Approved February 3, 1983
Date

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./~~p.m.~~ on February 2, 1983 in room 526-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Norman Furse and Bill Wolff

Conferees appearing before the committee:

Senator Norma Daniels
Jean Ann Summers, Kansas Planning Council on Developmental Disabilities
Dr. Jim Lackey, Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.
Ehtel May Miller, Kansas Association for Retarded Citizens, Inc.

Others present: see attached list

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

Senator Norma Daniels spoke briefly in support of SB 11. Senator Daniels said that she had served on both the Legislative Interim Committee and the Judicial Council Advisory Committee. She urged the Public Health and Welfare Committee to remember that the purpose of their recommendations is to provide what is best for the people, with the least restrictive alternatives possible, and that something needs to be done now for the elderly population.

Jean Ann Summers, Vice-Chairperson of the Kansas Planning Council on Developmental Disabilities, testified in support of SB 11, and distributed a memorandum to committee members asking that special consideration be given to certain items in SB 11. She did not support the concept of voluntary guardian; she favored the Judicial Council approach to limited guardianship; and she supported annual reporting and periodic review of the relationship. (Attachment #1). Ms. Summers said that KPCDD feels that this bill addresses the concerns that were highlighted in the studies conducted over the past 12 months, and that this legislation must balance the liberty of the developmentally disabled person with his need to be protected.

Dr. Jim Lackey; Kansas Guardianship Program Coordinator for KAPS, testified in support of SB 11, and distributed testimony relating to recommendations, substitutions, or additions to specific sections of SB 11 and some of the proposed amendments that were developed by the Judicial Council Advisory Committee. (Attachment #2). Dr. Lackey said that KAPS believes that the proposed bill can strengthen the ability of the courts to provide wise and caring guardianships and conservatorships for those who need substitute decision makers; can provide more individualized protection of, with increased accountability for, the wards and conservatees; and can enable those persons who are appointed as guardians and conservators to be more certain about their responsibilities. He said that overall SB 11 and the recommended amendments by the Judicial Council Advisory Committee reflect the warm and practical considerations of lawmakers and other Kansas citizens.

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 525-S, Statehouse, at 10 a.m./p.m. on February 2, 1983.

Ethel May Miller, Kansas Association for Retarded Citizens, Inc., testified in support of SB 11. Ms. Miller distributed testimony listing sections of the bill which KARC especially supports; sections which are of special concern to KARC; and comments for consideration. (Attachment #3). She also distributed an article from the TARC magazine, entitled "What Will Happen To My Child When I'm Gone", written by Virginia Lockhart, Vice-President of KARC. The article focuses on four areas of concern which Ms. Lockhart has with the present Kansas guardianship system - Training, Accountability, Knowledge, and Caring Concern. This article was part of the ARC testimony to Public Health and Welfare Interim Study Committee, September, 1982. (Attachment #4).

Senator Morris moved that the minutes of February 1, 1983, be approved. Senator Bogina seconded the motion and it carried.

Senator Meyers announced that the hearing on SB 11 would continue the next day, and the committee would also hear SB 31.

The meeting was adjourned.

SENATE

PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-2-'83

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
Ethel May Miller	Assn. for Retarded Citizens 11111 West 59th Terr. Shawnee, Kansas
Jim Lackey	Kans. Advoc. & Protective Services f. Dev. Disabled
Janet Schalansky	Ks Planning Council on D-D
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
[illegible]	Kans Bar assn
Randy Hearrell	KS Jud. CON
[illegible]	Dept. of SRS
Charles [illegible]	S.R.S
Michele Hinds	Legis. Intern
DEAN EDSON	Ks Assoc. of Homes for the Aging
Stu Entz	KAHA
Sylvia Hougland	Ks. Dept on Aging
[illegible] Daniels	Senate
Jean Ann Summers	KPCDD
Nadine Burch	KCOA
Judy Gingerich	KDOA
Marilyn Bradt	KINH
Harriet Nehring	KINH
[illegible]	Topeka Legal Aid Society
[illegible]	" " " "
[illegible]	visitor
Al Bramble	KCOA, KCCA, [illegible]

SENATE

PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-2-83

(PLEASE PRINT)

NAME AND ADDRESS	ORGANIZATION
Mary Fischman	DOB
Peter Cerf	KINH
Connie Perkins	Constituent Services
Joseph Willey	Ks Legal Services
[illegible]	HRS
Bruce [illegible]	SRS

2-2-83

KANSAS PLANNING COUNCIL on DEVELOPMENTAL DISABILITIES SERVICES

JOHN CARLIN
Governor
RICHARD MORRISSEY
Chairperson
JANET SCHALANSKY
Executive Secretary

Fifth Floor North
State Office Building
Topeka, Kansas 66612
Ph. (913) 296-2608

TESTIMONY PUBLIC HEALTH AND WELFARE COMMITTEE

On behalf of The Kansas Planning Council on Developmental Disabilities, we appreciate the opportunity to address some of our concerns related to Guardianship in Kansas, particularly as they apply to the Developmentally Disabled.

The Kansas Planning Council on Developmental Disabilities was created by K.S.A. 74-5501-06 in response to Federal Legislation. The Council's Mission is to improve the quality of life, maximize the developmental potential, and assure the participation of the Developmentally Disabled citizens in the privileges and freedoms available to all Kansans.

The Council is composed of 15 members, one-half of whom are either Developmentally Disabled themselves or are parents or guardians of the Developmentally Disabled.

We recognize that there are many complex legal concepts involved in the issue of Guardianship and/or Conservatorship of which we are unqualified to address. However, we know that the issue has a very direct effect on the Developmentally Disabled persons of Kansas whom we are charged to represent.

We feel that S.B. 11 basically addresses the concerns that were highlighted in the studies that have been conducted over the past 12 months, and that we endorse.

It is essential that Developmentally Disabled persons have the ability to exercise the same rights and responsibilities normally associated with citizenship for all Kansans. We feel that this Legislation must balance the

Atch. 1 #1

liberty of the Developmentally Disabled person with their need to be protected. For these reasons, we ask that you give special consideration to the following items:

1. Voluntary Guardian, (S.B. 11, 0093-0094). We recommend the removal of the provision for a Voluntary Guardian. The Developmentally Disabled, as a result of their disability, are in many instances very vulnerable to influence from others. In the worse sense, this may result in exploitation.

   At a minimum,we request that if the provision for appointment of a Voluntary Guardian remains in the Bill that a Hearing be required.

2. Limited Guardian (Section 13). Although Guardianship is intended to be a means of permitting certain decisions to be made on behalf of individuals who cannot make these decisions for himself or herself, and while the purpose is to enhance rather than limit the retarded person's ability to exercise his or her rights, consideration should be given to statutory revisions that will allow for the development of the most appropriate Guardian/Ward relationship possible in accord with the needs of the individual handicapped person. We, therefore, support statutory revisions that would seek to establish limited or partial Guardianship that would provide for the exercising of limited control over the personal decisions of a disabled person. In this event, the limited Guardian would possess fewer than all of the legal rights and powers of the full Guardian.

