

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE

The meeting was called to order by Senator Meyers at
Chairperson

10:00 a.m./~~p.m.~~ on March 2, 1983 in room 526-S of the Capitol.

All members were present ~~except~~

Committee staff present: Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes Office

Conferees appearing before the committee:

Joseph G. Hollowell, MD, Department of Health and Environment
Richard J. Morrissey, Kansas Department of Health and Environment

Senator Meyers stated that the committee would hear testimony today on Senate Bills 321, 341 and 342, which in essence made only technical changes in the statutes, and also that the committee would take action on these bills today.

Senate Bill 321 - deletes contracts for personnel services with the Department of Administration. Testimony on the bill was presented by Richard J. Morrissey, Director of the Kansas Department of Health and Environment, who distributed copies of the Department's official position and favorable recommendation of the bill. (Attachment #1).

Senate Bill 341 - administrative procedures of Secretary of Health and Environment in licensing adult care homes and child care facilities. The Director of the Kansas Department of Health and Environment, Richard J. Morrissey, distributed copies of his testimony outlining technical changes which the department recommended and hoped the committee would favorably recommend the bill for passage. (Attachment #2).

Senate Bill 342 - local health department definition clean-up. Mr. Morrissey stated this is a definition clean-up bill and is self-explanatory.

Senator Johnston moved that SB 342 be reported favorably to the Senate and placed on the Consent Calendar. Senator Morris seconded the motion and the motion carried.

Senator Morris moved that SB 341 be reported favorably to the Senate for passage. Senator Johnston seconded the motion and the motion carried.

Senator Bogina moved, Senator Francisco seconded, that SB 321 be reported favorably to the Senate for passage. Motion carried.

Senate Bill 364 - child care licensure. Senator Meyers stated that the committee would hear testimony on this bill from the Department of Health and Environment today and all other conferees appearing on the bill would be heard tomorrow. Dr. Joseph G. Hollowell, Director of the Department, distributed copies of his testimony (Attachment #3), and also copies of proposed amendments as shown in the balloon copies pertaining to pages 2, 7 and 8 of the bill (Attachments #4, 5 and 6).

Senator Meyers said that SB 343, family day care homes, injunctions authorized to prevent unlawful operation, would be heard tomorrow.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC, HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m.~~pm~~ on March 2, 1983

Emalene Correll, Legislative Research Department, explained the sub-committee recommendations and distributed copies of a summary of the report on SB 11, concerning the act for obtaining a guardian or conservator, or both. (Attachment #7).

Senator Meyers stated that the committee would meet at their regular time and also have a noon meeting tomorrow. The noon meeting would be spent primarily on Health Cost Containmentment.

The meeting was adjourned.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3-2-83

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Richard Morrissey	KDH+E
Richard BLEAM	SRS
Allan Hurlburt	SRS
Charles Hamm	SRS
Clady Neanel	Judicial Council
Bryan Krantz	ACLU
KETTER LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Mrs. Bill Morris	Senate Wife
Robert E. Clark	Visitor
Ruth F. Clark	Visitor
Ethel May Miller	Ks. Assn. Retarded Citizens
Marilyn Bradt	KINH
Jim Lasky	KAPS - Manhattan
BARB REINERT	KWPC
Michele Hinds	Legislative Intern
Carl Schmitthouwer	Ks Dental Assn.
Gary Robbins	Ks Opt. Assn.
Betty Stowers	MIAK
Norris E. Class	—
Joe Mollenbelle	K D H + E
Miss SCHROEDER	KDOA
Ruth Wilber	Girl Scouts
Elizabeth E. Taylor	Ks. Assn for the Education of Young Children

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3/2/83

(PLEASE PRINT)
NAME AND ADDRESS

Wanda Parks Russell
LAURINE S. ATKINSON ABILENE

ORGANIZATION

Kansas State Assoc. of Foster Parents
KANSAS STATE ASSOC. OF FOSTER PARENTS

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Public Health and Welfare

Recommends that Senate Bill No. 342

"AN ACT concerning definitions relating to financing local health departments; amending K.S.A. 1982 Supp. 65-241 and repealing the existing section."

