0281 (5) A notice in the manner provided for in K.S.A. 59-3012 and  
0282 acts amendatory thereof.

0283 (6) An order for mental evaluation. Such order may be served  
0284 on the proposed ward or proposed conservatee at the same time  
0285 or after notice is given. It shall be served in the manner provided  
0286 for in K.S.A. 59-3012, and acts amendatory thereof. It shall order  
0287 the proposed ward or proposed conservatee to submit himself or  
0288 herself for a mental evaluation and to undergo such evaluation at  
0289 a general hospital or a psychiatric hospital, mental health clinic,  
0290 private psychiatrist or physician designated by the court in the  
0291 order. A state psychiatric hospital shall receive and evaluate any  
0292 proposed ward or proposed conservatee ordered evaluated  
0293 therein. At the time designated by the court in the order, but in  
0294 no event later than three (3) days prior to the date of the hearing  
0295 provided for in K.S.A. 59-3013 and amendments thereto, the  
0296 examiner shall submit to the court a report, in writing, of the  
0297 evaluation which report also shall be made available to counsel  
0298 for the parties at least three (3) days prior to such hearing. Such  
0299 report shall state that the examiner has made an examination of  
0300 the proposed ward or proposed conservatee and shall state the  
0301 results of the examination on the issue of whether the proposed  
0302 ward or proposed conservatee is an incapacitated a disabled  
0303 person. Such order shall be issued unless the court shall deter-  
0304 mine that the statement of the physician, if any, filed with the

0305 application is a sufficient evaluation.

0306 ~~(B)~~ (b) When the proposed ward or proposed conservatee is  
0307 alleged to be a minor, the court shall issue an order fixing the  
0308 time and place of the hearing on the application. If the applica-  
0309 tion is filed on behalf of the minor by such minor's next friend or  
0310 by the natural guardian of the minor, the time of the hearing  
0311 designated in the order may be forthwith and without notice, but  
0312 in no event later than ~~fourteen~~ ~~(14)~~ 14 days after the date of filing  
0313 of the application. In all other cases the time designated in the  
0314 order shall in no event be earlier than seven ~~(7)~~ days or later than  
0315 ~~fourteen~~ ~~(14)~~ 14 days after the date of the filing of the application.

0316 ~~(C)~~ (c) When the proposed conservatee has been duly ad-  
0317 judged an incapacitated person, *a disabled person*, an insane  
0318 person or an incompetent person and a conservator or guardian  
0319 of such person's estate has been appointed by any court of  
0320 competent jurisdiction of any other state, the court, relying upon  
0321 the application which incorporates the duly authenticated tran-  
0322 script required by subsection ~~(C)~~ (c) of K.S.A. 59-3009 and  
0323 *amendments thereto*, shall issue an order fixing the time and  
0324 place of the hearing, which hearing may be ~~forthwith~~ held  
0325 *immediately* and without notice.

0326 Sec. 7. K.S.A. 59-3011 is hereby amended to read as follows:  
0327 59-3011. At or after the filing of the application provided for in  
0328 K.S.A. 59-3009, and any amendments thereto, and prior to the  
0329 hearing provided for in K.S.A. 59-3013 *and amendments thereto*:

0330 ~~(A)~~ (a) When the proposed ward or proposed conservatee is  
0331 alleged to be either ~~an incapacitated~~ *a disabled* person or a  
0332 minor, the court may issue either of the following orders:

0333 (1) An order for investigation. Such investigation may, at the  
0334 direction of the court, cover the character, family relationships  
0335 and past conduct of the proposed ward or proposed conservatee;  
0336 whether or not the proposed ward or proposed conservatee is  
0337 likely to injure ~~himself or herself~~ *oneself* or others; the character  
0338 and past conduct of any proposed guardian or conservator; the  
0339 nature and extent of the property and income of the proposed  
0340 ward or proposed conservatee; and other pertinent factors. If  
0341 requested by the court, the secretary of social and rehabilitation

11

0342 services shall make such investigation. At the direction of the  
0343 court, any person, appointed by the court, may make such in-  
0344 vestigation. The person who conducts the investigation shall  
0345 promptly make a report to the court, in writing, which report  
0346 shall be made available to counsel for the parties at least three ~~(3)~~  
0347 days prior to such hearing.

0348 (2) An order of continuance. For good cause shown, a con-  
0349 tinuance may be granted to either the applicant or the proposed  
0350 ward or proposed conservatee.

0351 (3) An order of advancement. Upon request by the proposed  
0352 ward or the proposed conservatee or ~~his or her~~ *the attorney of the*  
0353 *proposed ward or proposed conservatee*, the district court may  
0354 advance the date of the hearing to as early a date as is practicable.

0355 ~~(B)~~ (b) When the proposed ward or proposed conservatee is  
0356 alleged to be a minor, the court may issue any of the following  
0357 orders:

0358 (1) An order of temporary custody.

0359 (2) An order that the proposed ward or proposed conservatee  
0360 appear at the time and place of the hearing.

0361 (3) An order appointing an attorney to represent the proposed  
0362 ward or proposed conservatee at all stages of the proceedings. If  
0363 over ~~fourteen (14)~~ 14 years of age, the proposed ward or proposed  
0364 conservatee shall have the right *to choose and* to engage an  
0365 attorney of ~~his or her own choice~~ and, in such an event, the  
0366 attorney appointed herein shall be relieved of all duties by the  
0367 court.

0368 (4) A notice in the manner provided for in K.S.A. 59-3012 *and*  
0369 *amendments thereto*.

0370 (5) An order for psychological testing. Such order may be  
0371 served on the proposed ward or proposed conservatee at the  
0372 same time or after notice is given. It shall be served in the  
0373 manner provided for in K.S.A. 59-3012 *and amendments thereto*.  
0374 It shall order the proposed ward or proposed conservatee to  
0375 submit ~~himself or herself~~ for psychological tests and to undergo  
0376 such tests at a mental health clinic, psychological clinic or with a  
0377 psychologist or physician designated by the court in the order.  
0378 The examiner shall submit to the court a report of the evaluation

0379 at the time designated by the court.

0380 Sec. 8. K.S.A. 1982 Supp. 59-3012 is hereby amended to read  
0381 as follows: 59-3012. (a) The notice provided by K.S.A. 59-3010  
0382 and 59-3011, and amendments to these sections, shall be given to  
0383 the proposed ward or proposed conservatee named in the appli-  
0384 cation, the attorney of the proposed ward or proposed conserva-  
0385 tee, if any, and to such other persons as the court shall direct. If  
0386 the proposed ward or proposed conservatee has a spouse, natural  
0387 guardian, custodian, guardian, or conservator notice shall also be  
0388 given them.

0389 (1) The notice shall state:

0390 (A) That an application has been filed, alleging that the  
0391 proposed ward or proposed conservatee is either ~~an incapacitated~~  
0392 ~~tated~~ a disabled person or a minor and requesting that the court  
0393 appoint a guardian or a conservator, or both;

0394 (B) the time and place of the hearing and whether the pro-  
0395 posed ward or proposed conservatee shall be present thereat;

0396 (C) the name of the attorney, if any, appointed to represent  
0397 the proposed ward or proposed conservatee and the time and  
0398 place where the proposed ward or proposed conservatee shall  
0399 consult with such attorney;

0400 (D) that the proposed ward, or proposed conservatee, if al-  
0401 leged to be ~~an incapacitated~~ a disabled person, has a right to  
0402 demand a hearing before a commission or a jury.

0403 (2) The court may order any of the following to serve the  
0404 notice:

0405 (A) The physician currently administering to the proposed  
0406 ward, or proposed conservatee provided the physician consents;

0407 (B) the head of the local mental health clinic or designee of  
0408 such head;

0409 (C) the local health officer or designee of the local health  
0410 officer;

0411 (D) the commissioner of adult services or the commissioner's  
0412 designee;

0413 (E) any law enforcement officer;

0414 (F) the attorney of the proposed conservatee.