   Although S.B. 11 implies limited Guardianship, we would encourage that the term be defined, and the duties be enumerated by Court Order.

3. Annual Reporting (Section 19) and Periodic Review of the Relationship (Section 20). We support the Section of this Bill, requiring that Guardians make an annual report to the Court, and that a periodic review by the Court of a Conservatorship or Guardianship relationship be conducted every three years.

   We feel both these items will allow for a monitoring vehicle to assure maximal compliance with the intent of a Court-appointed Guardian/Ward relationship, as well as a protection of the rights of the Ward or Conservatee.

We recognize that this Legislation will have impact on others, not only the Developmentally Disabled. For this reason, we encourage your consideration of the needs of the different populations, and that in all instances the rights and liberties of the Ward/Conservatee be balanced with his/her need to be protected.

Thank you for the opportunity to share our thoughts with you.

MEMBERS
The Kansas Planning Council
on Developmental Disabilities

Jean Ann Summers
Vice Chairperson
Presenting.

JS:jmr
February 2, 1983

2-2-83 #2

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

Suite 2, the Denholm Bldg.
513 Leavenworth
Manhattan, KS 66502
(913) 776-1541

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R. C. (Pete) Loux
Wichita

Vice Chairperson
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Topeka

Liaison to the Governor
Robert Epps

Executive Director
Joan Strickler

TO: The Senate Committee on Public Health and Welfare
Senator Jan Meyers, Chairperson

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

RE: Senate Bill 11, Concerning Guardianship and Conservatorship

DATE: February 1, 1983

KAPS has been charged with developing a system of advocacy and protective services in Kansas relevant to the provisions of Sec. 113 of P.L. 94-103, as amended by P.L. 95-602; the Developmental Disabilities Services and Facilities Construction Act.

Atch. 2 #2

Senator Meyers, and distinguished members of the Senate's Public Health and Welfare Committee -

I am Jim Lackey, one of the staff members of the Kansas Advocacy and Protective Services for the Developmentally Disabled, Inc. In our agency I have the opportunities and responsibilities of being the coordinator of the Kansas Guardianship Program.

KAPS' executive director, Joan Strickler, and I attended many of the sessions that were held by the Interim Study of the Joint Committee on Public Health and Welfare regarding Proposal 28 during this past summer and fall, as they met to hear testimony and to develop proposed legislation to enhance the welfare of persons who will need guardianship and conservatorship in Kansas. We commend the committee for their ability to listen and commend the result of their concern - Senate Bill 11.

Senator Norma Daniels was a member of that legislative interim committee. She and I were members of the Judicial Council Advisory Committee that reviewed and studied the current guardianship/conservatorship statutes, Article 30 of Chapter 59 of the Kansas Statues Annotated.

We think that S.B. 11, explicitly and implicitly, is "right headed." We are pleased with the fundamental agreements between S.B. 11 and the proposed amendments that were prepared by the Judicial Council Advisory Committee.

The amendments that are in S.B. 11 and the proposed amendments that were prepared by the Judicial Council Advisory Committee do not suggest that Kansas has had statutes that were insensitive to those members of our state who have been adjudicated as incapacitated. But, we do believe that the proposed amendments that have been prepared by the two groups:

(a) can strengthen the ability of the courts to personalize their authority to provide wise and caring guardianships and conservatorships for those who need substitute decision makers,

(b) can provide more individualized protection of, with

increased accountability for, the wards and conservatees, and

(c) can enable those persons in our communities who are appointed as guardians and conservators to be more certain about their responsibilities both to the wards and conservatees and to the courts.

Overall, we believe that S.B. 11 and recommended amendments that were developed by the Judicial Council Advisory Committee reflect the warm and practical considerations of lawmakers and other Kansas citizens for those persons whose powers of mind and, in some cases, those whose powers of body do not permit them to manage themselves or their estates at all, or to manage them without being very, very vulnerable to the daily demands of a complex society.

Having said this, we have prepared testimony to and about specific sections of S.B. 11 and about some of the proposed amendments that were developed by the Judicial Council Advisory Committee. In the long form that you have received from Senator Daniels and myself, there are recommendations about most of the sections of Article 30 of Chapter 59 K.S.A. The texts of the substitute amendments are those that were developed by the Judicial Council Advisory Committee - not the final word from the Judicial Council. At the end of most sections there is a very terse rationale for the recommendations, substitutions or additions.

1. 59-3001 (a) We recommend that the "purpose clause" prepared by the Judicial Council Committee be placed at the beginning of the act.

> New 59-3001a. Purpose. Recognizing that every individual has unique needs and differing abilities, the Kansas Legislature declares that it is the purpose of this act to promote the general welfare of all citizens by permitting and assisting disabled persons and minors to participate as fully as possible in all decisions which affect them; protecting their rights, managing their financial resources, and developing or regaining their abilities to the maximum extent possible; and to accomplish these objectives through the use of the least restrictions. This act shall be liberally construed to accomplish this purpose.

Rationale: (a) It provides an explicit statement of the intention of the state to responsibly promote the general welfare of all citizens by providing appropriate guardianship/conservatorship for some. (b) It further calls attention to the national emphasis on "the use of least restrictions" with regard to the (disabled). (c) We, however, recommend the substitution of the word "incapacitated" for "disabled" in the purpose statement.

2. 59-3001 (b) We recommend the Judical Council Committee's statement

> 59-3001b. Adjudication as an incapacitated person under the provisions of this act is not intended to remove or

limit the personal or civil rights of the person so adjudicated unless removal or limitation of such right or rights is provided by law.

be adopted and placed before 3002. Rationale: This statement instructs the public to assume that adjudication is considered by the state not to be a punishment. If specific rights are specifically removed, it is understood that the concern of the state is to provide wise protection in that area wherein the rights reside.

3. 59-3002 We recommend that, in the Definitions and in all following sections where appropriate, the word "disabled" be replaced by the word "incapacitated." Rationale: Words carry different freight for different folk. For some, "incapacitated" is oppressive and demeaning; although "disabled", in its sense of denoting the absence of ability seems almost totally to be synonymous. Several states have chosen to use the word "disabled" to refer to persons in need of guardianship/conservatorship. Nevertheless, for many persons the word "disabled" connotes mental and/or physical conditions that do not warrant the court appointment of substitute decision makers and is considered a less onerous term. Admitting that neither term is pejorative nor panacean, and believing that the more popular usage of "disabled" is less connotative of a condition that may result in adjudication, we suggest the retention of the words "incapacity" and "incapacitated" throughout the legislation.

4. 59-3002 We recommend the substitution of the Judicial Council Committee's wording of 59-3002 entirety for S.B. 11, Section 1, (0026-0088).

59-3002. Definitions. When used in this act: (1) "disabled persons" means adults whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that they lack the capacity to manage their financial resources or to meet essential requirements for their physical health or safety.

(2) The term "manage financial resources" means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(3) The term "meet essential requirements for physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, and other care without which serious injury or illness is more likely than not to occur.

