Approved: 3/13/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 5, 1997 in Room 313-

-S of the Capitol.

All members were present except: Representative Krehbiel (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary (excused)

Conferees appearing before the committee: Ron Smith, Kansas Bar Association
Barbara Helm, Executive Director of ARCare, Inc.
Judge Sam Bruner, Johnson County District Judge
Randy Hearrell, Judicial Council
John House, Attorney, SRS
Senator Pugh
Frank J. Yeoman, Attorney for SRS-written testimony
Lonny Lindquist, Executive Director of KMIAC
Steven Meisel, SPIRIT of Ottawa, Kansas
William C. Smith, IV, Office Manager for SPIRIT
Charlie Cole, SPIRIT-CHDO
Roxanna Lindquist, SPIRIT-written testimony
Terry Larson, Kansas Alliance for the Mentally Ill
Scott Letts, Attorney, Kansas Advocacy & Protective Services, Inc.

Others attending: See attached list

The Chair called the meeting to order.

SB 106: Making of gifts by conservators in certain circumstances.

Ron Smith, Kansas Bar Association, testified in support of SB 106. The conferee stated that this bill allows conservators, under judicial supervision, to make gifts that are consistent with the disabled or mentally incompetent person's established giving pattern. (Attachment 1)

Ron Smith, Kansas Bar Association, requested an amendment to SB 106 that would incorporate the provisions of SB 105 regarding payback trusts. (Attachment 2)

Barbara Helm, Executive Director of ARCare, Inc. testified in support of the amendment requested by Ron Smith, which would amend provisions of SB 105 into SB 106. Ms Helm related that this amendment would allow assets saved for the disabled family member's care to be used without risking disqualification for all services. (Attachment 3)

Judge Sam Bruner, Johnson County District Judge, testified in support of SB 106. Judge Bruner stated that this bill would allow the transfer of these assets for disabled adults to trusts as long as the state has the first shot at the remaining assets to recoup medicaid expenditures. The conferee stated that the need for this bill was brought to his attention by attorneys who said that authority for such gifts could not be found in the statute giving the conservator the right to make gifts on behalf of the individual. The conferee stated that this bill will allow legitimate discretion for an individual's estate to be spent on items that afford them dignity in life, but allow eligibility for a complete spend down. Judge Bruner stated he did not have any problem with Ron Smith's new language.

In response to the Chairman's question, Judge Bruner stated that the reason the word "guardian" is in the bill because of federal legislation. Judge Bruner stated that it would always be the conservator that is making the transfer. The conferee stated that the state's enabling legislation to qualify with the 1993 Congress uses the word "guardian" so that is why it is there.

The question was asked as to whether the gifting program may be used to dissipate funds to qualify for state assistance, medicaid etc. Judge Bruner stated that the purpose of SB 106 is to give the guardian authority to allow the distribution of gifts as the pattern was established by the individual. The conferee stated that the ability to continue a pattern of giving will be something the court will consider.

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

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 5, 1997.

In response to a question concerning current law on gifts by the parents to a special needs trust, the conferee stated that if the gift(s) are assets from the parents they would not act as a disqualifier for medicaid.

The Chair closed the hearing on SB 106.

SB 66: **Amendments to the care and treatment act for mentally ill persons.**

Randy Hearrell, Judicial Council testified in support of SB 66. The conferee stated that SB 66 amends K.S.A. 59-3026 to add Medicaid claims to funeral expenses and expenses of last illness as items the district judge may order paid from the deceased individual's estate. The conferee stated that with the passage of SB 66 a number of conservatorships could be closed and additional funds could go to reimbursement of Medicaid expenditures. (Attachment 4)

The conferee stated that the bill corrects a common situation because SRS is not specifically mentioned in statute and, therefore, the SRS must petition to recoup Medicaid claims.

Mr. Hearrell referred to Judge Bruner who stated that under this bill funeral expense, expense of last illness and the SRS liens are on the same priority.

The Chair closed the hearing on SB 66

The Chair open the hearing on SB 68 and stated that as a part of the presentation on SB 68, testimony will be heard on HB 2364 also.

SB 68: **Amendments to the care and treatment act for mentally ill persons.**

John House, attorney for the SRS and a member of the Judicial Council for the Care and Treatment for Mentally Ill persons testified in support of SB 68.

The conferee stated that SB 68 offers technical amendments to legislation passed last year codifying the care and treatment act. (Attachment 5)

The Chair stated that the hearing would remain open on SB 68.

HB 2364: **Allowing the guardian to commit a ward to a treatment facility over the ward's objection; hearing and notice required.**

Senator Pugh testified in support of HB 2364. Senator Pugh cited several examples showing the need for HB 2364. The conferee stated that this bill will provide that the guardian can obtain treatment for the ward over the ward's objections where immediate intervention is necessary. The conferee stated that this bill would allow in the case of a relapse that the person's guardian could admit the person involuntarily into treatment. The conferee stated that this would allow for immediate intervention short of going through a full-blown commitment hearing. The conferee stated that the ward could at any time dissolve the guardianship by going to Court and demonstrating that they were no longer disabled. The conferee stated that this bill would allow the person's guardian to obtain necessary treatment and care for the ward in a timely manner. (Attachment 6)

Committee members asked questions concerning the increased time allowed for the guardian to file in court the commitment hearing. The conferee explained the different standards applied to guardianships in cases of disabled or mentally ill persons. The conferee explained the exceptions to the powers of a guardian.

In response to a Committee member's question, Senator Pugh stated that the SRS's proposed changes to the bill would defeat the purpose of the bill of obtaining immediate care for a disabled person.

Mr. John House, attorney for the SRS testified stating that the Department of SRS is neutral regarding HB 2364 and proposed some changes to the bill. The conferee stated that the proposed balloon amendments are intended to clarify the exception being created by HB 2364. The conferee recommended utilizing the Care and Treatment Code definitions to trigger any action by the guardian. (Attachment 7)

Frank J. Yeoman, Jr. Judge of the District Court provided written testimony calling for the Committee members to look at the bill's language of K.S.A. 59-3018(f)(1) and (5)(A) and compare that language with that in the definition of a "disabled person" at L.S.A. 59-3002 (a). (Attachment 8)

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 5, 1997.