Be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

_____Chairperson

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Public Health and Welfare

Recommends that Senate Bill No. 341

"AN ACT concerning the secretary of health and environment; relating to administrative hearings and procedures; amending K.S.A. 1982 Supp. 39-931 and 65-504 and repealing the existing sections."

Be passed.

-----Chairperson

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Public Health and Welfare

Recommends that Senate Bill No. 321

"AN ACT concerning the department of administration; removing the department of health and environment from responsibility for participating in agreements for support services for city and county health units; amending K.S.A. 1982 Supp. 75-3747 and repealing the existing section."

Be passed.

-----Chairperson

(Attachment #1)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL NO. 321

PRESENTED MARCH 2, 1983

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

This is the official position taken by the Kansas Department of Health and Environment on Senate Bill No. 321.

Senate Bill No. 321 is intended to remove language from the statutes authorizing the Secretary of Health and Environment to reimburse the Secretary of Administration the cost of personnel services provided to local health departments. Until recently federal regulations required that local units receiving some federal health funds participate in a merit system for employees. Some county health departments joined the state system to meet this requirement and the stricken language in this bill authorized the Secretary of Health and Environment to pay the cost of those services from federal funds.

The federal requirement to participate in a merit system has been revoked and the Division of Personnel Services has offered the local departments the opportunity to continue to receive services with the cost of the services borne directly by the local department. Senate Bill No. 321 is intended to bring the statutes in line with this current situation.

DEPARTMENT'S POSITION:

The department recommends that the committee report Senate Bill No. 321 favorably for passage.

PRESENTED BY: Joseph G. Hollowell, MD, Director
Division of Health
Kansas Department of Health and Environment

Atch. 1

(Attachment #2)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL NO. 341

PRESENTED MARCH 2, 1983

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

Senate Bill No. 341 makes technical changes in the statutes authorizing administrative appeals of agency decisions concerning adult care homes (Section 1) and child care facilities (Section 2).

The change relating to adult care home appeals beginning in line 54 is intended to clarify that the Secretary of Health and Environment makes the final decision on an appeal after receiving a recommendation from a hearing officer. The present language is vague and may be read to infer that the hearing officer makes the final decision. All similar statutes for other programs clearly give the Secretary the authority to decide appeals.

The changes in Section 2(f) are intended to differentiate between the orders required in subsections (f) and (e). These sections were amended last year in Senate Bill No. 840 and the proposed change will correct an oversight in that process.

DEPARTMENT'S POSITION:

The department recommends that the committee report Senate Bill No. 341 favorably for passage.

PRESENTED BY: Richard J. Morrissey, Director
Office of Health Facilities
Kansas Department of Health and Environment

Atch. 2

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL NO. 364

PRESENTED MARCH 2, 1983

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

NEW BILL

CURRENT LAW

Section 1. Definitions Section

Generic term is facility

4 basic types:

- Child care facility
- Child placing agency
- Day care referral agency
- Maternity center

Child is under age 18

- Boarding Homes for children
- Day Nurseries
- Placing agency
- Maternity home and hospital

Child is under age 16

Section 2. Licensing Requirement

Exemptions: Same as current
plus

- a) State operated facility
- b) Short term care near
parents
- c) Short term camps, etc.
- d) Accredited schools without
overnight lodging (see
balloon)
- e) Inconsequential care
- f) Limited "Mothers Day Out
Program"

Exemptions:

- a) State institutions
- b) Care by relatives
- c) Family day care homes (registered)

Section 3. Licensing Section

Secretary of Health and
Environment solely responsible
for licensing.

Duration of license not to
exceed three years.

Secretary of Health and Environment
responsible for licensing after
approval by Secretary of SRS.

