

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY SUBCOMMITTEE #2

The meeting was called to order by Senator Jeanne Hoferer at _____
Chairperson

10:00 a.m./p.m. on Wednesday, March 23, 1988 in room 254-E of the Capitol.

All members were present except:

Committee staff present: Gordon Self - Assistant Revisor
Mike Heim - Research Department

Conferees appearing before the committee: Representative David Heinemann
Joan Strickler, Kansas Advocacy and Protective Services
Jim Robertson, Attorney, SRS

Representative Heinemann explained House Bill 2880 which was introduced to clarify what the statutes provide for in regard to "restraining orders". (60-3107)

Joan Strickler briefed the committee on the activities of the agency she represents (Att. 1.). She addressed the changes in law proposed by House Bill 2968 and recommended no changes in the bill as it now stands.

Jim Robertson spoke to House Bills 2860 and 2866 and explained the background and intent of the bills. He stated that they are not SRS bills. He also said it was his opinion that a constitutional challenge would not apply. The bills were discussed by committee.

House Bill 2251 was again considered. Senator Parrish moved that in Line 36 the word "shall" be stricken and the word "may" be inserted. This motion failed for lack of a second.

A technical amendment to House Bill 2251 was recommended by the Revisor. Senator Feleciano made a motion to this effect, seconded by Senator Talkington and passed by subcommittee.

Senator Feleciano moved that House Bill 2251 be recommended to the full committee, seconded by Senator Talkington. This motion failed with Senators Hoferer and Parrish voting "No".

House Bill 2880 was discussed. A technical clean-up amendment was recommended by the Revisor - striking "creating a definition of persons" in the title. Senator Talkington moved thusly, seconded by Senator Parrish and passed.

Senator Feleciano moved that House Bill 2880 be recommended; seconded by Senator Parrish and passed by subcommittee.

Senator Talkington moved that House Bill 2968 be recommended; seconded by Senator Feleciano and passed by subcommittee.

Meeting adjourned.

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

Subcom #2

Kansas Advocacy & Protective Services, Inc.



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Liaison to the Governor
Jose A. de la Torre

Executive Director
Joan Strickler

TO: The Senate Committee on Judiciary, Subcommittee #2
Senator Jeanne Hoferer, Chairperson

FROM: Kansas Advocacy and Protective Services
R.C. Loux, Chairperson

RE: H.B. 2968

DATE: March 28, 1988

KAPS assists disabled children and adults in gaining access to the rights and services to which they are entitled. We fulfill the protection and advocacy requirements of P.L. 94-103 as amended, the Developmental Disabilities Act, and P.L. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act. We also administer a program unique to the state of Kansas, the Kansas Guardianship Program. KAPS is a private non-profit corporation which was initially created specifically to serve as the developmental disabilities protection and advocacy agency in Kansas. We have been serving the state since 1977.

H.B. 2968 contains proposed amendments which are intended to address two issues. The first would simply reflect a recent name change for our agency. Last year KAPS dropped "for the Developmentally Disabled" from it's name since we have, over the years, broadened the scope of our services to include persons with disabilities other than only developmental disabilities.

The second purpose is to bring Kansas into compliance with the provisions of two federal laws.

On page two, lines 77 and 78, we request that the language "and do not have legal guardians" be deleted. From the Conference Report on The Protection and Advocacy for Mentally Ill Individuals Act of 1986, the apparent intention of Congress was that the law should apply to all persons who meet the definition of mentally ill individual without regard to whether the person has a legal guardian. The restriction placed on protection and advocacy programs is that they must not duplicate any of the efforts of a guardian. We believe that, to insure that Kansas law is consistent with the federal

Att. 1

Senate Judiciary Subcommittee #2

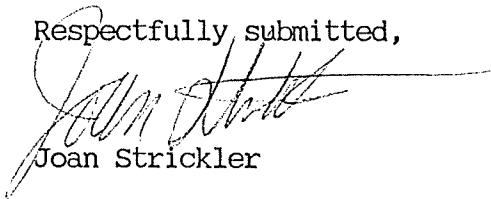
March 23, 1988

statute, and to allow KAPS to carry out its responsibilities, the exception listed in KSA 65-5603 (n) (10) should be expanded to include persons who have legal guardians.

The amendments on page three are intended to assure that Kansas complies with the new requirements for developmental disabilities protection and advocacy agencies contained in P.L. 100-146, the Developmental Disabilities Assistance and Bill of Rights Act of 1987, which was signed into law on October 29, 1987. One of the new requirements of that Act set out the conditions under which the protection and advocacy agencies are authorized to access records. These conditions are more comprehensive than those presently set out in KSA 74-5515.

We request your support for these amendments.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Joan Strickler", with a long horizontal line extending to the right from the end of the signature.