Lonny Lindquist, Executive Director of KMIAC testified in opposition to HB 2364. The conferee stated that current law allows the guardian the authority for two years to readmit the ward to an appropriate treatment facility as may become necessary. The conferee stated that this bill provides that the guardian could place the ward in a treatment facility without any due process for a period of fourteen days before a hearing. The conferee stated that HB 2364 would increase the possibility of abuse of the ward by the guardian. (Attachment 9)

Steven Meisel, SPIRIT of Ottawa, Kansas testified in opposition to HB 2364. The conferee stated that his concern was that according to earlier bills anyone can be classified unfit or "mentally ill" and thus be put under guardianship. The conferee stated that so called "normal" person can be put into this segment of the population and thus lose all rights as an American Citizen. (Attachment 10)

William C. Smith IV, the Office Manager for SPIRIT Inc. CHDO testified in opposition to HB 2364. The conferee stated that he objected to the concept of guardianships. The conferee discussed several potential scenarios where the authority of the guardian might be abusive and the rights of the ward would be relinquished. The conferee stated that he feels this bill takes rights and privileges away from those placed under a guardianship. (Attachment 11)

Charlie Cole, SPIRIT-CHDO read the testimony of Roxanna Lindquist, Executive Director of SPIRIT Inc. CHDO in opposition to HB 2364. Mr. Cole stated that personally this bill might be the beginning of more intrusive laws. (Attachment 12)

The Committee members discussed issues and comments contained in Roxanna Lindquist written testimony.

Terry Larson, Kansas Alliance for the Mentally Ill, testified in opposition to HB 2364. Ms Larson stated that Edward Moynihan, President of Kansas AMI felt the need to oppose this bill because he felt that due process rights would be denied to the ward. The conferee stated that the Kansas AMI supports the 1990 Mental Health Reform law and that possibly a better job could be done to educate judges on issues of mental illness. The conferee stated that the law was changed last year to allow guardians two-year commitment authority with a hearing up front in order for commitment to occur. The conferee stated that this bill would be depriving individuals their freedom. (Attachment 13)

The Committee members discussed with the conferee changing the time within which a hearing must be held to 48 hours.

Scott Letts, Attorney with Kansas Advocacy & Protective Services, Inc. (KAPS) testified in opposition to HB 2364. The conferee stated that this bill will create an unnecessary alternative form of commitment that is inconsistent with the care and treatment act. The conferee discussed three points of opposition: the extension of time for the guardian to file, qualified mental health professionals involvement, and procedures already exist for emergency observation and treatment. (Attachment 14)

The Chair closed the hearings on SB 68 and HB 2364.

The Chair announced that the Committee will be having hearings on HB 2415, however, that bill was not referred to the Appropriations Committee so the bill to be heard next week will be HB 2506 another bill dealing with juvenile justice reform.

The Chair adjourned the meeting at 5:45 p.m.

The next meeting is scheduled for March 6, 1997.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 3/5/97

NAME	REPRESENTING
Jason Oldham	OSA
William Hammond	ARCARE
Barbara Helm	ARCare
Ron Smith	Ks Bar Assn
Sam K. Bruner	Ks Judicial Council
John House	SRS/Judicial Council
Randy M. Hearrell	Judicial Council
Scott Letts	Ks. Advoc. + Prot. Services
Lloyd Hull	SRS/Legal
Lonny Lindquist	KS. Mental Illness Awareness Council
Steven Meisel	Spirit Inc.
William C Smith IV	Spirit Inc CHDO
Charles Cull	Spirit Inc ChDG
Susan Baker	Hein + Weir
Jason Pittenberger	Brad Smoot
Anne Spiess	Peterson Public Affairs Group
Larrie Ann Brown	KAPS & KHA
Canda Byrne	KMHC
Terry Larson	Kansas AMI

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 3/5/97

NAME	REPRESENTING
JEAN KRAHN	KGP
DAVID TALLMAN	KS BAR ASSN
[illegible signature]	KAR

Legislative Testimony

KANSAS BAR ASSOCIATION

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Ginger Brinker, Administrative Director
Debra Prideaux, Communications Director
Ronald Smith, General Counsel
Art Thompson, Public Services Director

TO: Rep. Tim Carmody, Chair
Members, House Judiciary Committee

FROM: Ron Smith, KBA General Counsel

SUBJ: SB 106

DATE: March 5, 1997

A conservator is someone who is appointed by a Court to manage the financial affairs of a disabled or mentally incompetent person. Many times they are appointed when relatives seek the protection of the court for the finances of their incompetent relatives who become incompetent due to stroke or other injury. Other times they are used by court order to insure that one group of relatives do not get control of an incompetent relative's money and spend it all, affecting the rights of other heirs.

Conservators are court-appointed only. They cannot exist privately by contract. As such the powers of a conservator are strictly limited by statute. Judges will not allow conservators to do something not allowed by statute, primarily in Chapter 59, article 30 of the probate code.

The problem this bill addresses is that once a person becomes incompetent, their previous giving pattern ceases. The person for whom the conservatorship is made (the "conservatee") might have had a history of giving financial gifts regularly to the conservatee's church, or in an estate planning situation he or she might have been giving the children $10,000 per year.

Current law does not allow these sorts of gifts to be made by a conservator even if it might represent the wishes of the disabled or incompetent person for whom the conservatorship was appointed.

SB 106 allows conservators, under judicial supervision, to make these gifts. We are usually talking about gifts to a giving pattern established prior to the incompetency of the conservatee. Conservators would have to prove with evidence that the conservatee would have made the gifts if still competent. And the conservator must show any gift made would not deplete the corpus of the conservatorship to where the conservatee's remaining property after the gift or gifts would not be sufficient for the conservatee's needs. Most often these are gifts to churches or charities or relatives.

The bill passed the Senate without debate. We hope you will pass it too.

House Judiciary
Attachment 1
3/5/97

Legislative Testimony

KANSAS BAR ASSOCIATION

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Email: ksbar@ink.org

TO: Members, House Judiciary Committee

FROM: Ron Smith, KBA General Counsel

SUBJ: SB 105, payback trusts

DATE: March 5, 1997

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Ronald Smith, General Counsel
Art Thompson, Public Services Director

SB 105 was heard in the Senate Judiciary Committee. That Committee was a bit confused by these sorts of what are called "payback trusts." Thus they took no action by the deadline. The bill is still alive, but caught by the turnaround deadline. We'd like you to consider adding this authority to SB 106.

In 1993 Congress got tougher on the use of trusts to shelter assets in order to more rapidly qualify for state Medicaid assistance. As a result, a common practice of putting assets into a trust to make the recipient appear to have no assets is no longer allowed, except in very narrow circumstances. In 42 USC §1396p(4), basically three types of trusts are still allowed:

1. a trust for a disabled individual under 65 established for the benefit of such individual by a parent, guardian, grandparent, or a court – if the state receives all amounts remaining in the trust to repay Medicaid payments made to this individual;

2. A trust for the benefit of an individual if it is composed only of SSI, pension or other income to the individual and accumulates income while in the trust and the state receives the remaining amounts equal to total medical assistance supplied under Medicaid.

3. A trust containing the assets of a disabled person if the trust is managed by a nonprofit association, including pooled amounts from other trusts for investment purposes, and the accounts are established by parents, grandparents or guardians.

These sorts of trusts are commonly called "payback" trusts because SRS gets "paid back" for medical assistance paid by Medicaid during the disabled person's life – if there are remaining trust assets when the person dies. If these conditional trust provisions are not strictly complied with, the trust assets must be considered when determining the eligibility of these persons for initial Medicaid benefits, and a "spend-down" must occur before eligibility. *Such trusts are now being set up by private individuals.* See the fact that they are exempted trusts under the Kansas Public Assistance Manual, part 5434.1-5434.2. It is attached.