0415 (b) The notice shall be served personally on the proposed

0416 ward or proposed conservatee and the attorney of the proposed  
 0417 ward or proposed conservatee, if any, not less than five days prior  
 0418 to the date of the hearing and immediate return thereof shall be  
 0419 made. If the proposed ward or proposed conservatee may not be  
 0420 personally served within the state, the court may direct notice be  
 0421 given to the proposed ward or proposed conservatee in such  
 0422 manner and for such a period of time as the court shall deem  
 0423 reasonable. Notice required to be given to any other person shall  
 0424 be given in such manner and for such a period of time as the  
 0425 court shall deem reasonable. If the proposed ward or proposed  
 0426 conservatee is a patient in any psychiatric hospital notice by mail  
 0427 shall be given to the head of the hospital.

0428 Sec. 9. K.S.A. 59-3013 is hereby amended to read as follows:  
 0429 59-3013. The hearing shall be held at the time and place speci-  
 0430 fied in the court's order, unless an advancement or a continuance  
 0431 has been granted, and may be consolidated with the hearing  
 0432 provided for in K.S.A. 59-2917 and ~~acts and amendments thereof~~  
 0433 *thereto*. The hearing shall be held to the court only, unless the  
 0434 court shall determine that it shall be held before a commission or  
 0435 a jury or unless the proposed ward or proposed conservatee shall,  
 0436 at least ~~forty-eight (48)~~ 48 hours prior to the time of the hearing,  
 0437 request in writing, a hearing before a commission or a jury.

0438 The commission, if one is ordered or requested, shall be  
 0439 composed of two ~~(2)~~ persons duly licensed to practice medicine  
 0440 and surgery by the state board of healing arts, which commission  
 0441 shall make and file a report of its findings upon which the court  
 0442 shall enter judgment. The court shall allow a reasonable fee per  
 0443 day to each commissioner for ~~his or her~~ services, which fee shall  
 0444 be taxed as costs.

0445 The jury, if one is ordered or requested, shall consist of six ~~(6)~~  
 0446 persons and shall be selected in the manner provided in K.S.A.  
 0447 59-2917 and ~~acts amendatory thereof~~ *amendments thereto*.

0448 The applicant and the proposed ward or proposed conservatee  
 0449 shall be afforded an opportunity to appear at the hearing, to  
 0450 testify, and to present and cross-examine witnesses. All persons  
 0451 not necessary for the conduct of the proceedings may be ex-  
 0452 cluded. The hearing shall be conducted in as informal a manner

The Judicial Council recommends that reference to the commission procedure be stricken from K.S.A. 59-3013. The proposal is made because the procedure is seldom used and removes decision making authority from the judge.

14

0453 as may be consistent with orderly procedure and in a physical  
 0454 setting not likely to have a harmful effect on the proposed ward  
 0455 or proposed conservatee. The court shall receive all relevant and  
 0456 material evidence which may be offered, including the testi-  
 0457 mony or written findings and recommendations of the hospital,  
 0458 clinic, physician or psychologist who has examined or evaluated  
 0459 the proposed ward or proposed conservatee and the testimony  
 0460 and written findings and recommendations of the investigators  
 0461 appointed pursuant to subsection ~~(A)~~(a)(1) of K.S.A. 59-3011 and  
 0462 ~~acts amendatory thereof amendments thereto.~~ Such evidence  
 0463 shall not be privileged for the purpose of this hearing.

0464 If the proposed conservatee has been duly adjudged an inca-  
 0465 pacitated person, a disabled person, an insane person or an  
 0466 incompetent person by any court of competent jurisdiction in  
 0467 any other state and a domiciliary conservator or guardian for the  
 0468 estate of such person has been appointed, and such facts have  
 0469 been established in accordance with subsection ~~(C)~~(c) of K.S.A.  
 0470 59-3009 and amendments thereto, the court shall appoint a  
 0471 suitable ancillary conservator.

0472 If, upon the completion of the hearing, the court commission  
 0473 or jury finds by clear and convincing evidence that the proposed  
 0474 ward or proposed conservatee is ~~an incapacitated~~ a disabled  
 0475 person in need of a guardian or conservator, or both, or if the  
 0476 court commission or jury finds that the proposed ward or pro-  
 0477 posed conservatee is a minor in need of a guardian or conserva-  
 0478 tor, or both, the court shall appoint one or more suitable persons,  
 0479 who are not minors, as guardian or conservator, or both, of such  
 0480 ~~incapacitated~~ disabled person or minor as the case may be.

0481 If, upon the completion of the hearing, the court, commission  
 0482 or jury finds that clear and convincing evidence that the pro-  
 0483 posed ward or proposed conservatee is ~~not an incapacitated~~ a  
 0484 disabled person or a minor *has not been shown*, the court shall  
 0485 enter ~~such findings~~ the finding in the record and ~~shall the court~~  
 by an appropriate order shall terminate the proceedings.

0487 Sec. 10. K.S.A. 59-3014 is hereby amended to read as fol-  
 0488 lows: 59-3014. (a) Subject to K.S.A. 59-3004 and amendments  
 0489 thereto, the court in appointing a suitable guardian or conserva-

The Judicial Council recommends that in 59-3013, the paragraph beginning at line 0472 be rewritten to read as follows:

"If, upon the completion of the hearing, the court or jury finds by clear and convincing evidence that the proposed ward or proposed conservatee is ~~an incapacitated~~ a disabled person in need of a guardian or conservator, or both, or if the court or jury finds that the proposed ward or proposed conservatee is a minor in need of a guardian or conservator, or both, the court shall ~~appoint one or more suitable persons, who are not minors, as guardian or conservator, or both, of such incapacitated person or minor as the case may be~~ shall make a finding as to what extent the disabled person is able to, and should be permitted to, make decisions which affect that person and the court shall specifically set forth such findings of fact in the court's order and pursuant to K.S.A. 59-3014, as amended, shall appoint one or more suitable individuals or corporations as guardian or conservator, or both, of such disabled person."

This proposed change would require the judge to set forth findings of fact relating to the extent that the proposed ward or proposed conservatee is disabled.

15



0490 tor shall give priority in the following order:

0491 (1) To the nominee of a minor over the age of ~~fourteen (14)~~ 14  
0492 years who is not ~~himself or herself an incapacitated a disabled~~  
0493 person.

0494 (2) To the nominee of a natural guardian.

0495 (b) Subject to K.S.A. 59-3004 and amendments thereto, if a  
0496 person, other than a corporation, is serving as guardian or  
0497 conservator, or both, for 15 or more wards or conservatees, or  
0498 both, and is the nominee of a minor or natural guardian under  
0499 subsection (a) or is otherwise proposed to be appointed as a  
0500 guardian or conservator, or both, the court shall consider the  
0501 workload and capabilities of the proposed guardian or conser-  
0502 vator, or both, before making such appointment.

0503 (c) Subject to K.S.A. 59-3004 and amendments thereto, in  
0504 appointing a suitable guardian for a person who is an adherent  
0505 of a religion whose tenets and practices call for reliance on  
0506 prayer alone for healing, the court shall consider, but shall not  
0507 be limited to, the appointment of a person as guardian who is  
0508 sympathetic to and will support such system of healing.

0509 (d) Upon the filing of an oath according to law, letters of  
0510 guardianship shall be granted. Upon the filing of a bond in such  
0511 an amount as the court may direct and an oath according to law,  
0512 letters of conservatorship shall be granted. If there is no prop-  
0513 erty, the court may waive the filing of a bond, but if the conser-  
0514 vator receives or becomes entitled to any property, ~~he or she~~ the  
0515 conservator shall immediately file a report thereof and a bond in  
0516 such amount as the court may direct. ~~Provided, That.~~ If the  
0517 guardian or conservator appointed is the one named by a testator  
0518 under the provisions of K.S.A. 59-3004 and amendments thereto  
0519 and the testator has provided by ~~his or her~~ will that no bond be  
0520 required of such guardian or conservator, then no bond shall be  
0521 required, unless the court shall otherwise direct. If either the  
0522 guardian or the conservator dies, resigns, or is removed, the  
0523 court, with or without notice, may appoint a successor.