Not to exceed one year.

Section 4. Renewal Section

Technical language only.

NEW BILL

CURRENT LAW

Section 5. Provisional license

Provisional license
a) may be issued for initial applications
b) will last for 6 months
c) may be renewed once

No authority for provisional license. Temporary license could be issued to allow time for SRS to make a determination after a place met all requirements of the law.

Section 6. Rules and Regulations
Section

All standards will be written in rules and regulations.

Some standards in statute, some in rules and regulations.

Section 7. Notification of
Deficiency Section

Correction or acceptable plan required within 10 days of notification.

Correction required within 5 days of notification.

Section 8. Denial and Revocation
Section

Unchanged

Same as new bill.

Section 9 through 11 - Appeals

Unchanged

Same as new bill

Section 12. Authority to Suspend
License

License may be suspended temporarily when public health and safety endangered. The Secretary also shall initiate hearing proceedings simultaneously, shall have hearing within 7 days, may have one continuance for 30 days.

No authority for suspension.

No suspension shall exceed 90 days.

Section B. Fee Section

Unchanged

Same as new bill.

NEW BILL

CURRENT LAW

Section 14. Records Section

Not all forms shall be furnished
by Secretary.

All forms furnished by Secretary.

Section 15. Adoption Section

This is poorly worded and was
intended to replace K.S.A.
65-509 without appreciable
change. We recommend the
language in the accompany-
ing balloon.

Section 16. Investigation
Section

Right of access clarified.
Yearly inspection required.

Two inspections per year required.

Authorizes use of agencies
and political subdivisions to
assist. The intent is to
continue using local health
departments and SRS.

Section 17. Penalty Section

Misdemeanor defined for
a) operating without a
license
b) advertising as operating
without a license
c) offering to take
possession of a child
without a license as
a placing agency.

a and c are in the current law -
b is new.

Section 18. Criminal Prosecution
Section

No change from current law.

Same as in new bill.

Section 19 - Injunction Section

Secretary may enjoin violators in
district court.

No authority to enjoin violators.

Section 20 a & b

Recommend change as in balloon.

NEW BILL

CURRENT LAW

Section 21.

Prohibits child care license in facility licensed as adult care facility.

Similar but less clear who is prohibited. Also does not allow facility to care for person over age 21 under police surveillance.

Recommend additional language of 65-510.

Language of 65-510 could be used.

The Department recommends that this bill be amended as indicated and reported favorably for passage.

PRESENTED BY: Joseph G. Hollowell, Jr., M.D., M.P.H.
Director, Division of Health

0046 (g) "Person" means an individual, firm, corporation, partner-
0047 ship, company or association and the legal successor thereof.

0048 (h) "Operate a facility" means to own, lease, establish, main-
0049 tain, conduct the affairs of or manage a facility, except that for the
0050 purposes of this definition the word "own" and the word "lease"
0051 shall not include hospital districts, cities and counties which hold
0052 title to a facility purchased or constructed through the sale of
0053 bonds.

0054 (i) "Secretary" means secretary of health and environment.

0055 (j) "Licensee" means a person who has obtained a license
0056 under this act to operate a facility.

0057 Sec. 2. (a) No person may operate a facility without a license
0058 issued by the secretary of health and environment.

0059 (b) This act shall not apply to:

0060 (1) A state operated facility;

0061 (2) a facility that is operated in connection with a business,
0062 religious organization or other establishment where children are
0063 cared for during short periods while parents are on or near the
0064 premises;

0065 (3) a school, class or youth camp caring for any one child not
0066 more than two weeks;

0067 (4) ~~a school accredited by the Kansas department of education~~
0068 ~~that does not provide overnight lodging;~~

0069 (5) a family day care home operated under K.S.A. 65-517 et
0070 seq.;

0071 (6) care for not more than two children for not more than 20
0072 hours total per week; and

0073 (7) a program which meets not more than one time each week
0074 with children in attendance for not more than five consecutive
0075 hours.