Most often these payback trusts are created by parents who have no duty to support their adult disabled child, but who have assets and want to make those assets go as long as possible for their adult child. Payback trusts often are called "quality of life trusts," since the assets can be used for things that SRS Medicaid cannot pay, e.g. a trip to Disneyland, travel expenses for regular visits by important relatives for the disabled person, or some sorts of medical assistance that Medicaid only partially pays for. Medicaid will not pay for outings, or travel, or some medical assistance. Payback trusts can.

House Judiciary
Attachment 2
3/5/97

If these trusts have assets when the disabled person no longer needs them, the assets revert to the state – the state is "paid back" – to the extent the state has paid for Medicaid assistance. Remainders – if any – then go to the disabled person's estate – if any. However, most of the time the entire amount of the trust is paid back to the state since assistance received exceeds remaining assets.

Guardians and conservators, however, have no statutory authority to set up these payback trusts. This is what SB 105 allows, create the authority for guardians and conservators to set up these conditional trusts. *Note the common thread in all such trusts is that, under federal law, the state welfare agency must receive any remaining trust assets upon the death of the disabled person.* If that language is not in the trust, it is not an exempt trust and the assets will be counted against the person's request for Medicaid assistance.

Private individuals can set up these trust, e.g. a parent for a child or a grandparent for a grandchild. Conservators under strict court supervision need this authority, too. That is what SB 105 allows.

Our proposed amendments are offered to insure the similar result in the formation of payback trusts, but also to recognize that SRS has statutory authority to allow pooling of such trust assets for investment purposes. We also want the conservator to have authority to pool the trusts for investment purposes under SRS guidelines.

Our proposed amendments are in **BOLD FACE**

SENATE BILL No. 105
By Committee on Judiciary
1-24

AN ACT concerning conservators; relating to creation of trusts in certain circumstances.

Be It Enacted by the Legislature of the State of Kansas:

Section 1. (a) A **guardian or** conservator, with or without notice, upon the order of the district court, may **create an irrevocable trust and** transfer property of the conservatee to ~~a~~ **such** trust ~~created by the conservator~~ for the benefit of the conservatee, if the court finds **such transfer will enable the conservatee to qualify for benefits from any federal, state or local governmental program or will accelerate such qualification.**

(b) For purposes of this section, a trust to which property of a conservatee is transferred includes:

~~(1) Such transfer will enable the conservatee to qualify for benefits from any federal, state or local governmental program or will accelerate such qualification;~~

~~(2) the conservator is to serve as sole trustee of such trust;~~

~~(3) the conservatee is the sole beneficiary of such trust during its term;~~

~~(4) the term of such trust does not extend beyond the conservatee's lifetime;~~

~~(5) the provisions of such trust provide for the distribution of the trust estate for the benefit of the conservatee to the extent not satisfied from governmental benefits, in the same manner and under the same circumstances the property of the conservatee would have been distributed for the benefit of the conservatee pursuant to the provisions of article 30 of chapter 59 of the Kansas statutes annotated and amendments thereto had such transfer not occurred; and~~

~~(6) upon the termination of such trust, the provisions of the trust require the entire trust estate, to the extent not required to be expended to reimburse governmental entities for benefits provided as a condition for qualification for such benefits, is to be paid over and assigned to the conservatorship, should such termination occur during the conservatee's lifetime, and to the legal representative of the conservatee's estate, should such termination occur by virtue of the conservatee's death.~~

(1) a trust established by the guardian or conservator for the benefit of the ward or conservatee when the guardian or conservator, or its successor as appointed by the court, serves as sole trustee of such trust, and the ward or conservatee is the sole beneficiary of such trust during its term; or

(2) a pooled trust established and managed by a nonprofit corporation, certified in accordance with KSA 59-3037 and amendments thereto, when a separate account is established and maintained for the sole benefit of the ward or conservatee during the term of the account.

(c) Any property of a ward or conservatee transferred to such a trust or account within a trust shall be transferred upon a finding by the district court that:

(1) the term of such a trust or account within a trust does not extend beyond the ward or conservatee's lifetime;

(2) the provisions of such trust or account within a trust provides for the distribution of the trust estate for the benefit of the ward or conservatee to the extent not satisfied from government benefits, in the same manner and under the same circumstances the property of the ward or conservatee would have been distributed for the benefit of the ward or conservatee pursuant to the provisions of article 30 of chapter 59 of the Kansas statutes annotated and amendments thereto, had such transfer not occurred; and

(3) upon the termination of such trust or account within a trust, the provisions of the trust require the entire trust estate or account, to the extent not required to be expended to reimburse governmental entities for benefits provided as a condition for qualification for such benefits, is to be paid over and assigned to the conservatorship, should such termination occur during the ward or conservatee's lifetime, either to the legal representative of the ward or conservatee's estate or in the same manner such trust property would have been distributed had such trust property been distributed to the legal representative of the ward or conservatee's estate, should such termination occur by virtue of the conservatee's death.

~~(b)~~ **(d)** To the full extent not inconsistent with the provisions of this section, any such trust created pursuant to the provisions of this section **and to which property of a conservatee is transferred pursuant to the provisions of this section,** and the trustee thereof shall be subject to the provisions of article 30 of chapter 59 of the Kansas statutes annotated and amendments thereto, including but not limited to, investment authority, bonding and annual and final accounting requirements and appointment of successor trustees, in the same manner such provisions would have applied had the property of the conservatee not been transferred to such trust.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

This statute is referenced in the SB 105, subsection (b)(2).

KSA 59-3037. Appointment of corporation as guardian; qualifications; procedure.

(a) A private, nonprofit corporation organized under the Kansas general corporation code may act as guardian for an individual found to be in need of a guardian under the act for obtaining a guardian or conservator, or both, if the private, nonprofit corporation has been certified by the secretary of social and rehabilitation services as a suitable agency to perform the duties of a guardian.

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

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

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

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

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

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

(d) No private, nonprofit corporation shall be eligible for certification under this section if such corporation provides residential care in an institution or community based program or is the owner, part owner or operator of an adult care home, lodging establishment or institution engaged in the care, treatment or housing of any person physically or mentally handicapped, infirm or aged.

(e) The secretary of social and rehabilitation services may adopt rules and regulations necessary to administer the provisions of this section.

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

To: Members, House Judiciary Committee

From: Barbara Helm, Executive Director, ARCare

Subj: SB 105, Payback Trusts

Date: March 5, 1997

House Judiciary
Attachment 3
3/5/97

LEGISLATIVE TESTIMONY

My name is Barbara Helm. I am executive director of ARCare, Inc. I am here to speak on behalf of ARCare in support of Senate Bill 105.