The Judicial Council recommends that in 59-3014(b), all before the comma in line 0500 be stricken. The reason is that, as drafted, the section could be interpreted to state that the workload and capabilities of the proposed guardian or conservator shall be considered only if such person is serving 15 or more wards or conservatees. The implication could be that if a person is serving less than 15 wards or conservatees that such person's workload and capabilities need not be considered.

The Judicial Council recommends that subsection (d) of K.S.A. 59-3014 be rewritten to read as follows:

(d) Upon the filing of an oath according to law, letters of guardianship shall be granted. If the court, pursuant to K.S.A. 59-3013, has made a finding that a disabled person is able to and should be permitted to make some decisions which affect the person, a guardian shall be appointed and "Letters of Limited Guardianship" shall specify which of the powers and duties of a guardian shall be assigned to the limited guardian. If the court, pursuant to K.S.A. 59-3013, has made a finding that a disabled person is unable to, and should not be permitted to, make any decisions which will affect the person of said disabled person, or if the ward is a minor, a guardian shall be appointed and the guardian shall be possessed of all the powers and duties of a guardian as set out in K.S.A. 59-3018. Upon the filing of a bond in such amount as the court shall direct and an oath according to law, letters of conservatorship shall be

16

granted. If the court, pursuant to K.S.A. 59-3013 has made a finding that a disabled person is able to and should be permitted to make some decisions which affect the person's property, a limited conservator shall be appointed and the "Letters of Limited Conservatorship" shall specify which of the powers and duties of a conservator shall be assigned to the limited conservator. If the court, pursuant to K.S.A. 59-3013, has made a finding that the disabled person is unable to make any decisions which affect the property of said disabled person, or the ward is a minor, a conservator shall be possessed of all powers and duties of a conservator as set out in K.S.A. 59-3019. If there is no property, the court may waive the filing of a bond, but if the conservator receives or becomes entitled to any property, ~~he or she~~ the conservator shall immediately file a report thereof and a bond in such amount as the court may direct ~~provided that~~. If the guardian or conservator appointed is the one named by a testator under the provisions of K.S.A. 59-3004 and amendments thereto and the testator has provided by ~~his or her~~ will that no bond be required, unless the court shall otherwise direct. If either the guardian or the conservator dies, resigns, or is removed, the court, with or without notice, may appoint a successor.

The proposed change in this subsection provides for "Letters of Limited Guardianship" and Letters of Limited Conservatorship" in addition to "Letters of Guardianship" and "Letters of Conservatorship".

0524 Sec. 11. K.S.A. 59-3015 is hereby amended to read as fol-  
0525 lows: 59-3015. All courts having control over or custody of any  
0526 amount of money not exceeding ~~two thousand dollars~~ (\$2,000)

0527 \$5,000, the right to which is vested in a minor, may in its  
0528 discretion, without the appointment of a conservator, or the  
0529 giving of bond, and notwithstanding the provisions of K.S.A.  
0530 59-3003 *and amendments thereto*, authorize the deposit thereof  
0531 in a savings account of a bank or savings and loan association,  
0532 payable to the conservator when appointed or to the minor upon  
0533 ~~his or her~~ attaining the age of majority, or the payment thereof to  
0534 any person, including the natural guardian of the minor or the  
0535 minor ~~himself or herself~~. Such person shall have the right and  
0536 duty, for the benefit of the minor, to manage, invest or otherwise  
0537 dispose of such ~~monies~~ *moneys* for the benefit of such minor.  
0538 ~~Provided, That~~. If such minor is a conservatee, the court shall  
0539 authorize the payment thereof to the conservator of such minor.

0540 Sec. 12. K.S.A. 59-3016 is hereby amended to read as fol-  
0541 lows: 59-3016. After the application provided for in K.S.A. 59-  
0542 3009 or 59-3027, *and amendments to these sections*, is filed, the  
0543 district court may at any time, on its own motion or upon the  
0544 written request of any person, change the place of hearing on  
0545 such application:

0546 (a) To the county of the residence of the proposed ward or  
0547 ward;

0548 (b) To the county in which the proposed ward or proposed  
0549 conservatee or ward or conservatee is a patient receiving care or  
0550 treatment under the authority of a psychiatric hospital;

0551 (c) To any other county designated by the court, when the  
0552 proposed ward or proposed conservatee or ward or conservatee  
0553 has made a request for a change of hearing and the district court  
0554 finds that the proposed ward or proposed conservatee or ward or  
0555 conservatee cannot obtain a fair hearing.

0556 If any proposed ward or proposed conservatee, who is alleged  
0557 to be ~~an incapacitated~~ *a disabled* person, or any ward or conser-  
0558 vatee who was found to be ~~an incapacitated~~ *a disabled* person, is  
0559 in a psychiatric hospital the district court of the county in which  
0560 is located such hospital may not change the hearing under any  
0561 circumstances unless the proposed ward or proposed conserva-  
0562 tee or ward or conservatee has requested such change.

0563 When any order changing the place of hearing is issued, the

0564 district court issuing such order shall transmit to the district court  
0565 in which the hearing is to be held a certified copy of all pleadings  
0566 and orders in the case.

0567 Any district court to which the hearing is changed shall pro-  
0568 ceed in the case as if the application had been originally filed  
0569 therein and shall cause notice of the change of the place of the  
0570 hearing to be given to the persons and in the manner provided  
0571 for in K.S.A. 59-3012 and amendments thereto, except that the  
0572 court need not issue the order for mental evaluation pursuant to  
0573 subsection ~~(F)~~ (a)(6) of K.S.A. 59-3010 and amendments thereto,  
0574 if such order has previously been issued and the court shall not  
0575 determine the suitability of nor appoint or discharge a guardian  
0576 or conservator.

0577 Any district court holding such a hearing shall transmit a  
0578 statement of any court costs incurred and a certified copy of all  
0579 pleadings and findings of fact in the case to the district court  
0580 having venue. Upon receipt of such certified copy, the court  
0581 having venue shall hold a hearing, after having given such notice  
0582 as the court may direct. At such hearing, the court shall either  
0583 grant or deny the request contained in the application or shall  
0584 dismiss the case as the findings of fact in the certified copy may  
0585 indicate.

0586 Sec. 13. K.S.A. 59-3018 is hereby amended to read as fol-  
0587 lows: 59-3018. (a) A guardian shall be subject to the control and  
0588 direction of the court at all times and in all things. ~~He or she shall~~  
0589 ~~have charge of the person of the ward and unless otherwise~~  
0590 ~~limited by law shall have the right, if permission is granted by~~  
0591 ~~the court appointing the guardian, after hearing and notice~~  
0592 ~~thereof to the conservator, if any, and to such other persons and~~  
0593 ~~in such manner as the court shall direct, to establish the resi-~~  
0594 ~~dence of his or her ward either within or without the state. In~~  
0595 ~~particular, and without qualifying the foregoing, a guardian has~~  
0596 ~~the following powers and duties, except as otherwise limited by~~  
0597 ~~law or court order:~~

0598 (1) To the extent that it is consistent with the terms of any  
0599 order by a court of competent jurisdiction relating to detention  
0600 or commitment of the ward and except as otherwise limited by

The Judicial Council proposes that 59-3018 be amended to read as follows:

59-3018. Guardian; rights and duties. A guardian shall-be-subject-to-the-control-and-direction-of-the-court at-all-times-and-in-all-things. --He-or-she-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-ward-either-within-or without-the-state.

0601 law, the guardian is entitled to custody of the person of the ward  
 0602 and may establish, if permission is granted by the court ap-  
 0603 pointing the guardian, after hearing and notice thereof to the  
 0604 conservator, if any, and to such other persons in such manner as  
 0605 the court shall direct, the ward's place of abode within or  
 0606 without this state.

0607 (2) If entitled to custody of the ward, the guardian shall  
 0608 make provision for the care, comfort and maintenance of the  
 0609 ward and, whenever appropriate, arrange for training and edu-  
 0610 cation of the ward. Without regard to custodial rights of the  
 0611 ward's person, the guardian shall take reasonable care to protect  
 0612 the ward's clothing, furniture, vehicles and other personal ef-  
 0613 fects and commence protective proceedings if other property of  
 0614 the ward is in need of protection.