(4) The term "natural guardian" shall mean the parents of a minor provided that such parents have not had their parental rights severed by a court of competent jurisdiction.

(5) The term "minor" shall mean any person defined by K.S.A. 38-101 as being within the period of minority.

(6) The term "proposed ward" shall mean a person for whom an application for the appointment of a limited guardian or a guardian pursuant to K.S.A. 59-3006 has been filed.

(7) The term "proposed conservatee" shall mean a person for whom an application for the appointment of a limited conservator or a conservator pursuant to K.S.A. 59-3006 has been filed.

(8) The term "ward" shall mean a person who has a limited guardian or a guardian.

(9) The term "conservatee" shall mean a person who has a limited conservator or a conservator.

(10) "Limited conservator" means a conservator with only specified powers and duties which are less than all the powers and duties of conservators as set out in K.S.A. 59-3019.

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

(12) "Conservatorship" includes appointment of a limited conservator, conservator, or a standby conservator.

(13) "Limited guardian" means a guardian with only specified powers and duties which are less than all the powers and duties of a guardian as set out in K.S.A. 59-3018.

(14) "Guardian" means an individual or a corporation appointed by the court to act on behalf of a ward and possessed of all powers and duties set out in K.S.A. 59-3018.

(15) "Guardianship" includes the appointment of a limited guardian, guardian, or standby guardian.

(16) "Standby" guardian or conservator means a person or corporation designated by the court to assume the powers and duties assigned to a limited guardian, guardian, limited conservator, or conservator upon his death, resignation, removal, or disability.

(17) "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.

(18) "Counsel" means an attorney admitted to practice law in this state.

(19) "Restrictions on the legal capacity of a person to act in his or her own behalf" means powers of a partially disabled person or a minor which are assigned to a limited guardian, guardian, limited conservator or conservator.

(20) "Least restrictive dispositional alternative" means the form of assistance that least interferes with the legal capacity of a ward or conservatee to act in his or her own behalf.

(21) The various terms defined in K.S.A. 5902 of the act entitled "act for obtaining care or treatment for a mentally ill person" shall mean the same herein as they do in the act.

Rationale: The Judicial Council Committee's wording makes explicit the availability of "limited" guardianships/conservatorships, whereas S.B. No. 11 only implies such possibilities. The Judicial Council Committee's wording provides explicitly for "standby" guardianship for specific situations. The Judicial Council Committee's wording defines the role of the guardian ad litem. Finally, the Judicial Council Committee defines "least restrictive dispositional alternative" and thereby places before the Court and the public the intention of the state to act as liberally as it can for the welfare of the incapacitated citizen.

5. 59-3006 S.B. No. 11, (0093-0094) provides that the Court may appoint a Voluntary Guardian for one who has made application pursuant to K.S.A. 59-3007. We recommend the removal of the provision for appointment of a Voluntary Guardian. Rationale: The voluntary application for a voluntary limited guardianship or for a voluntary guardianship presupposes a procedure that enables a person to "turn over" to another the responsibilities for care, treatment, habilitation, education, support and maintenance, for establishing residence, assuring medical care and other services, for promoting care, comfort, safety, health and welfare, for providing consents - all as allowed by law. In order for one person to invest another with all or part of these responsibilities, we believe that a hearing, with notice to all who may be involved should be conducted. While voluntary application and appointment of a family member might be less expensive, there may be considerable opportunity for manipulation of an applicant.

6. 59-3007 S.B. 11 (0108-0123) provides for an application from an adult for the appointment of a voluntary guardian. We recommend the deletion of references to the application for a guardian in this section. Rationale: Same as above rationale in 59-3006.

7. 59-3008 We recommend the amendment prepared by the Judicial Council Committee to replace the S.B. 11 (0124-0137) amendment.

> K.S.A. 59-3008 is hereby amended to read as follows: 59-3008. Upon the filing of the application provided for in K.S.A. 59-3007 and amendments thereto, the court shall issue an order fixing the time and place of the hearing on the application, which may be forthwith. The applicant shall be required to be personally present and shall be questioned to determine if the applicant fully understands the nature and effect of the proceeding. If upon the hearing the court finds that the applicant has knowingly and voluntarily requested the appointment and that it is in the best interest of the applicant that a conservator or limited conservator be appointed for such applicant, the court shall, upon the filing of an oath according to law and of a bond, in such amount as the court may direct, issue letters of conservatorship or of limited conservatorship, to the person named in the application, if a fit and proper person. If the conservator or limited conservator dies, resigns or is removed, the court, after such notice to conservatee as the court shall direct, may appoint a successor.

Rationale: The Judicial Council Committee's amendment specifically requires the presence of the applicant in the court and requires the Court to question the applicant "to determine if the applicant fully understands the nature and effect of seeking" a voluntary conservatorship.

8. 59-3009 S.B. No. 11, Section 5, (b) (3) (0194-0198) reads that, if the proposed ward or proposed conservatee is...a minor, the application for appointment of a guardian and/or conservator shall state "the name and address of the...guardian, conservator..." We recommend the deletion of the words "guardian, conservator" - (0194, 0195). Rationale: If the minor has a guardian and/or conservator, why should there be an application for a guardian/conservator? Section 5, S.B. No. 11, is not providing for a "successor" guardian/conservator and, therefore it is unclear why there should be an application for the appointment of a guardian/conservator when one already exists.

9. 59-3012 S.B. No. 11 (a) (0385-0388), again refers to an already existing guardian/conservator for a proposed ward or conservatee. We recommend the deletion of the words "guardian, conservator" from line 0387. Rationale: If a person has a guardian and/or conservator, that person has already been adjudicated and is not a "proposed ward or conservatee."

10. 59-3012 S.B. No. 11 (d) (0402), includes a hearing before a "commission". We recommend the deletion of the word "commission". Rationale: We concur with the recommendation of the Judicial Council Committee that the use of a "commission" in hearings on incapacity should be disallowed.

11. 59-3013 S.B. No. 11, (0434-0444, 0472, 0476, 0481) We recommend the deletion of "commission". Rationale: Again, we concur with the recommendation of the Judicial Council Committee that the use of a commission be disallowed.

12. 59-3013 S.B. No. 11, (0448-0450), only affords an opportunity for the applicant and the proposed ward or proposed conservatee "to appear at the hearing, to testify, and to present and cross examine witnesses." We recommend that the Court require the presence of the applicant and the proposed ward or conservatee unless the Court, by an appropriate order, shall direct them not to appear. Rationale: The presence of the applicant and the proposed ward/conservatee provides an opportunity for the Court to personalize procedures that result in continuing personal relationships - i.e., the relationship of guardian/conservator to ward/conservatee and the relationship of the Court to the guardian/conservator. We think that all possible steps should be taken to personalize the proceedings of this act.

13. 59-3014 Following S.B. No. 11 (0472-0486) We recommend the substitution of the Judicial Council Committee's wording of these two paragraphs of [illegible] S.B. No. 11.