ARCare is a private, non-profit agency established almost 20 years ago by parents of children with severe disabilities. ARCare was formed to assist the parents in the care of their severely disabled children and to continue to supervise that care after the death of their parents. ARCare may act as an advocate, a guardian, or a conservator to an adult with severe disabilities. ARCare is certified by K.S.A. 59-3037.

The disabled individuals ARCare serves cannot work or are able to work only in limited, supervised work shelters. In another time they would have been institutionalized. Their parents want them to be as independent as possible, but they cannot live unsupervised, often require assistance and frequently require on-going medical care because of their disabilities.

Parents continue to be concerned about their disabled adult children and want them to get the services and care they need. They worry that no one will be watching out for their adult children after their death. They worry that needed services will no longer be available, that their disabled adult child will have to do without necessary medical care because of inability to pay, or that their disabled adult child will be forgotten by distant family members.

While they are living, parents can ensure that these things are available by paying medicaid co-payments or by filling out forms to establish eligibility under changing rules or by taking their child for holiday visits with relatives or by providing a place to stay if an institution or group home closes. But after their death they fear their disabled adult child will be abandoned or lost in an uncaring bureauracy.

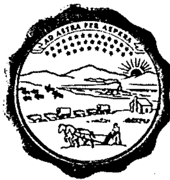
The majority of these parents have limited resources and could not afford to pay for all the services and care their adult disabled child needs. Many, aging themselves, are retired and may also be experiencing health problems associated with aging. But often, in anticipation of this time, they have set aside money for their child, or their child has received gifts which they have saved, or they have saved the earnings of their child while paying for their child's care themselves. They hope these assets will be used for their child TO SUPPLEMENT THEIR CARE, in an emergency, or if services are ended.

But current rules create a "catch 22" situation for the families. Under current rules, assets in the disabled family member's name make the family member ineligible for Medicaid and many other State services. Consequently, families are not able to use assets saved for their disabled family member's care without risking disqualification for all services.

Congress recognized the unique circumstances of disabled adults and their families and carved out some very limited situations where trusts could be used by families to participate in the care of their disabled family members. These trusts are commonly very small by trust standards.

The assets in such trusts must be used only for the care of the disabled individual in prescribed ways. If assets remain in the trust at the death of the disabled individual the state must be paid back for any medical assistance paid to that person during his or her lifetime.

In accordance with these rules ARCare established a pooled trust in 1996. A separate account is



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1997 SENATE BILL 66
KANSAS JUDICIAL COUNCIL TESTIMONY
MARCH 5, 1997

The problem Senate Bill 66 addresses was called to the attention of the Judicial Council by District Judge David Casement of Montgomery County.

Presently, K.S.A. 59-3026 states that if a conservatee dies, the district court may pay appropriate funeral expenses and the expenses of the conservatee's last illness. It is not unusual to have a conservatee die intestate with no known heirs, a very modest estate and no unpaid claims except SRS. It is common interpretation of K.S.A. 59-3026 by judges of the district court, that because SRS claims are not specifically named in the statute that SRS must petition for administration before it can recover. Some estates are not large enough to justify the costs of administration and they remain open.

Senate Bill 66 amends K.S.A. 59-3026 to add Medicaid claims to funeral expenses and expenses of last illness as items the district judge may order paid from the deceased conservatee's estate.

By amending the statute as proposed by the Judicial Council, a number of conservatorships could be closed and some additional funds will flow to Medicaid reimbursement.

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COMMENTS OF THE JUDICIAL COUNCIL
CARE & TREATMENT ADVISORY COMMITTEE
ON 1997 SENATE BILL 68
March 5, 1997

Section 1 (59-2957)

This section is proposed to be amended by "re-lettering" the paragraphs to eliminate confusion. This section was re-written in S.B. 469 from old K.S.A. 59-2913 and in that process three paragraphs were added specifying the three attachments which need to accompany a petition. The bill failed to separate the two subparts of subsection (a) and that, in turn, caused the numbering of the paragraphs to result in the subsection containing repeating references. The amendment is technical.

Section 2 (59-2958)

This section is proposed to be amended in to provide clarification. The amendments are technical.

Section 3 (59-2966)

This section is proposed to be amended by adding a requirement that an actual copy of the court's treatment order be provided to the head of the treatment facility (to which the person has been committed for treatment). The committee believes this is regularly done, but was requested to make an explicit requirement of this by representatives of treatment facilities. Since the court order is the legal authority by which the treatment facility may detain the individual, having a copy of the order in their files provides proof of the exact nature of the commitment and its duration. The committee considers the amendment to be principally technical.

A similar amendment is proposed to K.S.A. 59-2969.

Section 4 (59-2967)

This section is proposed to be amended in Section 4, subsection (e), line 22 by inserting the word "material." It is intended that the "noncompliance" referred to be "material" and not technical in nature.

This section is proposed to be amended in subsection (f) by changing the "trigger point" upon which a patient's right to a hearing is fixed. The current provision triggers this hearing upon the issuance of an exparte emergency custody order. At that point, the patient will likely

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not be in custody and the committee was reminded that the patient may, in some instances, not be found and taken into custody until well after the time required for the hearing to have been scheduled to have occurred. It makes more sense to trigger the hearing by the taking of the patient into custody. In most cases, this will not significantly change when the hearing will actually occur from what is provided in the current section (since most patients will be immediately picked up after the issuance of the court's order), in those cases where there is a delay in taking the patient into custody, the hearing will technically also be delayed in being set if not held, but no violation of the patient's rights will have occurred since no greater time transpires under this new provisions than that was contemplated when the current section following the taking of the patient into custody.

Section 5 (59-2969)

This section is proposed to be amended by allowing a requirement that an actual copy of the court's treatment order be provided to the interested parties rather than mere "notice" of such. The committee believes this is regularly done, but was requested to make an explicit requirement of the order by representatives of treatment facilities and of patients and their attorneys, in order to provide all parties with proof of the exact nature of the commitment and its duration.

A similar amendment is proposed to K.S.A. 59-2966.

Section 6 (59-2971)

This section is proposed to be amended by distinguishing requirements of what and how documents from a transferring court are transmitted to the court receiving venue. Literally following the current section would require a transferring court to fax the entire file of a case that may be many months old. For example: in the case where venue is transferred after a patient has been transferred from one treatment facility to another. That was not the original intent of the committee in its proposals which became S.B. 469. This redraft clarifies that faxing is required only in those instances where a patient's right to an upcoming hearing is at stake. Otherwise, mailing is adequate.

The section is also amended by adding subsection lettering for ease of reference.

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SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
JUDICIARY
UTILITIES
RULES AND REGULATIONS

TESTIMONY IN SUPPORT OF HOUSE BILL 2364
MARCH 5, 1997

I want to thank the members of the House Judiciary Committee for extending me the opportunity to appear before you today in support of the provisions of HB 2364. This bill represents a small effort towards addressing a large problem in the care and treatment of those persons in our communities that suffer from major mental illnesses.