0615 (3) A guardian may give any consents or approvals that may  
 0616 be necessary to enable the ward to receive medical or other  
 0617 professional care, counsel, treatment or service.

0618 (4) If no conservator for the estate of the ward has been  
 0619 appointed, the guardian may:

0620 (A) Institute proceedings to compel any person under a duty  
 0621 to support the ward or to pay sums for the welfare of the ward to  
 0622 perform such duty;

0623 (B) receive money and tangible property deliverable to the  
 0624 ward and apply the money and property for support, care and  
 0625 education of the ward; but the guardian may not use funds from  
 0626 the ward's estate for room and board which the guardian's  
 0627 spouse, parent or child has furnished the ward unless a charge  
 0628 for the service is approved by order of the court made upon  
 0629 notice to at least one of the next of kin of the ward, if notice is  
 0630 possible. The guardian shall exercise care to conserve any excess  
 0631 money and property for the ward's needs.

0632 (5) If a conservator has been appointed, all of the ward's  
 0633 estate received by the guardian in excess of those funds expended  
 0634 to meet current expenses for support, care and education of the  
 0635 ward shall be paid to the conservator for management, and the  
 0636 guardian shall account to the conservator for funds expended.

0637 (6) Exercise such other powers and perform such other duties

(A) A guardian shall be subject to the control and direction of the court at all times and in all things. It is the general duty of an individual or corporation appointed to serve as a guardian to carry out diligently and in good faith the specific duties and powers assigned by the court. In carrying out these duties and powers, the guardian shall assure that personal, civil, and human rights of the ward or minor whom the guardian serves are protected.

(B) The guardian of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support, and maintenance.

(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 59-3013(d) and as shall also be specifically set forth in letters of limited guardianship pursuant to 59-3014.

(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, 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 and other services that are needed;

(3) promoting and protect 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.

0638 *as may be authorized by law.*

0639 (b) *At the time of appointment of a guardian or at a later*  
0640 *time, the court making the appointment may specify the au-*  
0641 *thorities and responsibilities which the guardian and ward,*  
0642 *acting together or separately, shall have with regard to:*

0643 (1) *Selecting the ward's place of abode within or without this*  
0644 *state;*

0645 (2) *arranging for medical care for the ward;*

0646 (3) *protecting the personal effects of the ward;*

0647 (4) *giving necessary consent, approval or releases on behalf*  
0648 *of the ward;*

0649 (5) *arranging for training, education or other habilitating*  
0650 *services appropriate for the ward;*

0651 (6) *applying for private or governmental benefits to which*  
0652 *the ward may be entitled;*

0653 (7) *instituting proceedings to compel any person under a*  
0654 *duty to support the ward or to pay sums for the welfare of the*  
0655 *ward to perform such duty, if no conservator has been ap-*  
0656 *pointed;*

0657 (8) *entering into contractual arrangements on behalf of the*  
0658 *ward, if no conservator has been appointed; and*

0659 (9) *receiving money and tangible property deliverable to the*  
0660 *ward and applying such money and property to the ward's*  
0661 *expenses for room and board, medical care, personal effects,*  
0662 *training, education and habilitating services, if no conservator*  
0663 *has been appointed, or requesting the conservator to expend the*  
0664 *ward's estate by payment to third persons to meet such expenses.*

0665 *If the court does specify such authorities and responsibilities,*  
0666 *the specifications shall be endorsed upon the letters of guard-*  
0667 *ianship and shall be treated as specific limitations upon the*  
0668 *general powers, rights and duties accorded by law to the guard-*  
0669 *ian.*

0670 (c) *A guardian shall not have the power:*

0671 (1) *To place a ward in a facility or institution to which an*  
0672 *individual without a guardian would have to be committed*  
0673 *under the act for obtaining treatment for a mentally ill person or*  
0674 *under article 40 of chapter 65 of the Kansas Statutes Annotated*

(F) *A guardian of a ward is not obligated by virtue of the guardian's appointment to use of 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 other than through a formal commitment proceeding in which the ward has independent counsel and a separate guardian ad litem, or with the consent of the ward. A ward may voluntarily admit himself or herself 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;*

(4) *To consent on behalf of a ward to the performance of any experimental biomedical or behavioral medical procedure or to participation in any biomedical or behavioral experiment unless:*

(a) *It is intended to preserve the life or prevent serious impairment of the physical health of the ward; or*

(b) *It is intended to assist the ward to develop or regain that person's abilities and has been approved for that person by the court.*

(5) *To prohibit the marriage or divorce of a ward.*

(6) *To consent on behalf of a ward to the termination of the ward's parental rights.*

(H) *The guardian shall at least annually file a report concerning the personal status of the ward as provided by K.S.A. 59-3029 as amended.*

0675 *or acts amendatory of the provisions thereof or supplemental*  
 0676 *thereto, other than through a formal commitment proceeding in*  
 0677 *which the ward has independent counsel and a separate guard-*  
 0678 *ian ad litem;*

0679 (2) *to consent on behalf of a ward to an abortion, steriliza-*  
 0680 *tion, psychosurgery or removal of a bodily organ, except as*  
 0681 *specifically authorized by the court appointing the guardian or*  
 0682 *when necessary to preserve the life or prevent serious impair-*  
 0683 *ment of the physical health of that person;*

0684 (3) *to consent on behalf of a ward to the withholding of*  
 0685 *nonheroic, life-saving medical procedures except as specifically*  
 0686 *authorized by the court;*

0687 (4) *to consent on behalf of a ward to the performance of any*  
 0688 *experimental biomedical or behavioral procedure or participa-*  
 0689 *tion in any biomedical or behavioral experiment unless:*

0690 (A) *It is intended to preserve the life or prevent serious*  
 0691 *impairment of the physical health of the ward; or*

0692 (B) *it is intended to assist the ward to develop or regain*  
 0693 *abilities and has been approved for that person by the court*  
 0694 *which appointed the guardian;*

0695 (5) *to prohibit the marriage or divorce of a ward; and*

0696 (6) *to consent on behalf of a ward to the termination of the*  
 0697 *ward's parental rights.*

0698 New Sec. 14. (a) *At the time of appointment of a conservator*  
 0699 *or at a later time, the court making the appointment may limit the*  
 0700 *rights and duties of a conservator otherwise conferred under the*  
 0701 *act for obtaining a guardian or conservator, or both, or previously*  
 0702 *conferred by the court and may at any time change, modify or*  
 0703 *remove any limitation. If the court making the appointment*  
 0704 *limits any rights or duties of a conservator otherwise conferred*  
 0705 *under the act for obtaining a guardian or conservator, or both, the*  
 0706 *limitation shall be endorsed upon the letters of conservatorship*  
 0707 *of the conservator.*

0708 (b) *This section shall be part of and supplemental to the act*  
 0709 *for obtaining a guardian or conservator, or both.*

0710 Sec. 15. *K.S.A. 59-3023 is hereby amended to read as fol-*  
 0711 *lows: 59-3023. The conservator of a spouse may, with or without*

The amendment to 59-3018 proposed by the Judicial Council is similar to the proposal in S.B. 11, with some differences. S.B. 11 lists powers a guardian has if a conservator has not been appointed, the Judicial Council proposal does not. The Judicial Council proposal contains a statement that a guardian is not obligated to use the guardians own financial resources for the support of the ward, S.B. 11 does not. The Judicial Council

includes language in this section requiring the filing of the annual report of the guardian. There also are slight differences in the sections listing the prohibited powers of the guardian.

S.B. 11, in new section 14, authorizes the court to limit the rights and duties of a conservator by endorsement upon the letters of conservatorship. The Judicial Council agrees to the concept of limited conservatorships but would insert the concept by amending 59-3013 and 69-3014 instead of enacting new section 14.