> If, upon the completion of the hearing, the court finds that the proposed ward or proposed conservatee is a disabled person in need of a guardian, limited guardian, conservator, or limited conservator, or both, or if the court finds that the proposed ward or proposed conservatee is a minor in need of a guardian or conservator, or both,

the court, pursuant to the purpose set forth in K.S.A. 59-3001a, shall make a finding as to what extent the disabled person is able to, and should be permitted to, make decisions which affect him/her and shall specifically set forth such findings of fact in the court order; the court, pursuant to K.S.A. 59-3014, shall appoint one or more suitable adult persons or corporations as guardian, limited guardian, conservator, or limited conservator, or both, of such disabled person or minor, as the case may be.

If, upon the completion of the hearing, the court finds that the proposed ward or proposed conservatee is not an incapacitated person or a minor, the court shall enter such findings in the record and shall by an appropriate order terminate the proceedings.

Rationale: The Judicial Council Committee amendments wording explicitly requires the Court to make "a finding as to what extent the incapacitated person is able to, and should be permitted to make decisions which affect him/her" and to specifically set forth such findings in the court order.

14. 59-3014 Following S.B. No. 11, (0494) We recommend the following of the amendment suggested by the Judicial Council Committee:

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 his/her person, a limited guardian shall be appointed and the "Letters of Limited Guardianship" shall specify which of the powers and duties of guardians 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 his/her 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.

Simultaneously with or subsequent to the appointment of a guardian, limited guardian, conservator, or limited conservator the court may appoint a standby guardian, limited guardian, conservator, or limited conservator.

If there is no property, the court may waive the filing of a bond, but if the limited conservator or conservator receives or becomes entitled to any property, he or she shall immediately file a report thereof and a bond in the amount as the court may direct: Provided, That if the limited guardian, guardian, limited conservator or conservator appointed is the one named by a testator under the provisions of K.S.A. 59-3004 and the testator has provided by his or her will that no bond be required of the limited guardian, guardian, limited conservator or conservator then no bond shall be required, unless the court shall otherwise direct. If either the limited guardian, guardian, limited conservator or the conservator dies, resigns, or is removed, a standby guardian, standby limited guardian, standby conservator or standby limited conservator shall assume his or her duties or, the court, with or without notice, may appoint a successor.

We further recommend that S.B. No. 11 (b) line 0495 become S.B. No. 11 (c); that S.B. No. 11 (c) line 0503 become (d); and that S.B. No. 11 (d) line 0509 become (e). Rationale: Letters that clearly set forth the limited or the plenary nature of the appointments will enable the guardians/conservators to understand their roles more precisely, assure greater protection for the ward or conservator, and provide more exact criteria for supervision and review by the court.

15. 59-3014 S.B. No. 11, (0495-0502) We strongly urge the adoption of this section of the amendment. Rationale: This amendment does not criticize the intentions nor the effectiveness of those persons in Kansas who currently are providing guardianship/conservatorship services to a large number of wards/conservatees. This amendment does direct the Court to give specific attention to the welfare of wards/conservatees as this is affected by the workload of guardians/conservators. Additionally, we would support a firm limitation, however, of 15 wards/conservatees to any one guardian/conservator.

16. 59-3014 S.B. No. 11, (0503-0508) We concur with the sensitivity of the legislative committee to specific religious convictions of some Kansas citizens.

17. 59-3017 S.B. No. 11 does not amend 3017. The Judicial Council Committee amends existing 59-3017 to include, where they are required, references to limited guardian or limited conservator. We recommend the Judicial Council Committee's additions. Rationale: These additions are consistent with the intent throughout the act for provision for less than plenary powers of either guardians/conservators or both, where specified by the Court.

18. 59-3018 We recommend the substitution of the amendment worded by the Judicial Council Committee for S.B. No. 11 section 13.

59-3018. Guardian; rights and 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 the personal, civil, and human rights of the disabled person whom they are serving 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 59-3013d 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) Assure that the ward resides in the best and least restrictive setting reasonably available;

(2) assure that the ward receives medical care and other services that are needed;

(3) promote and protect the care, comfort, safety, health, and welfare of the ward;

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

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

(F) A person who deals with a limited guardian without knowledge that the person is a limited guardian shall be entitled to assume that the guardian has all the powers of a guardian, until notice to the contrary.

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

(H) A guardian shall not have the power:

(1) To place a disabled person in a facility or institution other than through a formal commitment

proceeding in which the disabled person 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 an abortion, 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 disabled person to the withholding of life-saving medical procedures;

(4) To consent on behalf of a disabled person to the performance of any experimental biomedical or behavioral medical procedure or 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 disabled person; or

(b) It is intended to assist the disabled person 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 disabled person;

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

(7) To petition for the divorce of the ward without the ward's consent.

(I) At least annually, the court shall inquire into the status of every ward under its jurisdiction for the purpose of determining whether the disability may have ceased and to insure that the guardian is discharging his or her responsibilities and duties in accordance with this act.

(1) In order to implement the court review prescribed by this section, the guardian shall file annually on the anniversary date of his letters, or as otherwise ordered by the court, a report concerning the personal status of the ward. Such report may be combined with the annual accounting if the guardian is also conservator of the estate of the ward. The report shall be in the form prescribed by the court and shall include the following information:

(a) The present address of the ward;

(b) The present address of the guardian;

(c) The number of times the guardian has had contact with the ward, and the nature of such contacts including the date the ward was last seen by the guardian;

(d) If the ward is institutionalized, whether the guardian has received a copy of the treatment or habilitation plan and whether the guardian agrees with its provision;

(e) A short description of the medical treatment received by the ward;

(f) Any major changes in the physical or mental condition of the ward observed by the guardian;

(g) The reasons, if any, why the appointment should not be terminated or why no less restrictive alternative will permit the partially disabled or disabled person to meet the essential requirement for his or her physical health or safety;

(h) The opinion of the guardian of an adult ward as to the need for the continuation of the guardianship and whether it is necessary to increase or decrease the powers of the guardian.

(2) For the purpose of filing the report required by subsection (f) of this section, the guardian shall be given access to records pertaining to the ward held by public or private agencies which contain information necessary for the guardian to perform his duties.

(3) If it appears that the disability of the ward has ceased, the court shall appoint an attorney to file, on behalf of the ward, a petition for termination of the guardianship or for restoration. The court shall give notice to interested parties of possible termination. If there is no objection the court may terminate the guardianship. If there is objection the court shall set the matter for hearing.

(4) If it appears to the court as part of its review or at any time upon motion of any interested person, including the ward or some person on the ward's behalf, that the guardian is not discharging the guardians'

responsibilities and duties as required by this act or has not acted in the best interests of the ward, the court may order that a hearing be held and direct that the guardian appear before the court. In the event that such a hearing is ordered and the ward is not represented by an attorney, the court shall appoint an attorney to represent the ward in the proceedings. At the conclusion of the hearing, if the court finds that the guardian is not discharging his duties and responsibilities as required by this code, or is not acting in the best interests of the ward, the court shall enter such orders as it deems appropriate under the circumstances. The orders may include the removal of the guardian and the appointment of a successor guardian or termination of the guardianship on finding the adult ward has recovered his capacity or a minor ward has reached the age of majority. The court in framing its orders and findings shall give due consideration to the exercise by the guardian of any discretion vested in him by law.