This problem first became obvious to me when I was serving as the county attorney of Pottawatomie County, Kansas, in the mid-1970's. Late in the evening of a holiday, weekend, or after business hours, I would receive a phone call from a perplexed law enforcement officer, family member, or close friend of a person experiencing severe mental problems. As I spoke with these people, it would become apparent that a real problem existed. An individual would be experiencing serious problems. They would be disoriented, confused, hallucinating, or engaging in bizarre actions. A call to the mental health agency would not be readily answered or if answered, nothing useful would be done. For instance, I recall being offered the scheduling of an intake interview in two weeks.

The remedy became the use of involuntary commitment procedures. These involved and still involve a procedurally strict and rigid legal process whereby a person can be eventually compelled to get treatment for mental illness. At first, these procedures were fraught with all kinds of problems, both procedural and legal. Now they have become somewhat easier to use.

The probate code of Kansas provides that in the case of a disabled person, a guardian can be appointed to care for the physical needs of that person. A mentally ill person very often meets the standards of a disabled person within the meaning of the statute. This bill provides an amendment to the probate code that would allow that a guardian who had been appointed by

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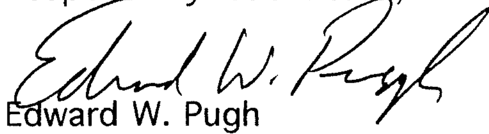
the Court after a hearing, appointment of an attorney to represent the proposed ward, and even after a jury trail would be allowed to sign the ward into treatment over the ward's objection. This would allow the friends or family of a mentally ill person to become appointed as that person's guardian. In the case of a relapse or reoccurrence of the illness, the guardian could sign the person into treatment. This would allow intervention short of going through a full-blown commitment hearing. The ward, of course, could at any time do away with the guardianship by going to Court and demonstrating that they were no longer disabled.

Respectfully submitted,



Edward W. Pugh

Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary

SRS Mission
To provide services to Kansas in need that contribute to their safety and promote dignity, independence, and responsibiity

Testimony of John House
Before the House Committee on Judiciary

March 5, 1997

CONCERNING HOUSE BILL 2364 - Concerning Guardians

Mr. Chairman and members of the committee, thank you for allowing me to testify concerning HB 2364. The Department of S.R.S. neither supports nor opposes HB 2364, but, in as much as it impacts upon the department's responsibilities to enforce the laws relating to the hospitalization and treatment of psychiatric patients pursuant to KSA 75-3307b and the department's responsibilities to provide care and treatment to such persons at the state's psychiatric hospital (Larned State Hospital, Osawatomie State Hospital, Rainbow Mental Health Facility, Topeka State Hospital), we do wish to call the committee's attention to the information represented on the attached chart and request that if the committee determines to recommend HB 2364 for passage that the amendments shown in the "balloon" attachment be made.

KSA 59-3018 provides for the authorities a guardian has and does not have. Currently, a guardian does not have the authority to place their ward in a psychiatric treatment facility without either obtaining advance authority from the court to admit their ward, or, the same as any other person, proceeding under the civil commitment act to have their ward regularly committed for psychiatric care. KSA 59-3018a governs how a guardian obtains prior court approval for such an admission.

HB 2364 proposes to create a new exception to these rules to allow a guardian to place their ward in a psychiatric treatment facility for up to 24 days before a court hearing is held to review that action. The department takes no position on whether or not allowance of such an exception would meet Constitutional due process requirements. A shortened time period may address

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any such Constitutional concerns, but may also negate the value of this proposed exception.

The proposed "balloon" amendments are intended to clarify the exception being created by HB 2364. Technical amendments noted are also included. At the heart of the proposed exception this bill would create is the grounds upon which the guardian could commit their ward against the ward's will. The current proposal language is largely circular since it is basically the same language by which a person is determined disabled and in need of a guardian. I understand the intent of the Bill to be to allow the guardian to obtain emergency psychiatric care for their ward when the guardian sees the ward in need of such. I would recommend utilizing the Care and Treatment Code definitions to trigger any action by the guardian. (These are attached for the committee's convenience.) The committee will need to choose alternatively according to whether it intends to allow the guardian to proceed at the level of mere mental illness, or whether it intends to restrict the guardian to the more restrictive standard applicable to civil commitment actions, or whether the committee intends to allow the guardian to act at either level as the guardian may choose. Those alternatives are bracketed in the "balloons" on page 5 of the Bill.

If I or the department can be of any other assistance to you, feel free to contact me.

Respectfully submitted,

John H. House
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Alturnative means for admission of a ward to a "treatment facility"	Involves a separately reported case?	How soon is the admission reviewed by a court?
1 voluntary by the ward, if the ward "has the capacity to consent to treatment" (KSA 59-3018a(d), KSA 1996 Supp. 59-2949)	No	at the next annual report review (KSA 59-3029)
2 involuntary emergency by a law enforcement officer following the taking of the ward into custody (KSA 1996 Supp. 59-2953, 59-2954(b))	Yes	3 days + any weekend and/or holiday (KSA 1996 Supp. 59-2956, 59-2958)
3 involuntary emergency upon presentation of the ward at a treatment facility by any person (including a guardian) (KSA 1996 Supp. 59-2954(c))	Yes	3 days + any weekend and/or holiday (KSA 1996 Supp. 59-2956, 59-2958)
4 involuntary upon (a) an ex parte emergency custody, or (b) other order issued by the court (KSA 1996 Supp. 59-2954(a), 59-2958(a), 59-2959(e), 59-2966)	Yes	(a) 2 days + any weekend and/or holiday (KSA 1996 Supp. 59-2958) (b) a hearing will have already been held before the order is issued
5 "voluntary by guardian" if the guardian has obtained prior authority from the court to do so, either: (a) under proceedings under	No	(a) a hearing will have alread

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	KSA 1996 Supp. 59-2945, et. seq. conducted pursuant to KSA 1996 Supp. 59-3018a or (b) from a prior proceeding pursuant to KSA 1996 Supp. 59-3018a resulting in a grant of continuing authority	No	been held before the order is issued (b) 90 days (which can be moved up at the request of the ward) (KSA 1996 Supp. 59-3018a, KSA 1996 Supp. 59-2969)
6	proposed HB2364 "commitment" by the guardian, subject to post admission hearing	No	24 days (14 days to file + 10 days to the hearing)

1 (4) providing required consents on behalf of the ward;
2 (5) exercising all powers and discharging all duties necessary or
3 proper to implement the provisions of this section.;
4 *(6) placing the ward in a treatment facility subject to the provisions*
5 *of subsection ~~(f)~~ of K.S.A. 59-3018a, and amendments thereto.* — (e)
6 (f) A guardian of a ward is not obligated by virtue of the guardian's
7 appointment to use the guardian's own financial resources for the support
8 of the ward.
9 (g) A guardian shall not have the power:
10 (1) ~~*Except as provided in subsection (f) of K.S.A. 59-3018a, and*~~ — To
11 ~~*amendments thereto,* to~~ place a ward in a facility or institution, other than
12 a treatment facility, unless the placement of the ward has been approved
13 by the court.
14 (2) ~~*Except as provided in subsection (f) of K.S.A. 59-3018a, and*~~
15 ~~*amendments thereto,* to place a ward in a treatment facility unless ap-~~
16 ~~proved by the court, except that a ward shall not be placed in a state~~
17 ~~psychiatric hospital or state institution for the mentally retarded unless~~
18 ~~authorized by the court pursuant to *subsection (a) of* K.S.A. 59-3018a,~~
19 ~~*and amendments thereto.*~~

To place a ward in a treatment facility unless the placement of the ward has been approved by the court pursuant to KSA 59-3018a, and amendments thereto, except as provided for in subsection (e) of KSA 59-3018a, and amendments thereto.