0076 Sec. 3. (a) The secretary shall issue a license to a person to
0077 operate a facility after investigating the application and after
0078 determining that an applicant has satisfied all the requirements of
0079 this act and applicable rules and regulations adopted pursuant to
0080 this act.

0081 (b) When issuing a license, the secretary may impose restric-
0082 tions on the license. The license shall state the name of all

accredited schools and private elementary and
secondary schools as defined in K.S.A. 1982
Supp. 72-53,000;

Attch. 4

0231 credited to the state general fund.

0232 Sec. 14. (a) A person who operates a licensed facility shall
0233 maintain records as prescribed by the secretary.

0234 (b) The department of health and environment shall provide
0235 forms for applications, inspection reports and other required
0236 reports.

0237 Sec. 15. No person ~~shall offer to adopt, find a home for or in~~
0238 ~~any manner offer to dispose of any child as an inducement to any~~
0239 ~~parent, guardian or custodian of an infant or child to place such~~
0240 ~~infant or child in a facility.~~

0241 Sec. 16. (a) The secretary or an authorized representative of
0242 the secretary shall have the right of entry and access to the
0243 premises of the facility during operating hours and to any infor-
0244 mation necessary to investigate, inspect and evaluate the facility.

0245 (b) The secretary shall make an inspection before issuing an
0246 initial license and shall inspect all licensed facilities at least once
0247 each year.

0248 (c) The secretary may request the assistance of political sub-
0249 divisions and governmental agencies in the administration of this
0250 act.

0251 Sec. 17. (a) A person who operates a facility without a license
0252 shall be guilty of a class C misdemeanor.

0253 (b) A person who has not obtained a license under this act but
0254 who advertises or holds oneself out to the public as operating a
0255 facility shall be guilty of a class C misdemeanor.

0256 (c) A person who violates the provisions of section 15 shall be
0257 guilty of a class C misdemeanor.

0258 (d) If for 30 days after any final conviction under this section
0259 or revocation of a license under this act, the person convicted or
0260 whose license has been revoked continues in violation of this act,
0261 upon five days' notice from the secretary, the building or prem-
0262 ises where the facility is located may be closed until all provi-
0263 sions of this act have been complied with.

0264 Sec. 18. Each county or district attorney in this state, upon
0265 the complaint of the secretary or an authorized representative of
0266 the secretary, shall file a complaint and prosecute until final
0267 determination all actions or proceedings against any person

except a person licensed as a child placing agency
shall offer by any form of news media or public
dissemination or otherwise offer to adopt, find a
home for, or in any manner offer to take possession
of any child either before or after the birth of a
child.

0268 under this act.

0269 Sec. 19. The secretary may bring an action in the district
0270 court to enjoin any person from maintaining a facility in violation
0271 of the child care licensing act. Upon a showing by the secretary
0272 that a person is maintaining a facility in violation of the child care
0273 licensing act, the court shall issue a temporary or permanent
0274 injunction restraining such violation. In an action under this
0275 section, it shall not be necessary to allege or prove at any stage of
0276 the proceeding that irreparable damage will occur should the
0277 temporary or permanent injunction not be issued or that the
0278 remedy at law is inadequate, and the temporary or permanent
0279 injunction shall issue without such allegations and without such
0280 proof.