Rationale: We think that the explicit references to limited guardianship, the explicit statement of limitations of the powers of the guardian, the more comprehensive delineation of the general powers and duties of the guardian, the precise statement of the requirement of and exact nature of the guardian's annual report, and the statement about review and possible hearing of the guardian's services in behalf of the ward will provide more certain guidelines to the Court. Furthermore, we think that this amendment

provides a more clear set of specific duties and limitation of duties for anyone who is appointed a guardian.

19. 59-3019 Again, we recommend the adoption of the amendment as developed by the Judicial Council Committee for the current 59-3019 and for S.B. No. 11, New Section 14 (0698-0707).

59-3019. Conservator; rights and duties.

(A) A conservator 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 conservator for a disabled person to carry out diligently and in good faith the specific duties and powers assigned by the court.

(B) A limited conservator 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 59-3013d and as shall also be set forth in the letters of limited conservatorship pursuant to 59-3014.

(C) A conservator shall have all of the general duties and powers herein set out and the dispositional order and the letters of conservatorship shall so state.

(D) In carrying out these duties and powers such individuals or corporations shall:

(1) Manage or assist in managing those financial resources placed under their supervision or control, as would a prudent person manage his or her own financial resources; and

(2) Encourage the disabled persons whom they are serving to:

(a) Participate, to the maximum extent of their abilities, in all decision which affect them;

(b) Act on their own behalf on all matters in which they are able to do so; and

(c) Develop or regain, to the maximum extent possible, their capacity to manage their financial resources and, if impaired, their capacity to meet the essential requirements for their physical health or safety.

(E) (1) A conservator, if ordered by the court, shall submit to the court an individual conservatorship plan, developed together with the guardian if any and, to the maximum extent possible, the partially disabled. The plan shall specify:

(a) The services which are necessary to manage the financial resources designated by the court in the dispositional order.

(b) The means through which those services will be provided;

(c) The manner in which the conservator of the disabled person and the guardian, if another individual has been appointed to serve in that capacity, will exercise and share their decision-making authority;

(d) The policies and procedures governing the expenditures of funds; and

(e) Such other items as will assist in the management of the designated financial resources, and in fulfilling the needs of the disabled person, the terms of the dispositional order, and the duties of the conservator.

(2) A complete inventory, valuation or appraisal of the designated financial resources shall be filed within 60 days in all cases. The filing shall include an oath or affirmation that, to the best of the conservator's knowledge, it is complete and accurate.

(F) (1) A conservator shall expend or distribute, and authorize the expenditure or distribution of, and assist in the expenditure or distribution of, the principle of or income from the financial resources placed under his, her, or its supervision and control to assure that:

(a) The essential requirements for the physical health or safety of the disabled person are met;

(b) The rights of that person are protected;

(c) The financial resources of that person which are subject to the conservatorship are prudently managed;

(d) The disabled person has the opportunity to develop or regain the capacity to perform the functions listed in subparagraphs (3) (a) (i) - (iii) of this section; and

(e) The guardian for that person is able to carry out the duties and powers assigned by the court.

(2) In so doing, the conservator shall consider:

(a) The requests of the disabled person;

(b) The size of the financial resources under the conservator's supervision or control;

(c) The probable duration of the conservatorship;

(d) The likelihood that the disabled person may be able to manage the financial resources in the future; and

(e) The accustomed standard of living of the disabled person and the individuals legally dependent on that person.

(3) Funds under this paragraph may be paid by a conservator to any person, including the disabled person.

(G) (1) In addition to the duties and powers prescribed in subsection (3) of this section, the court may assign to a conservator the duty and power to:

(a) Acquire, collect, hold, deposit, retain, operate, develop, repair, improve, insure, subdivide, exhange, partition, alter, lease, convert, or dispose of the financial resources of the disabled person;

(b) Pay, contest, settle, or release claims against the disabled person or the financial resources of the disabled person;

(c) Pay taxes, assessments, compensation, and other reasonable expenses incurred in the management of the financial resources of the disabled person;

(d) Employ persons to perform, advise, or assist in particular aspects of the management of the financial resources of the disabled person;

(e) Borrow money to be repaid from the financial resources of the disabled person;

(f) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of the financial resources of the disabled person and of the conservator in the performance of the conservatorship duties;

(g) Allocate items of income or expense to either principal or income as provided by law, including the creating of reserves out of income for depreciation, obsolescence, amorization, or depletion of mineral or timber resources;

(h) Vote a security in person, or by general or limited proxy;

(i) Establish revocable or irrevocable trusts;

(j) Exercise options;

(k) Exercise or release powers of appointment of which the disabled person is donor;

(l) Renounce interests and make gifts;

(m) Change beneficiaries under insurance and annuity policies; and

(n) Enter into contracts and execute and deliver all instruments which will accomplish or facilitate the exercise of the assigned duties and powers.

(2) Upon the death of a disabled person:

(a) The conservator shall deliver to the district court having jurisdiction any will of the deceased of which the conservator has possession and advise the court of the whereabouts of any other will of which the conservator is aware;

(b) Inform the executor or personal representative or administrator or a named beneficiary of the actions taken; and

(c) Retain those portions of the estate over which the conservator has control for delivery to a duly appointed executor or personal representative or administrator of the deceased or the individuals entitled thereto.

The conservator may seek appointment as executor or personal representative or administrator of the estate of the disabled person in the manner prescribed in the probate code.

(H) (1) A conservator shall not have the authority to exercise or release powers of appointment of which the disabled person is donee, to renounce interests or to make gifts exceeding 20 percent of any year's income from the financial resources placed under the control of the conservator, nor to change beneficiaries under insurance or annuity

policies without the approval of the court. No approval shall be granted unless it is demonstrated at a hearing that the proposed action is consistent with subsections (1) and (3) of this section and that the disabled person has consented or is unable to provide an informed, voluntary consent.

(2) Any sale, lease, or encumbrance to the conservator, his or her spouse, child or grandchild, agent or attorney, or to any corporation in which he or she has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable unless the transaction is approved by the court after hearing, upon notice to interested persons.

(3) Title to all the designated financial resources of a disabled person shall remain in that person subject to the possession of the conservator and to the control of the court, unless the court orders otherwise. The provision of title to a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust company, imposing restrictions upon or penalties for transfer or alienation by the disabled person of a right or interest. If title is provided to a conservator, the dispositional order shall be evidence of transfer of all designated financial resources. An order terminating a conservatorship or modifying the scope or powers thereof, shall be

evidence of transfer of the designated financial resources to the disabled person, the successor of that person, or to a new conservator. A dispositional order and order terminating or modifying a conservatorship shall be recorded to give record notice of title.