20 (3) To consent, on behalf of a ward, to psychosurgery, removal of a
21 bodily organ, or amputation of a limb unless the procedure is first ap-
22 proved by order of the court or is necessary, in an emergency situation,
23 to preserve the life or prevent serious impairment of the physical health
24 of the ward.
25 (4) To consent on behalf of the ward to the withholding of life-saving
26 medical procedures, except in accordance with provisions of K.S.A. 65-
27 28,101 through 65-28,109, and amendments thereto.
28 (5) To consent on behalf of a ward to the performance of any exper-
29 imental biomedical or behavioral procedure or to participation in any
30 biomedical or behavioral experiment without the review and approval by
31 an institutional review board under title 45, part 46 of the code of federal
32 regulations, where title 45, part 46 of the code of federal regulations
33 applies, or by a review committee where title 45, part 46, of the code of
34 federal regulations does not apply unless:
35 (A) It is intended to preserve the life or prevent serious impairment
36 of the physical health of the ward and it does not involve the application
37 of aversive stimulation; or
38 (B) it involves a behavioral procedure or experiment that does not
39 involve the application of aversive stimulation; or
40 (C) it is intended to assist the ward to develop or regain that person's
41 abilities and has been approved for that person by the court; and
42 (D) in the case of any procedure or experiment involving the appli-
43 cation of aversive stimulation, the procedure or experiment has been ap-

1 proved by the court.
2 No public or private entity or agency shall require or allow a ward to
3 perform any experimental biomedical or behavioral procedure or to par-
4 ticipate in any biomedical or behavioral experiment without the consent
5 of the guardian.
6 (6) To prohibit the marriage or divorce of a ward.
7 (7) To consent, on behalf of a ward, to the termination of the ward's
8 parental rights.
9 (8) To consent, on behalf of a ward, to sterilization of the ward, unless
10 the procedure is first approved by order of the court after a full due
11 process hearing where the ward is represented by a guardian *ad litem*.
12 (h) The guardian shall at least annually file a report concerning the
13 personal status of the ward as provided by K.S.A. 59-3029 and amend-
14 ments thereto.
15 Sec. 2. K.S.A. 1996 Supp. 59-3018a is hereby amended to read as
16 follows: 59-3018a. (a) *Except as provided in subsection* ~~(f)~~, a guardian may
17 file with the court a verified petition seeking authority to be able to admit
18 the guardian's ward to a treatment facility. Upon the filing of such peti-
19 tion, the court shall issue the following:
20 (1) An order fixing the time and place of the hearing on the petition.
21 The time designated in the order shall in no event be earlier than seven
22 days or later than 14 days after the date of the filing of the petition.
23 (2) An order that the ward appear at the time and place of the hearing
24 unless the court enters an order that the presence of the ward would be
25 injurious to the ward's welfare. The court shall enter in the record of the
26 proceedings the facts upon which the court has found that the presence
27 of the ward at the hearing would be injurious to the ward's welfare. Not-
28 withstanding the foregoing provisions of this subsection, if the ward or
29 the ward's attorney files with the court a written request that the ward
30 be present at the hearing, the ward's presence cannot be waived.
31 (3) An order appointing an attorney to represent the ward at all stages
32 of the proceedings. The court shall give preference, in the appointment
33 of the attorney, to any attorney who has represented the ward in other
34 matters if the court has knowledge of the prior relationship. The ward
35 shall have the right to choose and to engage an attorney and, in that event,
36 the attorney appointed by the court shall be relieved of all duties by the
37 court.
38 (4) An order that the ward appear at the time and place that is in the
39 best interest of the ward to consult with the court appointed attorney,
40 which time shall be prior to the hearing on the petition.
41 (5) Notice in the manner provided by subsections (a)(1)(A) through
42 (C), (a)(2) and (b) of K.S.A. 59-3012 and amendments thereto.
43 (b) At or after the filing of a petition pursuant to this section, the

(e)

who believes the ward is in need of psychiatric treatment

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court may issue the following:

(1) An order for mental evaluation in the manner provided by subsection (a)(6) of K.S.A. ~~59-3012~~ [59-3010] and amendments thereto.

(2) An order of continuance, for good cause shown, upon request of the petitioner, the ward or the ward's attorney.

(3) An order advancing the date of the hearing to as early a date as is practicable upon request of the ward or the ward's attorney.

(c) The hearing on a petition filed pursuant to this section shall be held at the time and place specified in the court's order unless an advancement or continuance has been granted. The hearing shall be to the court only. The petitioner and the ward shall be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. All persons not necessary for the conduct of the hearing may be excluded. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the ward. The court shall receive all relevant and material evidence which may be offered, including the testimony or written findings and recommendations of the treatment facility, hospital, clinic, physician or psychologist who has examined or evaluated the ward. Such evidence shall not be privileged for the purpose of this hearing.

If, upon the completion of the hearing, the court finds by clear and convincing evidence that the criteria set out in subsection (e) of K.S.A. 1996 Supp. 59-2946 and amendments thereto ~~or K.S.A. 76-12b03 and amendments thereto~~ are met, and after a careful consideration of reasonable alternatives to placement treatment, the court may enter an order granting such authority to the guardian as is appropriate, including continuing authority to readmit the ward to an appropriate treatment facility as may become necessary. Any such grant of continuing authority shall expire two years after the date of final discharge of the ward from such a treatment facility if the ward has not had to be readmitted to ~~that type of~~ a treatment facility during that two-year period of time. Thereafter any such grant of continuing authority may be renewed only after the filing of another petition in compliance with the provisions of this section. Any admission of the ward made pursuant to such authority shall be subject to periodic review in the manner set out in K.S.A. 1996 Supp. 59-2969 and amendments thereto.

(d) [Pursuant to the provisions of KSA 1996 Supp. 59-2949] ~~Except as otherwise provided by law~~, a ward may voluntarily consent to the ward's admission to a treatment facility if able ~~and permitted~~ to do so ~~according to the court's findings of fact set forth in the court's order issued at the conclusion of the hearing on the petition for guardianship~~.