0281 Sec. 20. ~~(a) No person shall operate a facility under this act if~~
0282 ~~in such facility resides any person who: (1) has been convicted of~~
0283 ~~child abuse, convicted of a crime involving violence or bodily~~
0284 ~~harm; (2) has been convicted of a sexual offense; (3) has signed a~~
0285 ~~diversion agreement pursuant to K.S.A. 22-2906 et seq. involving~~
0286 ~~a charge of child abuse or a sexual offense; or (4) has had an~~
0287 ~~infectious or contagious disease.--~~

0288 (b) No person shall operate a facility under this act if such
0289 ~~person:~~ (1) Has been convicted of child abuse, convicted of a
0290 crime involving violence or bodily harm; (2) has had a child
0291 declared deprived or removed from the home pursuant to the
0292 Kansas juvenile code; (3) has been convicted of a sexual offense;
0293 (4) has signed a diversion agreement pursuant to K.S.A. 22-2906
0294 et seq. involving a charge of child abuse or a sexual offense; (5)
0295 has been found to be an incapacitated person in need of a
0296 guardian or conservator, or both, pursuant to the act for obtaining
0297 a guardian or conservator, or both; (6) has been found to be unfit
0298 to have custody of a minor child pursuant to K.S.A. 60-1610 and
0299 amendments thereto; ~~(7) has had a license revoked or denied; or~~
0300 ~~(8) has had an infectious or contagious disease.~~

0301 Sec. 21. No license shall be issued under this act for a facility
0302 which is licensed as an adult care home under the adult care
0303 home licensure act.

0304 Sec. 22. This act shall be known and may be cited as the child

in such facility resides any person who

It shall be unlawful for any home for children to receive or care for any aged or indigent adult; or a person afflicted with any dangerous communicable disease, or anyone over twenty-one (21) under the surveillance of the police power of the state, or any county or city in the state; and the presence of such person in the home for children shall be cause for refusal of the license and shall require immediate revocation of a license in force.

Atch. 6

SENATE BILL No. 11

By Special Committee on Public Health and Welfare

Re Proposal No. 28

12-20

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,

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 (l) 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:

Subcommittee Adopted this Recommendation

"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:

Subcommittee Adopted this Recommendation

"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.

Subcommittee Adopted this Recommendation

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. . .".

a pe-
tition

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.

Subcommittee Adopted this Recommendation

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."

Subcommittee Adopted this Recommendation

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.

Subcommittee Adopted this Recommendation

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.

Voluntary guardianship eliminated

See sec.s 3, 4 and 18

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

(2)

petition
petitioner
petition
petitioner

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 can;

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

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Subcommittee Adopted this Recommendation

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.

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0157 can't]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];

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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;

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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.

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0215 ~~(G)~~ (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;

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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

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Subcommittee Adopted this Recommendation

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.

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

an institution within the department of social and rehabilitation services,
an institution within the department of social and rehabilitation services

independent evaluation and

10 Deletion of court authority not to order mental evaluation.

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

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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 for the proposed
0350 ward or proposed conservatee.

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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 a application has been filed, alleging that the
0391 proposed ward or proposed conservatee is either an ~~incapaci-~~
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;

(E) any law enforcement officer;

(F) the attorney of the proposed conservatee.

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

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Commission deleted.

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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

Subcommittee Adopted this Recommendation

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.

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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
 04 an appropriate order shall terminate the proceedings.

046 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-

Subcommittee Adopted this Recommendation

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.

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tor shall give priority in the following order:

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

(2) To the nominee of a natural guardian.

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

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

(d) Upon the filing of an oath according to law, letters of guardianship shall be granted. Upon the filing of a bond in such an amount as the court may direct and an oath according to law, letters of conservatorship shall be granted. 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 of such guardian or conservator, then no bond shall 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.

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

, and the court shall give particular attention in making such appointment to all cases in which the proposed guardian or conservator, or both, other than a corporation, is serving as guardian or conservator, or both, for 15 or more wards or conservatees, or both

Subcommittee Adopted this Recommendation

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

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~~ 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 *ineapacitated a disabled* person, or any ward or conser-
0558 vatee who was found to be an *ineapacitated 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

petition

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

petition

Subcommittee Adopted this Recommendation (exceptions noted)

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.

601 law, the guardian is entitled to custody of the person of the ward
 602 and may establish, if permission is granted by the court ap-
 603 pointing the guardian, after hearing and notice thereof to the
 604 conservator, if any, and to such other persons in such manner as
 605 the court shall direct, the ward's place of abode within or
 606 without this state.