(I) The conservator shall submit an accounting to the court 10 days before the initial review hearing and at least annually, on the anniversary date of his or her letters, or as otherwise ordered by the court, or when there is a significant change in the capacity of the disabled person to manage his or her financial resources, or when the conservator resigns or is removed, or when the conservatorship is terminated. Such accounting may be combined with the annual report of the guardian if the conservator is also guardian. The accounting shall be in the form prescribed by the court and shall include the following information:

(1) (a) The name and address of the disabled person and of the conservator;

(b) Significant changes in the capacity of the disabled person to manage his or her financial resources;

(c) A complete financial statement of the financial resources under the control and supervision of the conservator;

(d) The services being provided to the conservatee;

(e) The significant actions taken by the conservator during the reporting period;

(f) The compensation requested and the reasonable and necessary expenses incurred by the conservator;

(g) Any significant problems relating to the conservatorship which have arisen during the reporting period; and,

(h) The reasons, if any, why the conservatorship should not be terminated, or why no less restrictive alternative would permit the disabled person to manage his or her financial resources.

(2) Attached to the accounting may be an updated individual conservatorship plan developed by the conservator, the guardian, if any, and, to the maximum extent possible, the disabled person.

(3) Following submission of an accounting or in conjunction with a review hearing a conservator shall submit to a physical check of the financial resources placed under his, her or its control, in the manner specified by the court.

Rationale: It provides for the limited conservatorship. It provides a more complete statement of general and specific duties of the conservator. It provides for the possible requirement of a conservatorship plan. It includes clear directions about the filing of the conservator's inventory, valuation or appraisal of financial resources, and directions for the submitting of the annual accounting.

20. Current 59-3020 through 59-3027. We recommend the small additions suggested by the Judicial Council Committee that are consistent with the provisions of limited conservatorship and the requirement that limitations, if ordered, must appear in the letters of appointment.

21. 59-3028 S.B. 11, (0776-0777) We recommend removal of (1). Rationale: This subsection appears to have application to the provision of the voluntary guardianship. Additionally, if the ward has not died, but had been adjudicated, the action to be taken by the Court is that of restoration - if a guardianship, in fact, is to be terminated.

22. 59-2028 S.B. 11, (0793-0800) We recommend deleting the words - "guardian", "guardianship", "ward" - since their use - pursuant to 59-3008 - refers to voluntary guardianship. Rationale: As before, we think that the voluntary guardianship option is not beneficial.

23. 59-3029 S.B. 11, (0801-0828) We strongly support the legislative committee's amendment about the guardian's report and the conservator's annual accounting, and while reference to both appear in 59-3018 and 59-3019, respectively, it is important that the requirements be clearly provided for those persons who will be appointed.

24. New Section 20. S.B. 11, (0829-0866) We strongly recommend this section, not withstanding the fact that provision for review appears in the Judicial Council Committee's amendment of 59-3018 and 59-3019.

25. New Section 21. We recommend adopting S.B. 11, (0867-0922).

26. Section 22. 38-1505 S.B. 11, (0923--152) We recommend this amendment with the additions of the words "limited guardian, limited conservator", "temporary guardian or conservator" and "standby guardian/ conservator" where appropriate.

27. New Section 24. S.B. 11, (1153-1199) We strongly recommend that there be some system provided for the certification of non-profit corporations who will be entrusted by the state with guardianships of incapacitated adults or of minors. Rationale: The emphasis of the proposed legislation upon "least restrictive dispositional alternatives", upon greater accountability of the guardian to the Court and to the ward would be weakened if great care was not given to the nature of the ability and the willingness of the corporation that might be considered an appropriate guardian. The legislative committee in careful consideration that SRS is an appropriate certifying body seems wise to us.

Respectfully,

Senator Norma Daniels

Jim Lackey
Kansas Guardianship Program Coordinator

Addendum on following page

REPORT OF THE JUDICIAL COUNCIL GUARDIANSHIP AND CONSERVATORSHIP ADVISORY COMMITTEE

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 study requested.

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; a member of the Judicial Council and practicing lawyer.

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

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

HONORABLE MARY SCHOWENGERDT, Topeka; Associate District Judge.

WAYNE T. STRATTON, Topeka; a practicing lawyer.

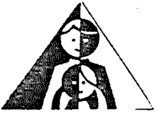
HONORABLE JOSEPH H. SWINEHART, Kansas City; Judge of the Court of Appeals.

DAVID J. WAXSE, Olathe; a practicing lawyer.

#3

KANSAS
ASSOCIATION FOR RETARDED CITIZENS, INC.

11111 WEST 59th TERRACE
SHAWNEE, KANSAS 66203
(913) 268-8200



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BRENT GLAZIER
Executive Director

To: Senate Public Health and Welfare Comm. Date: 2/2/83
Senator Jan Meyers, Chairperson

From: Kansas Association for Retarded Citizens Re: S.B. 11
Ethel May Miller, Chairperson
State Legislative Affairs Comm.

Appreciate having the opportunity to appear, representing the some 5,500 families and friends of persons who happen to be mentally retarded, belonging to the some 50 local associations located throughout the state, who make up the ARC of Kansas.

We are speaking in support of S.B. 11 and are especially grateful for the time and effort expended by this committee and the Special Committee on Public Health and Welfare which studied Proposal No. 28 this past summer. We also appreciate the study handled thru the Judicial Council Advisory Committee which studied the issues of Guardianship and Conservatorship.

Those sections in S.B. 11 that address needs and concerns which representatives of our ARC have conveyed in previous testimony, and which we especially support, include:

1. The inclusion in the statutes of specific rights and duties of a guardian and the prohibition of certain actions by same. Sec. 13, pages 16-19.

2. The addition of the requirement that guardians make an annual report to the court which appointed them. Sec. 19, (a) page 22., as well as an annual report required of conservators. Sec. 19 (b), page 22.

3. The addition of a requirement that a review be made every three years, of the conservatorship or guardianship, or both to determine the issues as specified in the statutes, New Sec. 20, (1) thru (5) and (b), page 23. and more frequently as specified, lines 0832-835.

4. The authorization for non-profit corporations to serve as corporate guardian, providing they meet certain conditions as indicated in the law. New Sec. 24. pages 31-33.

5. The authorization for "limited" guardianship or conservatorship for those who may be able to exercise some of their rights and responsibilities, but need assistance in others. Sec. 1, (d), lines 053,054,055, and (f), lines 067,068,069, page 2.

Atch. 3 #3

6. The effort to address the need for some consideration of limitations as to the total number of wards or conservatees for which any one person might be respnsible. Sec. 10. item (2) (b), page 14.

Comments for consideration:

1. Rights and duties - Sec. 13, pages 16-19. We wonder why the word "may" is used , page 18, line 6040 "the court may specify the authorities and responsibilities".

   In specifying the limitations, page 18, lines 0670, (c), the word "shall" is used, "A guardian shall not".

   Unless there is some legality involved which we do not understand, we feel in both places the word "shall" is appropriate.