~~(e) This section shall be part of and supplemental to the act for ob-~~

1 ~~taining a guardian or conservator, or both.~~
2 ~~(f)~~ (1) *A guardian may commit such guardian's ward to a treatment*
3 *facility over the objections of the ward if it appears to the guardian that*
4 *the* ~~*ward's ability to receive and evaluate information effectively or to*~~
5 ~~*communicate decisions, or both, is impaired to such an extent that the*~~
6 ~~*ward lacks the capacity to meet essential requirements for the ward's*~~
7 ~~*physical health, mental health or safety.*~~
8 *(2) The guardian shall file with the court, within 14 days, a verified*
9 *petition stating that the ward has been committed to the treatment facility.*
10 *(3)* ~~*Within 10 days of receiving the petition of the commitment, the*~~
11 ~~*court shall fix a time for a hearing.*~~
12 *(4) Notice shall be given to the ward named in the petition, the at-*
13 *torney of the ward and to such other persons as the court shall direct. If*
14 *the ward has a spouse, custodian or conservator, notice shall also be given*
15 *to such person. If the ward does not have an attorney, the court shall*
16 *appoint an attorney to represent the ward at all stages of the proceedings.*
17 *The court shall give preference, in the appointment of the attorney, to any*
18 *attorney who has represented the ward in other matters if the court has*
19 *knowledge of the prior relationship. The ward shall have the right to*
20 *choose and to engage an attorney and, in that event, the attorney ap-*
21 *pointed by the court shall be relieved of all duties by the court.*
22 *(5) The notice shall state:*
23 *(A) That a petition has been filed, alleging that the ward is* ~~*unable to*~~
24 ~~*receive and evaluate information effectively or to communicate decisions,*~~
25 ~~*or both, and is impaired to such an extent that the ward lacks the capacity*~~
26 ~~*to meet essential requirements for the ward's physical health, mental*~~
27 ~~*health or safety;*~~
28 *(B) the time and place of the hearing; and*
29 *(C) the name of the attorney appointed to represent the ward and the*
30 *time and place where the ward shall consult with such attorney.*
31 *(6) The notice shall be served personally on the ward and the attorney*
32 *of the ward, not less than five days prior to the date of the hearing and*
33 *immediate return thereof shall be made. Notice required to be given to*
34 *any other person shall be given in such manner and for such a period of*
35 *time as the court shall deem reasonable.*
36 *(7) Subsection (b) and (c) shall apply to the proceedings pursuant to*
37 *this subsection.*
38 *(8) Nothing herein shall prohibit the ward from receiving treatment*
39 *from the treatment facility during the time such ward is in the facility*
40 *pursuant to this subsection.*
41 Sec. 3. K.S.A. 59-3018 and K.S.A. 1996 Supp. 59-3018a are hereby
42 repealed.

(e)

ward is [a mentally ill person] [a mentally ill person subject to involuntary commitment for care and treatment] [either a mentally ill person or a mentally ill person subject to involuntary commitment for care and treatment] as definded in KSA 1996 Supp. 59-2946, and amendments thereto, except that no such ward shall be admitted to a state psychiatric hospital without a written statement from a qualified mental health professional authorizing such admission.

Upon the filing of a verified petition, the court shall fix a time and place of a hearing on the petition, which hearing shall be held not later than 10 days following the filing of the petition.

[a mentally ill person] [a mentally ill person subject to involuntary commitment for care and treatment] [either a mentally ill person or a mentally ill person subject to involuntary commitment for care and treatment] as definded in KSA 1996 Supp. 59-2946, and amendments thereto, and in need of continued placement in a treatment facility;

CARE AND TREATMENT ACT
FOR MENTALLY ILL PERSONS

59-2946. Definitions. When used in the care and treatment act for mentally ill persons:

(a) "Discharge" means the final and complete release from treatment, by either the head of a treatment facility acting pursuant to K.S.A. 1996 Supp. 59-2950 and amendments thereto or by an order of a court issued pursuant to K.S.A. 1996 Supp. 59-2973 and amendments thereto.

(b) "Head of a treatment facility" means the administrative director of a treatment facility or such person's designee.

(c) "Law enforcement officer" shall have the meaning ascribed to it in K.S.A. 22-2202, and amendments thereto.

(d) (1) "Mental health center" means any community mental health center organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015 and amendments thereto, or mental health clinic organized pursuant to the provisions of K.S.A. 65-211 through 65-215 and amendments thereto, or a mental health clinic organized as a not-for-profit or a for-profit corporation pursuant to K.S.A. 17-1701 through 17-1775 and amendments thereto or K.S.A. 17-6001 through 17-6010 and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto.

(2) "Participating mental health center" means a mental health center which has entered into a contract with the secretary of social and rehabilitation services pursuant to the provisions of K.S.A. 39-1601 through 39-1612 and amendments thereto.

(e) "Mentally ill person" means any person who is suffering from a mental disorder which is manifested by a clinically significant behavioral or psychological syndrome or pattern and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment.

(f) (1) "Mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e), who also lacks capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; mental retardation; organic personality syndrome; or an organic mental disorder.

(2) "Lacks capacity to make an informed decision concerning treatment" means that the person, by reason of the person's mental disorder, is unable, despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by an inability to weigh the possible risks and benefits.

(3) "Likely to cause harm to self or others" means that the person, by reason of the person's mental disorder: (a) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty; or (b) is substantially unable, except for reason of indigency, to provide for any of the person's basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person's ability to function on the person's own.

No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be a mentally ill person subject to involuntary commitment for care and treatment under this act unless substantial evidence is produced upon which the district court finds that the proposed patient is likely in the reasonably foreseeable future to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty.

(g) "Patient" means a person who is a voluntary patient, a proposed patient or an involuntary patient.

(1) "Voluntary patient" means a person who is receiving treatment at a treatment facility pursuant to K.S.A. 1996 Supp. 59-2949 and amendments thereto.

(2) "Proposed patient" means a person for whom a petition pursuant to K.S.A. 1996 Supp. 59-2952 or K.S.A. 1996 Supp. 59-2957 and amendments thereto has been filed.

(3) "Involuntary patient" means a person who is receiving treatment under order of a court or a person admitted and detained by a treatment facility pursuant to an application filed pursuant to subsection (b) or (c) of K.S.A. 1996 Supp. 59-2954 and amendments thereto.

(h) "Physician" means a person licensed to practice medicine and surgery as provided for in the Kansas healing arts act or a person who is employed by a state psychiatric hospital or by an agency of the United States and who is authorized by law to practice medicine and surgery within that hospital or agency.

(i) "Psychologist" means a licensed psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

(j) "Qualified mental health professional" means a physician or psychologist who is employed by a participating mental health center or who is providing services as a physician or psychologist under a contract with a participating mental health center, or a registered masters level psychologist or a licensed specialist social worker or a licensed master social worker or a registered nurse who has a specialty in psychiatric nursing, who is employed by a participating mental health center and who is acting under the direction of a physician or psychologist who is employed by, or under contract with, a participating mental health center.

(1) "Direction" means monitoring and oversight including regular, periodic evaluation of services.