607 (2) If entitled to custody of the ward, the guardian shall
 608 make provision for the care, comfort and maintenance of the
 609 ward and, whenever appropriate, arrange for training and edu-
 610 cation of the ward. Without regard to custodial rights of the
 611 ward's person, the guardian shall take reasonable care to protect
 612 the ward's clothing, furniture, vehicles and other personal ef-
 613 fects and commence protective proceedings if other property of
 614 the ward is in need of protection.

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

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

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

623 (B) receive money and tangible property deliverable to the
 624 ward and apply the money and property for support, care and
 625 education of the ward; but the guardian may not use funds from
 626 the ward's estate for room and board which the guardian's
 627 spouse, parent or child has furnished the ward unless a charge
 628 for the service is approved by order of the court made upon
 629 notice to at least one of the next of kin of the ward, if notice is
 630 possible. The guardian shall exercise care to conserve any excess
 631 money and property for the ward's needs.

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

637 (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.

by court order after a hearing before the court to deter-
(G) A guardian shall not have the power: (1) To mine the
place a ward in a facility or institution other than [through need for
a formal commitment proceeding] in which the ward has such
independent counsel and a separate guardian ad litem, or placement
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 with-
holding of life-saving medical procedures, except in accordance with
provisions of K.S.A. 65-28,101 to 65-28,109, inclusive, and amendments thereto

(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 behavior-
al 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.*

(b) *This section shall be part of and supplemental to the act*
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.

Subcommittee Adopted this Recommendation

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.

Renumber subsequent sections accordingly.

22

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 ~~ineapacitated~~ *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 ~~ineapacitated 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-

petition

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.

petition

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.

a petition
petition

a petition

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.

petition

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;
(1) upon an order of the court after a finding that there is no
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-

24

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 pacity, the conservator's representative, shall present a verified
0822 final account with [an application] for the settlement and allow-

Subcommittee Adopted this Recommendation

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

Subcommittee Recommends

on a form prescribed for this purpose by rule of the supreme court
The supreme court may require by rule that other matters relating to conservatorship be contained in the report.
a petition

25

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 contents of the final account shall be prescribed by rule of the supreme court on a form prescribed for this purpose by rule of the supreme court.

Subcommittee Adopted this Recommendation

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.

a petition

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.

petition

0875 (2) The application shall state:

petition

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.

a petition

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

29

897 immediate action is taken, the court shall:

898 (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*

a petition
petition

a petition

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 in-*
0947 *capacitated 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 ~~ineapacitated~~
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
such person.

1080 *Thirtieth.* The term "mentally ill person" shall mean any
1081 person who is mentally impaired to the extent such person is in
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

35 Change to reflect different definition in 59-3002.

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.

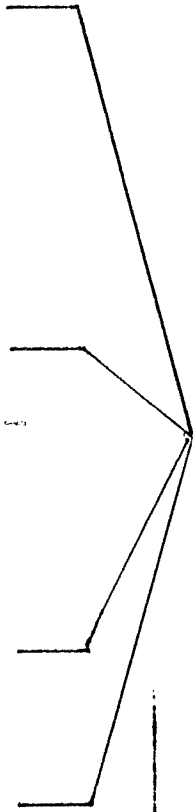
1141 *Thirty-sixth.* The term "proposed ward" shall mean means a
1142 person for whom an application for the appointment of a guard-
1143 ian pursuant to K.S.A. 59-3006 and amendments thereto has been
1144 filed.

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



Change to reflect different definition in 59-3002.

36

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

1183 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.

Additional Subcommittee Recommendations:

1. Cross-reference act to uniform durable power of attorney act, 58-610 et seq.
2. Additional sections to be amended to change application to petition: 59-3017 and 59-3030.
3. Other technical changes necessary to fit subcommittee changes into the current statutes.