2. "Limited" Guardianship - Sec. 1, (d), lines 053,054, 055, and (f), lines 067,068,069, page 2. We wonder if further clarification is needed, or more specific definition of "limited" guardianship.

3. Page 2., (e), lines 061,062. By having changed the word "incapacitated" to "disabled" (about which we have no objection), we believe there is an implication by the wording herein that "if either parent of a legitimate minor . . . .has been found to be a disabled person. . . ., the other shall be the 'natural guardian'." Implication that a disabled person cannot be a natural guardian? In this case, the use of the word "disabled" seems inappropriate.

4. Page 14, (d), line 0523 use of word "may". "If either the guardian or the conservator dies, resigns, or is removed, the court. . .may appoint a successor." We feel the word should be "shall". (Give example.)

Personal concern:

1. Have personal concern in specifying certain limitations of guardians - Page 19, (3), (5), (6). (Explain why).

   If, on the one hand, we wish for guardians to serve in a more personal and involved way than is currently the situation, and if "guardianship" is indeed an extension of the parents responsibility for the well-being of the ward when the parent is no longer available to so serve, and if guardianship is intended to be a means of permitting certain decisions to be made in behalf of an individual who cannot make these decisions for him or herself, then are not these limitations unduly restricting the guardian to serve in the very manner we supposedly want. Is this not being overzealous in "guarding the guardians."

Issues raised,ARC member who is a lawyer, formerly on Faculty of The Institute of Government, Univ. of North Carolina, educated at Harvard, currently Dir. of Special Education, University of Kansas, Lawrence,and Secretary of ARC United States, Rud Turnbull:

1. Page 5, lines 179-180 "such application may be accompanied by a statement in writing of a physician". Reminds that other professionals equally competent to offer appropriate proof of disability as far as mentally retarded are concerned.

2. Page 7, Sec. 6, (2). Would prefer that counsel, rather than the court itself, be responsible for entering the order waiving the proposed ward or conservatee's presence because of such being injurious to his or her welfare.

3. Page 8, (6). "an order for mental evaluation"- then reference to psychiatric hospital, mental health clinic, private psychiatrist, or physician. . . state psychiatric hospital etc. In dealing with evaluations for mentally retarded persons, again, other professionals equally competent,with multi-disciplinary evaluations more appropriate.(i.e. as offered State Mental Retardation Institutions, Univ. of Ks. Med. Center, etc.)

4. Page 9, (c), line 324 "which hearing may be held immediately and without notice" is wrong. Notice must always be given, a matter of contitutional law. If it is an emergency, then other means will take care of it, such as indicated Page 24, lines 837-874, Sec. 21.

   Similar issue, Page 4, 128,129- "without notice" wrong.

5. Page 9, Sec. 7, (1), lines 0334,0335. Question that "character, family relationships, past conduct" have much to do with determination of disability.

   Line 0340 - Would change "other pertinent factors" to "other factors relevant to the definition of disability."

6. Page 10,line 0343. "any person, appointed by the court may make such investigation". Would change "may" to "shall".

7. Page 12, lines 435-444. Would omit entirely the possible use of "commission". Hearing should be by court or jury. Page 13, lines 472,476,481. Omit "commission."

8. Page 21, line 0751, "the court may refuse to hear the application for six months. . .". Would add to allow hearing sooner if new evidence is produced. Add something to effect that "but if the petition alleges new evidence, court shall hear the application."
   Lines 762 and 769 would change "by clear and convincing evidence" to "preponderance of evidence."

#4

TARC

Topeka Association For Retarded Citizens, Inc.

PARENTALK

Vol. 27, No. 9, November 1982

"What will happen to my child when I'm gone?" – A concern of all parents of the handicapped

(From ARC testimony to Public Health & Welfare Interim Study Comm., Sept., 1982)

As it does to the parents of all handicapped children, the spector of what will happen to my Downs Syndrome daughter when I'm gone haunts me night and day. My experience with the Kansas guardianship laws during the last four years in which I have served as the guardian of two wards, Bobby, a 22-year old retarded young man in an ICF/MR in western Kansas, and Esther in her 60's in a nursing home in Topeka, has done little to relieve my anxiety. What it has done is to give me the opportunity to look at the problems associated with guardianships from both sides – from that of a guardian and from the other side – a person who will eventually need a guardian for my child. My concern grows as Gina becomes older. She has just turned 18, lives at home and attends a special education class in the Topeka Public Schools.

I became Bobby's guardian in December, 1978, while he was a resident in the Brown School in Texas where he had been placed by the Department of Social and Rehabilitation Services after the courts had severed parental rights. In March, 1979, I became Esther's guardian and conservator. I did not know either of my wards prior to becoming their guardian.

In order to better define just a few of the problems and decisions associated with guardianships I would like to briefly relate some of my experiences.

When Bobby turned 21, SRS wished to return him to Kansas. I received a phone call from an area SRS office to this effect and was told that Bobby would be transferred to a nursing home in western Kansas unless I objected. The social worker had little information about the facility, especially regarding training or sheltered work activities. He was frank to admit he did not know a great deal about either type of service. Although I protested mildly because of the distance, I agreed to the transfer. This decision was not made without some feelings of guilt. I was responsible for a young man whom I had never seen, whom I really knew very little about, and I had agreed to his placement in a facility I had never seen, knew little about and which was over 700 miles, round trip, from me. Furthermore, Bobby is largely non-verbal and certainly unable to write. It was almost as if he were a commodity that I had agreed to have placed on a certain shelf, there to remain for the rest of his life which might last another 50 years. And I asked myself the question, "Is this the type of caring guardian I want for my daughter?" – and the answer was obviously, "No!"

For the first 4 months Bobby was at the facility I was in frequent contact with them but I have received no official report since June of 1981 – over a year ago – although I talk with the social worker by phone occasionally. Again I ask, "Do I want my daughter's guardian to be more involved with her?" And, the answer is a resounding, "You bet I do!"

I find some comfort in the fact that Kansas has licensing laws and standards related to facilities for the mentally retarded. I know also, however, that social worker and staff ratio-to-clients means that in no way can the clients receive the personal, individual and on-going attention that I want my daughter to receive. This must come from families, or in the cases of clients with no families – from guardians.

I can identify 4 problems with our present Kansas guardianship system which cause me concern both as a guardian and a person who will eventually need the services of the system.

1. Training: When I became Bobby's guardian, I had absolutely no idea what this involved. I thought I would be required to sign a few documents from time to time and that would be all. Since then I have had to agree to his placement in a facility I had never seen. I have had to sign off on educational objectives with totally inadequate understanding and knowledge of his capabilities. I have been asked to agree to medical care and surgery when I knew nothing about the

Continued on 5

Atch. 4 #4

Continued from 1

physician or the nature of the illness. When he and Esther die, the way and place of their burials will be entirely my responsibility since I have no idea where their families are. And I will be their only mourner. Bobby has no money except his $25 monthly SSI check. Esther has her SSI check and a small checking account, and as her conservator I am expected to use her money wisely. Conservatorship accounting is so meager that the opportunities for misuse of the ward's funds are prevalent. There is presently no legal requirement that guardians be provided with any type of training or prepared in any way to make these kinds of decisions.