0712 notice, upon the order of the district court, sell, convey, lease or  
0713 mortgage, the inchoate interest of such conservator's conservatee  
0714 in any real estate, except the homestead, the title to which is in  
0715 the other spouse; but no conservator's deed or other instrument  
0716 executed by virtue of such order shall be valid unless the other  
0717 spouse, or if an adjudged ~~incapacitated~~ *disabled* person, such  
0718 spouse's conservator, shall join therein as one of the grantors  
0719 thereof.

0720 Sec. 16. K.S.A. 59-3026 is hereby amended to read as fol-  
0721 lows: 59-3026. Any person having a demand, other than tort,  
0722 against the estate of a conservatee, or against ~~his or her~~ *such*  
0723 *person's* conservator as such, may present it to the district court  
0724 for determination, and upon proof thereof procure an order for its  
0725 allowance and payment. Upon the death of a conservatee, the  
0726 conservator upon order of the district court may pay appropriate  
0727 funeral expenses and the expenses of the conservatee's last  
0728 illness, in such amounts as are reasonably necessary, with due  
0729 regard to the ~~assets and~~ rights of creditors. If there remain assets  
0730 in the estate of the deceased conservatee after any such pay-  
0731 ments, they shall be held by the conservator until the court  
0732 directs the disposition thereof, and the conservator shall not be  
0733 discharged until such funds are transferred as directed according  
0734 to law by the court. If the funeral and last illness expenses and  
0735 expenses of closing and final accounting will deplete the estate,  
0736 the conservator shall so show on the hearing for final accounting  
0737 and if the court finds the final account is correct, it may discharge  
0738 the conservator and such conservator's sureties.

0739 Sec. 17. K.S.A. 59-3027 is hereby amended to read as fol-  
0740 lows: 59-3027. Any ward or conservatee who has been found to  
0741 be ~~an incapacitated~~ *a disabled* person or any person on such  
0742 ward's or conservatee's behalf may file a verified application for  
0743 restoration to capacity in the district court which has venue of the  
0744 guardianship or conservatorship. The application shall state:

0745 ~~(A)~~ (a) The name of the ward or conservatee;

0746 ~~(B)~~ (b) the name and address of the nearest relatives of the  
0747 ward or conservatee;

0748 ~~(C)~~ (c) the name and address of the guardian or of the con-

23



0749 servator; and

0750 ~~(D)~~ (d) a request for restoration to capacity.

0751 The court may refuse to hear ~~said the~~ application for six ~~(6)~~  
0752 months from either the date of the original adjudication finding  
0753 the ward or conservatee to be ~~an incapacitated~~ a disabled person,  
0754 or for six ~~(6)~~ months from the date of any subsequent hearing on  
0755 an application for restoration.

0756 Upon the filing of the application, the district court shall  
0757 proceed with a hearing in the same manner and with the same  
0758 powers as if an application, pursuant to K.S.A. 59-3009 and  
0759 amendments thereto, had been filed in ~~said the~~ court except that  
0760 the court need not issue the orders provided for in K.S.A. 59-3010  
0761 and amendments thereto.

0762 Upon the completion of the hearing, if the court finds *by clear*  
0763 *and convincing evidence* that such ward or conservatee con-  
0764 tinues to be ~~an incapacitated~~ a disabled person, the court shall  
0765 deny the application for restoration to capacity. If the court finds  
0766 that *it has not been shown by clear and convincing evidence that*  
0767 such ward or conservatee ~~is no longer an incapacitated~~ continues  
0768 *to be a disabled* person, the court shall order such ward or  
0769 conservatee restored to capacity.

0770 Sec. 18. K.S.A. 59-3028 is hereby amended to read as fol-  
0771 lows: 59-3028. The guardianship of a ward or the conservatorship  
0772 of a conservatee shall terminate upon any of the following  
0773 conditions:

0774 ~~(A)~~ (a) When the ward or conservatee is ~~an incapacitated~~ a  
0775 disabled person;

0776 (1) upon an order of the court after a finding that there is no  
0777 further need of the guardianship or conservatorship;

0778 (2) upon the death of the ward or conservatee; or

0779 (3) upon the restoration to capacity of the ward or conserva-  
0780 tee;

0781 ~~(B)~~ (b) when the ward or conservatee is a minor;

0782 (1) upon an order of the court after a finding that there is no  
0783 further need of the guardianship or conservatorship;

0784 (2) upon the death of the ward or conservatee;

0785 (3) upon the attainment of legal age of the ward or conserva-

0786 tee; or

0787 (4) upon the marriage of the ward or conservatee. ~~Provided,~~  
 0788 ~~That, except that~~ the conservatorship shall not be terminated  
 0789 unless by such marriage the rights of majority are thereby con-  
 0790 ferred upon such conservatee;

0791 ~~(G)~~ (c) when the *guardian* or conservator was appointed  
 0792 pursuant to K.S.A. 59-3008 *and amendments thereto*;

0793 (1) upon an order of the court after a finding that there is no  
 0794 further need of the *guardianship* or conservatorship;

0795 (2) upon the death of the *ward* or conservatee;

0796 (3) upon the finding that the *ward* or conservatee is an  
 0797 adjudged ~~incapacitated~~ *disabled* person; or

0798 (4) upon the filing of a verified application by the *ward* or  
 0799 conservatee that ~~he or she~~ *the ward or conservatee* no longer  
 0800 desires to have the *guardianship* or conservatorship continue.

0801 Sec. 19. K.S.A. 1982 Supp. 59-3029 is hereby amended to  
 0802 read as follows: 59-3029. (a) *Except where expressly waived by*  
 0803 *the court, every guardian shall file annually with the court, on a*  
 0804 *form prescribed for this purpose by rule of the supreme court, a*  
 0805 *report on the condition of the guardian's ward and of the estate*  
 0806 *which has been subject to the possession and control of the*  
 0807 *guardian. The supreme court may require by rule that other*  
 0808 *matters relating to guardianship be contained in the report. At*  
 0809 *the termination of the guardianship or upon the guardian's*  
 0810 *removal or resignation, the guardian or the guardian's repre-*  
 0811 *sentative, in the event of the guardian's death or incapacity,*  
 0812 *shall file with the court a final report the contents of which shall*  
 0813 *be prescribed by rule of the supreme court on a form prescribed*  
 0814 *for this purpose by rule of the supreme court.*

0815 (b) ~~Except where expressly waived by the court,~~ every con-  
 0816 servator shall annually present a verified account covering the  
 0817 period from the date of appointment or the last account. At the  
 0818 termination of the conservatorship or upon the conservator's  
 0819 removal or resignation, the conservator, or *the conservator's*  
 0820 *representative*, in the event of the conservator's death or inca-  
 0821 ~~capacity; the conservator's representative,~~ shall present a verified  
 0822 final account with an application for the settlement and allow-

The Judicial Council recommends striking, "Except where expressly waived by the court" from 59-3029(b).

0823 ance thereof. The conservator or the conservator's estate shall  
0824 not be discharged from liability until such account is presented,  
0825 settled and allowed. A conservator's surety, in such surety's  
0826 discretion, may perform the duties required of a conservator  
0827 pursuant to this section in the event the conservator or the  
0828 conservator's representative fails to perform such duties.

The Judicial Council proposes that 59-3031 be amended to read as follows:

"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 or 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 his or her sureties."

The Judicial Council recommends that K.S.A. 59-3032 be amended to add the petitioner as one of the parties to whom costs of the action may be taxed.

**59-3032. Costs; payment by resident county, when.** In each proceeding the court shall allow and order paid to any individual or institution as a part of the costs thereof a reasonable fee and expenses for any professional services ordered performed by the court pursuant to this act other than those performed by any individual or institution under the jurisdiction of the department of social and rehabilitation services, but including the fee of counsel for the proposed ward or proposed conservatee or ward or conservatee when counsel is appointed by the court. Other costs and fees shall be allowed and paid as are allowed by law for similar services in other cases. The costs shall be taxed to the estate of the proposed ward or proposed conservatee or ward or conservatee, to those bound by law to support him or her or to the county of the residence of the proposed ward or proposed conservatee or ward or conservatee as the court having venue shall direct. Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county except that it may refuse to approve the same for payment only on the grounds that the proposed ward or proposed conservatee or ward or conservatee is not a

, or to the  
petitioner

resident of its county. In such case it shall transmit the statement of costs to the department of social and rehabilitation services which shall determine the question of residence and certify its findings to each district court. If the claim for costs is not paid within thirty (30) days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county. The findings made by the department of social and rehabilitation services as to the residence of the proposed ward or proposed conservatee or ward or conservatee shall be applicable only to the assessment of costs. Any county of residence which pays from its general fund court costs to the district court of another county may recover the same in any court of competent jurisdiction from the estate of the proposed ward or proposed conservatee or ward or conservatee or from those bound by law to support him or her, unless the court shall find that the proceedings in which such costs were incurred and were instituted without probable cause and not in good faith. [L.