Joan Strickler

(3) by striking out "\$47,000,000" in paragraph (4) and inserting in lieu thereof "\$60,000,000";

(4) by striking out "\$160,000" in subparagraph (A) of such paragraph and inserting in lieu thereof "\$200,000";

(5) by striking out "\$300,000" in subparagraph (B) of such paragraph and inserting in lieu thereof "\$350,000"; and

(6) by adding at the end thereof the following new paragraph:
 "(6) In any case in which the total amount appropriated under section 130 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary may increase each of the minimum allotments under paragraphs (3) and (4) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 130 for the fiscal year for which the increase in minimum allotment is being made, minus

"(B) the total amount appropriated under section 130 for the immediately preceding fiscal year,
 bears to the total amount appropriated under section 130 for such preceding fiscal year."

(b) Section 125(b) is amended to read as follows:

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid."

WITHHOLDING

Sec. 207. Section 127(1) is amended by inserting ", particularly sections 122(b)(3) or 122(f)" after "State plan". 42 USC 6027.

AUTHORIZATION OF APPROPRIATIONS

Sec. 208. Section 130 is amended to read as follows: 42 USC 6030.

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 130. For allotments under section 125, there are authorized to be appropriated \$62,200,000 for fiscal year 1988, \$69,900,000 for fiscal year 1989, and \$77,400,000 for fiscal year 1990."

TITLE III—PROTECTION AND ADVOCACY

REQUIREMENTS FOR SYSTEM

SEC. 301. (a) Section 142(a)(2) is amended— 42 USC 6042.

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (E), (F), and (G), respectively;

(2) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) have the authority to—

"(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such persons within Minorities.

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Ex

the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of minority groups; and

"(ii) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

"(B) have the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

"(C) on an annual basis, provide the public with an opportunity to comment on priorities established by, and activities of, the system;

"(D) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system;" and

(3) by striking out subparagraph (G) (as redesignated by clause (1) of this subsection) and inserting in lieu thereof the following:

"(G) have access to all records of—

"(i) any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and

"(ii) any person with developmental disabilities—

"(I) who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access;

"(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

"(III) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse or neglect;"

(b) Section 142(c) is amended—

(1) by striking out "\$11,000,000" in subparagraph (A) of paragraph (1) and inserting in lieu thereof "\$20,000,000";

(2) by striking out "\$80,000" in clause (i) of such subparagraph and inserting in lieu thereof "\$107,000";

(3) by striking out "\$150,000" in clause (ii) of such subparagraph and inserting in lieu thereof "\$200,000";

(4) by striking out "\$11,000,000" in subparagraph (B) of such paragraph and inserting in lieu thereof "\$20,000,000";

(5) by striking out "\$50,000" in such subparagraph and inserting in lieu thereof "\$150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than \$80,000";

(6) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(7) by inserting after paragraph (1) the following new paragraph:

State and local
governments.

following "diagnosis of."

5(b). Sec. 3(a)(3) of the Senate Bill further defines "mentally ill person" as one "who is an inpatient or resident in, and who resides for 24 hours a day in a residential facility."

Sec. 102(3)(B) of the House amendment further defines "mentally ill individual" as one "who is an inpatient in a hospital or nursing home or a resident in a board and care home or a community facility for mentally ill individuals."

The Senate recedes with an amendment that removes the list of different types of residential facilities enumerated in the House definition. It is the intent of the Committee that this legislation focus on abuse and neglect of mentally ill individuals and not on the facility in which they reside. Accordingly, residential facility could include, but need not be limited to, hospitals, nursing homes, community facilities for mentally ill individuals, and board and care homes.

5(c). Sec. 102(3)(C) of the House amendment further defines "mentally ill individual" as someone "for whom a legal guardian, conservator or legal representative has not been appointed unless these individuals request the eligible system to treat the mentally ill individual."

The Senate Bill contains no similar provision.

The House recedes with an amendment (reflected in Sec. 111) which requires that the system assure as part of their receipt of funds that any activity undertaken on behalf of a mentally ill

individual will not duplicate the efforts of the guardian, unless the guardian requests the system's services, or unless the guardian is the state, or unless after a reasonable time the guardian has not acted. It is the intent of the conferees that P&A agencies not needlessly repeat the activities of an active legal guardian exercising his or her responsibilities. It is not the intent of the conferees to prohibit agencies from working with persons whose legal guardians are the State or public agencies or whose guardians are not exercising their responsibilities, nor is it the intent of the conferees that agencies be prohibited from notifying guardians of possible abuse or neglect of mentally ill persons or notifying or advising guardians of possible remedies available to mentally ill persons.

6(a) Sec. 103(a)(4) of the Senate Bill defines "neglect" as a negligent act or omission by a person responsible for providing services in a residential facility.

Sec. 102(4) of the House amendment defines "neglect" as a negligent act or omission by any person responsible for providing services in a hospital, nursing home, board and care home or community facility for mentally ill individuals.

Sec. 102(4)(A)(i) of the House amendment further defines "neglect" as the failure to place individuals requiring inpatient mental health facilities in optimum therapeutic settings and provide appropriate services.

Sec. 102(4)(A)(ii) of the House amendment further defines "neglect" as the failure to discharge inappropriately placed