2. Accountability: I am accountable to no one for my stewardship of Bobby's welfare and care. I am not his conservator so I don't have to file an annual accounting to the courts regarding his financial status as I do for Esther. If guardianship reports were required as has been suggested, who should receive them? The courts don't have time to read them. Records concerning the number, names and locations of guardians in Kansas are lacking. Guardians are appointed by the courts so supposedly their supervision rests there also. However, evidence indicates the level of court supervision varies greatly across the state, if it exists at all. There is no punishment and no agency willing and/or responsible for canceling a guardianship of the guardian if guilty of benign neglect toward his/her ward.

3. Knowledge: We must recognize that there is more to life and living for the mentally retarded, just as for the rest of us, than mere housing, meals and nursing care when needed. The quality of the program is important and while I can in my will name the bank as the conservator of my daughter's estate, I cannot expect the trust department at the bank to be as cognizant as I am about the quality of the program in which they wish to place her. I am terribly frightened by the prospect that whomever becomes my daughter's guardian may think that as long as a room shared with several others and meals are provided for her, she has the best of which she is capable of enjoying. How untrue!

The adults in the programs of the Topeka Association for Retarded Citizens work at producing useful products and they are paid in accordance with how much they produce. They are active in the Special Olympics. They swim, engage in track and field events, play competitive tennis, basketball and softball. They are learning to play soccer and to square dance. They go the Royals' and Chiefs' games, down to Kansas City to eat out and to the American Royal. They go camping, skiing and to dances. In Kansas, they may even enter a competitive rodeo for the handicapped.

But how can I be assured that after I'm gone, as long as Gina enjoys such activities and is capable of doing them, they will continue for her – that life for her will not become 4 walls, 3 meals and a TV set? The unanswered question is how can we provide this awareness to guardians? How do we make sure they can and will judge placement of their wards by the quality of the facility and services it offers? In my will, I had my attorney insert the clause that any placement of Gina by her guardian must be done in cooperation with the Board of Directors of the Topeka Association for Retarded Citizens. He tells me he is uncertain if it is legal or binding, but at least it will indicate to the guardian that there is a place and people from which help and advice can be obtained.

4. Caring Concern: The last point I wish to make is intangible, but perhaps the most importa[illegible]h it, the guardian will provide the very best fo[illegible] ward irregardless of what the law says is required, and without it, even though the mandate of the law may be obeyed, its intent can, and no doubt, will be circumvented. Like many retarded persons, Gina comes from a single parent family. She has no brothers or sisters. She is totally my responsibility and mine alone. Parents like me, many of us older parents, are beseiged by advice on guardianship – much of it conflicting – so much so that we seem frozen into inactivity and do nothing but worry. The idea of parents exchanging agreements of guardianship whereby one set takes over if something happens to the other set is excellent for young parents, but it won't work in my case – my friends are as old as me. My family, though they "feel sorry" for Gina, have no understanding of quality programs for the retarded and I really don't expect them to take the time to learn. They all have their own problems.

The one group of people to whom I would trust my child with no qualms are my friends at TARC. Active parents at TARC have that quality of caring concern for all handicapped children and adults of which I previously spoke. They know good quality programs. They have high expectations for the progress and capabilities of the retarded. And they know how to truly advocate for them. Almost every parent who is active in the association knows the handicapped child of every other parent – and most important, they have a caring concern for that child or adult.

The TARC Board of Directors has expressed interest in the possibilities which may be inherent in not-for-profit corporate guardianships. What are its implications, its legal problems and what safeguards would be necessary to prevent such a system from becoming a for-profit venture of some non-interested corporation? Testimony was presented to this effect by the Kansas Association for Retarded Citizens before the Legislative Interim Committee studying the problems of guardianships. The possibility of limited guardianship was also discussed before the committee. Under this concept no individual would be presumed to be incompetent or lose any legal rights or suffer any legal disabilities except those set forth in the limited guardianship. At least one other local association in the state is also interested in corporate guardianships and in recent weeks some interest in the prospect has been evidenced by the judiciary. Kansas law would, no doubt, have to be changed to permit corporate guardianships and necessary safeguards as mentioned above would have to be made an important part of any such law. In an Issue Paper submitted in July of this year to the national ARC office, the TARC board strongly urged the national office to accept the resolution of the problems of guardianships for the mentally retarded as a high priority issue. The TARC board will continue to study the issue with continued contact with the Kansas legislature, the judiciary and the state ARC office.

Guardianship traditionally has been considered to be an extension of the parents patral authority of the state. The presumption has been that the extension of authority in a guardianship proceeding is both paternalistic and benevolently exercised. However, the guardianships have not always been paternally or benevolently exercised. I could live the rest of my life in peace about Gina's future care if I knew those decisions would be made after I'm gone by an organization as knowledgeable and concerned as the Topeka Association for Retarded Citizens.

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Panel urged to revise state guardianship law

TOPEKA (AP) — A legislative study panel was urged Tuesday to revise state laws regarding legal guardianships for the mentally retarded and to develop a way to enforce them.

"Kansas law must set out specific rights, duties and limitations for the guardians," said Brent Glazier, executive director of the Kansas Association for Retarded Citizens.

His remarks came during testimony to the Special Committee on Public Health and Welfare, which is reviewing the guardianship laws. No action was taken by the panel Tuesday.

But much to the surprise of some committee members, Glazier said there was no data available on the number of persons in Kansas nursing homes, state institutions and other care homes who have legal guardians. Courts appoint guardians to make decisions for individuals who cannot do it themselves.

Glazier also said there were no existing provisions in the law to ensure that guardians act in the best interests of their wards.

"Based on the amount of acutal personal contact a guardian has with his or her ward, it feasibly would be possible for a ward to have a complete change of program, geographical location, medication, or physical status without the guardian being made aware for weeks or even months."

"For the parents who have made guardianship provision for their son or daughter following their deaths, this is not at all what they had in mind. They hoped for the same continual monitoring and awareness of program and program changes that they provided during their lifetime."

Glazier suggested that the committee: —Collect data on the extent of guardianships in Kansas.

—Develop legislative recommendations for an "enforcement and monitoring vehicle" to ensure that guardians act in the best interests of their wards.

—Consider a bill allowing partial or limited guardianships of only a few aspects of a ward's matters such as just money or property. Currently, guardianships cover all matters.

—Look at legislation to allow guardianships by not-for-profit corporations instead of just individuals.

"Regular reporting should be mandatory, informing the court of the mental and physical condition of the ward, the habitation and rehabilitation services being provided, and the number of contacts with the ward," Glazier said.

"On the basis of this, and similar information, the court would then be able to review the guardian's performance, as well as determine whether there was a need for the guardianship itself."

Petey Cerf, presidenz of Kansans for Improvement of Nursing Homes, also suggested revisions.

She supported limiting the number of wards each guardian can have, allowing partial guardianships and requiring full court investigations into the need for guardianships.