0829 New Sec. 20. (a) Within three years from the date of ap-  
0830 pointment of a conservator or guardian, or both, and each three  
0831 years thereafter, the court shall conduct a review of the conser-  
0832 vatorship or guardianship, or both. The court may order a more  
0833 frequent review upon its own motion, upon the request of the  
0834 guardian or conservator or upon the request of the ward or  
0835 conservatee. The review shall be conducted to determine:

0836 (1) Whether the guardian or conservator, or both, is serving  
0837 the needs of the ward or conservatee;

0838 (2) whether the guardian or conservator, or both, is perform-  
0839 ing functions in a manner consistent with the letters of guard-  
0840 ianship or the letters of conservatorship;

0841 (3) whether limitations should be placed on the rights and  
0842 duties of a guardian or conservator, or both;

0843 (4) whether limitations previously placed on the rights and  
0844 duties of a guardian or conservator, or both, should be continued,  
0845 changed, modified or removed; and

0846 (5) whether the guardianship or conservatorship, or both,  
0847 should be terminated.

0848 (b) In conducting a review under subsection (a), the court  
0849 may review the reports filed under K.S.A. 59-3029 and amend-  
0850 ments thereto and may request written or oral comments, or both  
0851 written and oral comments, or such reports from the guardian or  
0852 conservator, or both, from the ward or conservatee and from  
0853 other persons as the court may order. In addition, in conducting a  
0854 review under subsection (a), the court may order a full eviden-  
0855 tiary hearing. The hearing shall be conducted in the same man-  
0856 ner and with the same powers as if an application pursuant to  
0857 K.S.A. 59-3009 and amendments thereto had been filed in the  
0858 court except that the court need not issue the orders provided for  
0859 in K.S.A. 59-3010 and amendments thereto.

S.B. 11, in new section 20, mandates periodic review  
by the court of a guardianship or conservatorship. The  
Judicial Council agrees with the intent of S.B. 11 to  
hold the guardian and conservator more accountable, but  
believes that new section 20 should be stricken. The  
Council believes that other actions taken by this bill,  
and proposed by the Judicial Council, meet the need for  
more accountability by guardians and conservators. The  
other actions are the requirement by this bill that  
guardians file annual reports and the requirement by  
this bill that the Supreme Court designate by rule the  
form for the annual report of the guardians. Also, the  
Judicial Council recommends, in section 19, that K.S.A.  
59-3029 be amended in new subsection (b) to not allow  
waiver of annual reports of conservators.

The Judicial Council also has pending before it the  
recommendation of the Guardianship and Conservatorship  
Advisory Committee that a Supreme Court Rule be adopted that  
provides that unless the court waives a hearing after having  
received the annual accounting a hearing shall be held. The  
rule also requires notice of failure to file annual account-  
ings be given to the fiduciary and attorney of record.

0860 (c) Upon the completion of the review under this section, the  
0861 court may issue such orders as it deems appropriate.

0862 (d) This section shall not be construed to limit the authority  
0863 of the court on its own motion at any time to conduct a review of  
0864 a guardianship or conservatorship, or both.

0865 (e) This section shall be part of and supplemental to the act  
0866 for obtaining a guardian or conservator, or both.

0867 New Sec. 21. (a) (1) If during the pendency of a proceeding  
0868 initiated under K.S.A. 59-3009 and amendments thereto, it ap-  
0869 pears that there is an imminent danger that the physical health or  
0870 safety of the proposed ward will be seriously impaired unless  
0871 immediate action is taken, the proposed ward, or any adult  
0872 interested in the welfare of the proposed ward, may apply to the  
0873 court in which the proceeding is pending for the emergency  
0874 appointment of a guardian.

0875 (2) The application shall state:

0876 (A) The names and addresses of the individuals and entities  
0877 entitled to notice; and

0878 (B) the relief requested and the facts and reasons supporting  
0879 that request.

0880 (3) A hearing shall be held no more than 48 hours after an  
0881 application for an emergency appointment has been filed. Notice  
0882 shall be given in the manner directed by the court.

0883 (4) If the court determines that there is an imminent danger  
0884 that the physical health or safety of the proposed ward will be  
0885 seriously impaired unless immediate action is taken, the court  
0886 shall appoint a guardian in the manner prescribed in K.S.A.  
0887 59-3014 and amendments thereto. The court shall assign to an  
0888 emergency appointee only those duties and powers necessary to  
0889 protect against the imminent danger shown.

0890 (5) The emergency appointment shall remain in effect until  
0891 the conclusion of the hearing conducted under K.S.A. 59-3013  
0892 and amendments thereto.

0893 (b) If at any time the court has probable cause to believe that  
0894 a guardian is not effectively performing such person's duties and  
0895 powers, and that there is an imminent danger that the physical  
0896 health or safety of the ward will be seriously impaired unless

Section 21 of S.B. 11 provides for emergency appoint-  
ment of a guardian in certain circumstances, for the  
appointment of a temporary guardian, and for designa-  
tion of another person who may assume the duties and  
powers of a guardian in the event of resignation,  
disability, temporary absence, or death of the guardi-  
an. The Judicial Council agrees that the provisions  
relating to emergency appointment should be enacted,  
but does not find the necessity for the "standby"  
guardian or conservator.

The Judicial Council recommends that the parts of  
section 21 which relate to "standby" guardians and  
conservators be stricken. The Judicial Council does not  
agree that there is a need for "standby" guardians and  
conservators.

0897 immediate action is taken, the court shall:

0898 (1) Suspend and temporarily replace the guardian with a  
0899 guardian meeting the qualifications set forth in K.S.A. 59-3014  
0900 and amendments thereto;

0901 (2) reassign the duties and powers of the suspended guardian  
0902 to the emergency appointee; and

0903 (3) direct the temporary appointee to file an application  
0904 under K.S.A. 59-3029 and amendments thereto within five days if  
0905 such an application is not already pending, and submit such  
0906 reports as may be necessary.

0907 (c) The court may designate another eligible person selected  
0908 in accordance with K.S.A. 59-3014 and amendments thereto to  
0909 assume the duties and powers assigned to the guardian upon the  
0910 resignation, disability, temporary absence or death of the guard-  
0911 ian. The individual so designated shall submit an application or  
0912 report, or both, pursuant to K.S.A. 59-3029 and amendments  
0913 thereto within 10 days after an individual appointed on a standby  
0914 basis assumes the duties of a guardian. A guardian serving on a  
0915 standby basis may exercise all of the duties and powers assigned  
0916 to the predecessor as a guardian until the conclusion of the  
0917 proceedings under K.S.A. 59-3029 and amendments thereto or,  
0918 in case of the temporary absence of the predecessor guardian,  
0919 until the predecessor guardian returns, unless otherwise ordered  
0920 by the court.

0921 (d) This section shall be part of and supplemental to the act  
0922 for obtaining a guardian or conservator, or both.

0923 Sec. 22. K.S.A. 1982 Supp. 38-1505 is hereby amended to  
0924 read as follows: 38-1505. (a) *Appointment of guardian ad litem;*  
0925 *duties.* Upon the filing of a petition the court shall appoint a  
0926 person who is an attorney to serve as guardian *ad litem* for a child  
0927 who is the subject of proceedings under this code. The guardian  
0928 *ad litem* shall make an independent investigation of the facts  
0929 upon which the petition is based and shall appear for and  
0930 represent the child.

0931 (b) *Attorney for parent or custodian.* A parent or custodian of  
0932 a child alleged or adjudged to be a child in need of care may be  
0933 represented by an attorney, other than the guardian *ad litem*

0934 appointed for the child, in connection with all proceedings  
0935 under this code. If at any stage of the proceedings a parent  
0936 desires but is financially unable to employ an attorney, the court  
0937 shall appoint an attorney for the parent. It shall not be necessary  
0938 to appoint an attorney to represent a parent who fails or refuses to  
0939 attend the hearing after having been properly served with  
0940 process in accordance with K.S.A. 1982 Supp. 38-1534 and  
0941 amendments thereto. A parent or custodian who is not a minor, a  
0942 mentally ill person as defined in K.S.A. 59-2902 and amendments  
0943 thereto or ~~incapacitated~~ a disabled person as defined in K.S.A.  
0944 59-3002 and amendments thereto may waive counsel either in  
0945 writing or on the record.

0946 (c) *Attorney for parent who is a minor, mentally ill or ~~incapacitated~~*  
0947 *disabled.* The court shall appoint an attorney for a  
0948 parent who is a minor, a mentally ill person as defined in K.S.A.  
0949 ~~1982 Supp.~~ 59-2902 and amendments thereto or an ~~incapacitated~~  
0950 *a disabled person* as defined in K.S.A. 59-3002 and amendments  
0951 thereto, unless the court determines that there is an attorney  
0952 retained who will appear and represent the interests of the  
0953 person in the ~~proceeding~~ *proceedings* under this code.

0954 (d) *Continuation of representation.* A guardian *ad litem* ap-  
0955 pointed for a child or an attorney appointed for a parent or  
0956 custodian shall continue to represent the client at all subsequent  
0957 hearings in ~~proceeding~~ *proceedings* under this code, including  
0958 any appellate proceedings, unless relieved by the court upon a  
0959 showing of good cause or upon transfer of venue.

0960 (e) *Fees for counsel.* A guardian *ad litem* or attorney ap-  
0961 pointed for parties to proceedings under this section shall be  
0962 allowed a reasonable fee for their services, which may be as-  
0963 sessed as an expense in the proceedings as provided in K.S.A.  
0964 1982 Supp. 38-1511 and amendments thereto.

0965 Sec. 23. K.S.A. 77-201 is hereby amended to read as follows:  
0966 77-201. In the construction of the statutes of this state the  
0967 following rules shall be observed, unless such construction  
0968 would be inconsistent with the manifest intent of the legislature  
0969 or repugnant to the context of the statute:

0970 *First.* The repeal of a statute does not revive a statute pre-



0971 viously repealed, nor does such repeal affect any right which  
0972 accrued, any duty imposed, any penalty incurred, nor any pro-  
0973 ceeding commenced, under or by virtue of the statute repealed.  
0974 The provisions of any statute, so far as they are the same as those  
0975 of any prior statute, shall be construed as a continuation of such  
0976 provisions, and not as a new enactment.

0977 *Second.* Words and phrases shall be construed according to the  
0978 context and the approved usage of the language; but technical  
0979 words and phrases, and such others as may have acquired a  
0980 peculiar and appropriate meaning in law, shall be construed  
0981 according to such peculiar and appropriate meaning.

0982 *Third.* Words importing the singular number only may be  
0983 extended to several persons or things, and words importing the  
0984 plural number only may be applied to one person or thing and  
0985 words importing the masculine gender only may be extended to  
0986 females.

0987 *Fourth.* Words giving a joint authority to three or more public  
0988 officers or other persons shall be construed as given such au-  
0989 thority to a majority of them, unless it be otherwise expressed in  
0990 the act giving the authority.

0991 *Fifth.* The words "highway" and "road" include public  
0992 bridges, and may be held equivalent to the words "county way,"  
0993 "county road," "common road," "state road," and "territorial  
0994 road."

0995 *Sixth.* The words "incompetent person" include ~~incompetent~~  
0996 ~~person disabled person as that term is defined in K.S.A. 59-3002~~  
0997 ~~and amendments thereto.~~

0998 *Seventh.* The word "issue," as applied to the descent of es-  
0999 tates, includes all the lawful lineal descendants of the ancestor.

1000 *Eighth.* The word "land," and the phrases "real estate" and  
1001 "real property," includes lands, tenements and hereditaments,  
1002 and all rights thereto and interest therein, equitable as well as  
1003 legal.

1004 *Ninth.* The words "personal property" include money, goods,  
1005 chattels, evidences of debt, and "things in action."

1006 *Tenth.* The word "property" includes personal and real prop-  
1007 erty.

1008 *Eleventh.* The word "month" means a calendar month, unless  
1009 otherwise expressed, and the word "year" alone, and also the  
1010 abbreviation "A.D.," is equivalent to the expression "year of our  
1011 Lord."

1012 *Twelfth.* The word "oath" includes "affirmation," in all cases  
1013 where an affirmation may be substituted for an oath, and in like  
1014 cases the word "swear" includes the word "affirm."

1015 *Thirteenth.* The word "person" may be extended to bodies  
1016 politic and corporate.

1017 *Fourteenth.* Where the seal of a court or public office or officer  
1018 may be required by law to be affixed to any paper, the word  
1019 "seal" shall include an impression of such seal upon the paper  
1020 alone, as well as upon wax or a wafer affixed thereto, and such  
1021 term also shall include a rubber stamp seal to be used with  
1022 permanent ink, so that such seal may be legibly reproduced by  
1023 photographic process.

1024 *Fifteenth.* The word "state," when applied to the different  
1025 parts of the United States, includes the District of Columbia and  
1026 the territories, and the words "United States" may include the  
1027 said district and territories.

1028 *Sixteenth.* The word "town" may mean a civil township, un-  
1029 less a different meaning is plainly intended.

1030 *Seventeenth.* The word "will" includes codicils.

1031 *Eighteenth.* The words "written" and "in writing" may in-  
1032 clude printing, engraving, lithography, and any other mode of  
1033 representing words and letters, excepting those cases where the  
1034 written signature or the mark of any person is required by law.

1035 *Nineteenth.* The term "sheriff" may be extended to any person  
1036 performing the duties of the sheriff, either generally or in special  
1037 cases.

1038 *Twentieth.* The word "deed" is applied to an instrument  
1039 conveying lands, but does not imply a sealed instrument, and the  
1040 words "bond" and "indenture" do not necessarily imply a seal,  
1041 but in other respects mean the same kind of instruments as  
1042 heretofore; and the word "undertaking" means a promise or  
1043 security in any form where required by law.

1044 *Twenty-first.* The term "executor" includes an administrator,

1045 where the subject-matter applies to an administrator.

1046 *Twenty-second.* The Roman numerals and Arabic figures are to  
1047 be taken as a part of the English language.

1048 *Twenty-third.* The term "residence" shall be construed to  
1049 mean the place adopted by a person as such person's place of  
1050 habitation, and to which, whenever such person is absent, such  
1051 person has the intention of returning. When a person eats at one  
1052 place and sleeps at another, the place where such person sleeps  
1053 shall be deemed such person's residence.

1054 *Twenty-fourth.* The terms "usual place of residence" and  
1055 "usual place of abode," when applied to the service of any  
1056 process or notice, shall be construed to mean the place usually  
1057 occupied by a person. If such person has no family, or does not  
1058 have ~~his or her~~ *one's* family with ~~him or her~~ *oneself*, such  
1059 person's office or place of business, or if such person has no place  
1060 of business, the room or place where such person usually sleeps  
1061 shall be construed to be such place of residence or abode.

1062 *Twenty-fifth.* The term "householder" shall be construed to  
1063 mean a person of full age, and owning or occupying a house as a  
1064 place of residence, and not as a boarder or lodger.

1065 *Twenty-sixth.* The term "general election" refers to the elec-  
1066 tion required to be held on the Tuesday succeeding the first  
1067 Monday in November of each even-numbered year.

1068 *Twenty-seventh.* The phrase "under legal disability" includes  
1069 persons within the period of minority, or incapacitated, or im-  
1070 prisoned.

1071 *Twenty-eighth.* When a person is required to be disinterested  
1072 or indifferent in acting on any question or matter affecting other  
1073 parties, relationship within the degree of second cousin, inclu-  
1074 sive, shall disqualify such person from acting, except by consent  
1075 of parties.

1076 *Twenty-ninth.* The phrase "head of a family" shall include any  
1077 person who has charge of children, relatives or others living with  
1078 such person.

1079 *Thirtieth.* The term "mentally ill person" shall mean any  
1080 person who is mentally impaired to the extent such person is in  
1081 need of treatment and who is dangerous to himself or herself or

1082 others and

1083 (a) who lacks sufficient understanding or capacity to make  
1084 responsible decisions with respect to his or her need for treat-  
1085 ment; or

1086 (b) who refuses to seek, except that no person who is being  
1087 treated by prayer in the practice of the religion of any church  
1088 which teaches reliance on spiritual means alone through prayer  
1089 for healing shall be determined to be a "mentally ill person"  
1090 unless substantial evidence is produced upon which the court  
1091 finds that such person is dangerous to himself or herself or  
1092 others; means any person who is mentally impaired to the extent  
1093 that such person is in need of treatment and who is dangerous to  
1094 self or others and:

1095 (1) Who lacks sufficient understanding or capacity to make  
1096 responsible decisions with respect to the person's need for treat-  
1097 ment, or

1098 (2) who refuses to seek treatment. Proof of a person's failure  
1099 to meet the person's basic physical needs, to the extent that the  
1100 failure threatens such person's life, shall be deemed as proof that  
1101 the person is dangerous to self, except that no person who is  
1102 being treated by prayer in the practice of the religion of any  
1103 church which teaches reliance on spiritual means alone through  
1104 prayer for healing shall be determined to be a mentally ill  
1105 person unless substantial evidence is produced upon which the  
1106 district court finds that the proposed patient is dangerous to self  
1107 or others.

1108 *Thirty-first.* The term "incapacitated person" shall mean any  
1109 person who is impaired by reason of mental illness, mental  
1110 deficiency, physical illness or disability, advanced age, chronic  
1111 narcotic drug addiction, chronic intoxication, or other cause to  
1112 the extent that such person lacks sufficient understanding or  
1113 capacity to make or communicate responsible decisions con-  
1114 cerning either his or her person or estate means disabled person  
1115 as that term is defined in K.S.A. 59-3002 and amendments  
1116 thereto.

1117 *Thirty-second.* The term "guardian" shall mean any person  
1118 who means an individual or a nonprofit corporation certified in

1119 *accordance with section 24 which has been appointed by a court*  
1120 *of competent jurisdiction to exercise control over the person of*  
1121 *an incapacitated person or of a minor act on behalf of a ward and*  
1122 *to exercise such powers and perform such duties as may be*  
1123 *authorized by law.*

1124 *Thirty-third.* The term "natural guardian" shall mean means  
1125 both the father and mother of a legitimate minor or the mother of  
1126 an illegitimate minor, provided that both such parents or parent  
1127 shall not have been found to be ~~an incapacitated~~ a disabled  
1128 person or had their parental rights severed by a court of compe-  
1129 tent jurisdiction. If either parent of a legitimate minor dies, or  
1130 has been found to be ~~an incapacitated~~ a disabled person or has  
1131 had parental rights severed by a court of competent jurisdiction,  
1132 the other shall be the natural guardian.

1133 *Thirty-fourth.* The term "conservator" shall mean any means a  
1134 person who has been appointed by a court of competent juris-  
1135 diction to ~~exercise control over the estate of any person act on~~  
1136 *behalf of a conservatee and to exercise such powers and perform*  
1137 *such duties as may be authorized by law.*

1138 *Thirty-fifth.* The term "minor" shall mean means any person  
1139 defined by K.S.A. 38-101 and amendments thereto, as being  
1140 within the period of minority.

1141 *Thirty-sixth.* The term "proposed ward" shall mean means a  
1142 person for whom an application for the appointment of a guard-  
1143 ian pursuant to K.S.A. 59-3006 and amendments thereto has been  
1144 filed.

1145 *Thirty-seventh.* The term "proposed conservatee" shall mean  
1146 means a person for whom an application for the appointment of a  
1147 conservator pursuant to K.S.A. 59-3006 and amendments thereto  
1148 has been filed.

1149 *Thirty-eighth.* The term "ward" shall mean means a person  
1150 who has a guardian.

1151 *Thirty-ninth.* The term "conservatee" shall mean means a  
1152 person who has a conservator.

1153 *New Sec. 24. (a) A private, nonprofit corporation organized*  
1154 *under the Kansas general corporation code may act as guardian*  
1155 *for an individual found to be in need of a guardian under the act*

1156 for obtaining a guardian or conservator, or both, if the private,  
1157 nonprofit corporation has been certified by the secretary of social  
1158 and rehabilitation services as a suitable agency to perform the  
1159 duties of a guardian.

1160 (b) The secretary of social and rehabilitation services shall  
1161 establish criteria for determining whether a private, nonprofit  
1162 corporation should be certified as a suitable agency to perform  
1163 the duties of a guardian. The criteria shall be designed for the  
1164 protection of the ward and shall include, but not be limited to,  
1165 the following:

1166 (1) Whether the private, nonprofit corporation is capable of  
1167 performing the duties of a guardian;

1168 (2) whether the staff of the private, nonprofit corporation is  
1169 accessible and available to wards and to other persons concerned  
1170 about their well-being and is adequate in number to properly  
1171 perform the duties and responsibilities of a guardian;

1172 (3) whether the private, nonprofit corporation is a stable  
1173 organization which is likely to continue in existence for some  
1174 time; and

1175 (4) whether the private, nonprofit corporation will agree to  
1176 submit such reports and answer such questions as the secretary  
1177 may require in monitoring corporate guardianships.

1178 (c) Application for certification under this section shall be  
1179 made to the secretary of social and rehabilitation services on  
1180 forms supplied by the secretary. The secretary of social and  
1181 rehabilitation services may suspend or revoke certification of a  
1182 private, nonprofit corporation under this section, after notice and  
1183 hearing, upon a finding that such corporation has failed to  
1184 comply with the criteria established by rules and regulations  
1185 under subsection (b). Such corporation shall not be appointed as  
1186 a guardian during the period of time the certificate is suspended  
1187 or revoked.

1188 (d) No private, nonprofit corporation shall be eligible for  
1189 certification under this section if such corporation provides resi-  
1190 dential care in an institution or community based program or is  
1191 the owner, part owner or operator of an adult care home, lodging  
1192 establishment or institution engaged in the care, treatment or

1193 housing of any person physically or mentally handicapped, in-  
1194 firm or aged.

1195 (e) The secretary of social and rehabilitation services may  
1196 adopt rules and regulations necessary to administer the provi-  
1197 sions of this section.

1198 (f) This section shall be part of and supplemental to the act  
1199 for obtaining a guardian or conservator, or both.

1200 New Sec. 25. (a) Any person adjudged an incapacitated per-  
1201 son prior to the effective date of this act who has not been  
1202 restored to capacity prior to that date shall be considered a  
1203 disabled person for the purposes of this act. No act of a guardian  
1204 or conservator, or both, lawfully performed under the act for  
1205 obtaining a guardian or conservator, or both, prior to the effective  
1206 date of this act shall be deemed unlawful because of any of the  
1207 provisions of this act.

1208 (b) This section shall be part of and supplemental to the act  
1209 for obtaining a guardian or conservator, or both.

1210 Sec. 26. K.S.A. 59-3002, 59-3006, 59-3007, 59-3008, 59-3009,  
1211 59-3010, 59-3011, 59-3013, 59-3014, 59-3015, 59-3016, 59-3018,  
1212 59-3023, 59-3026, 59-3027, 59-3028, 59-3033 and 77-201 and  
1213 K.S.A. 1982 Supp. 38-1505, 59-3012 and 59-3029 are hereby  
1214 repealed.

1215 Sec. 27. This act shall take effect and be in force from and  
1216 after its publication in the statute book.