(2) "Licensed master social worker" means a person licensed as a master social worker by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(3) "Licensed specialist social worker" means a person licensed in a social work practice specialty by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(4) "Registered masters level psychologist" means a person registered as a registered masters level psychologist by the behavioral sciences regulatory board under K.S.A. 74-5361 through 74-5373 and amendments thereto.

(5) "Registered nurse" means a person licensed as a registered professional nurse by the board of nursing under K.S.A. 65-1113 through 65-1164 and amendments thereto.

(k) "Secretary" means the secretary of social and rehabilitation services.

(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility or Topeka state hospital.

(m) "Treatment" means any service intended to promote the mental health of the patient and rendered by a qualified professional, licensed or certified by the state to provide such service as an independent practitioner or under the supervision of such practitioner.

(n) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, state psychiatric hospital, psychologist, physician or other institution or person authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

(o) The terms defined in K.S.A. 59-3002 and amendments thereto shall have the meanings provided by that section.

History: L. 1996, ch. 167, § 2; Apr. 18.

District Court of Kansas
Third Judicial District
Shawnee County Courthouse
200 East 7th Street
Topeka, Kansas 66603

Chambers of
Frank J. Yeoman Jr.
Judge of the District Court
Division Eight
Suite 310

Officers:
Ellen L. Hilbert, P.L.S.
Administrative Assistant
233-8200 ext. 4026
Robin J. Schuyler, C.S.R.
Official Reporter
233-8200 ext. 4078

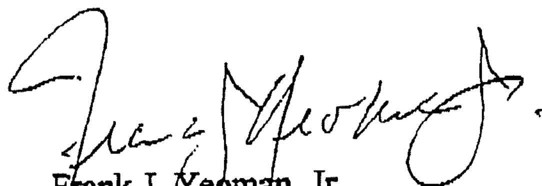
March 5, 1997

Joint House/Senate Committee
ATTN: Representative Carmody
Kansas Capitol
Topeka, KS 66612

Dear Representative Carmody & Committee:

I hope you will forgive me for not appearing personally, as I planned to do. I am a part of the Courthouse Safety Committee and, with the crisis we have to contend with, I find it essential to be a part of the meeting which is occurring at the same time as this hearing.

Sincerely,



Frank J. Yeoman, Jr.
JUDGE OF THE DISTRICT COURT

FJY:elh

House Judiciary
Attachment 8
3/5/97

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TESTIMONY BEFORE THE JOINT HOUSE/SENATE COMMITTEE

Ladies and Gentlemen:

I thank you for the opportunity to address the committee concerning House Bill 2364.

I am Frank Yeoman, District Judge in Shawnee County and the judge in charge of ongoing supervision of the hundreds of cases directly affected, or with potential to be affected, by the provisions of House Bill 2364.

I will get right to the point and tell you that my original intent was to oppose this bill because I understood it to be an attempt to undo, or limit, what was just accomplished in last year's Senate Bill 469, which was passed into law last April. Having reviewed the bill further, and having discussed it with some of my colleagues and others, I have come to see the concept of the bill differently and am stating here, today, that I <u>do not oppose</u> the concept reflected in this bill.

I would ask that you take a careful look at the bill's language of K.S.A. 59-3018(f)(1):

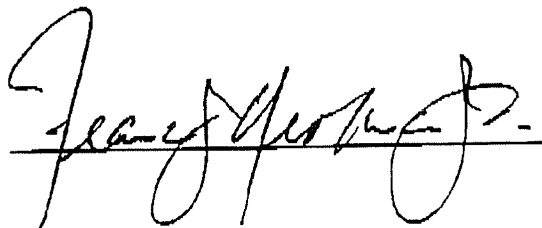
> . . . the ward's ability to receive and evaluate information effectively or to communicate decisions, or both, is impaired to such an extent that the ward lacks the capacity to meet essential requirements for the ward's physical health, mental health or safety.

and (5)(A):

> . . . alleging that the ward is unable to receive and evaluate information effectively or to communicate decisions, or both, and is impaired to such an extent that the ward lacks the capacity to meet essential requirements for the ward's physical health, mental health or safety;

and compare that language with that in the definition of a "disabled person" at K.S.A. 59-3002(a) which provides: "Disabled person" means any adult person whose ability to <u>receive and evaluate information effectively or to communicate decisions, or both, is impaired to such an extent that the person lacks the capacity to</u>. . .(handle finances) . . .meet essential requirements for such person's physical health or safety, or both.

My conclusion would be to simply ask, should there be some separate or additional finding that you would want us to make?



03/05/97 12:00 913 291 4908 CLERK DST COURT 003/003

Kansas Mental Illness Awareness Council .c.

Strength

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Executive Director
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Topeka, Kansas 66601
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Roxanna Lindquist
Ottawa

March 5, 1997

To: House Judiciary Committee
Chairperson Represenitive Tim Carmody
Vice Chair Represenitive Edward Pugh

Re: Testimony on House Bill 2364

Mr. Chairperson, I thank you for this opportunity to speak to you today. I am Lonny Lindquist, Executive Director of the Kansas Mental Illness Awareness Council (KMIAC), which is the state-wide consumer run organization (CRO). I speak for our membership, the consumers of Kansas.

I think this House Bill 2364 is appalling, it goes directly against everything that we have all worked for with Mental Health Reform since 1989. It opens many doors to abuse for the ward consumers of our state by use of intimidation, cohersion and out and out threats.

This bill without Sub Section F of K.S.A. 59-3018a as passed into law last year already states (as seen in this House Bill 2364 page 4 lines 26-30) **"and after careful consideration of reasonable alternatives to placement treatment, the court may enter an order granting such authority to the guardian as is appropriate*, including continuing authority to readmit the ward to an appropriate treatment facility as may become necessary."***

The current law allows the guardian this authority for two years, isn't that enough? Adding Subsection F allows so that, **without any due process**, a guardian could place its ward in a treatment facility for 14 days before even notifying the court and another possible 10 days before a hearing. That 24 days doesn't sound like much, but time is one thing in this life you can't replace and when you are forced someplace you don't want to be, 24 days can be a very long time that cannot be made up.

This could happen more times than I care to think if you pass this House Bill 2364. The temptation is too great for good guardians to turn into abusive ones using this Subsection F to control through intimidation and threats.

I ask that you **NOT** pass this bill.

Thank you for your time and consideration in hearing what I have to say. I hope this will serve to help in your decision making. I will be happy to answer any questions you might have.

Sincerely,

Lonny Lindquist

Lonny Lindquist
Executive Director of KMIAC

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House Judiciary
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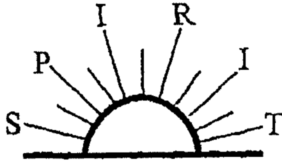
3/5/97



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Executive Director

SUPPORT PROGRAM FOR INDEPENDENT RESPONSIBLE INDIVIDUALS IN TRANSITION INC.
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William Smith
Office Manager

Steven Meisel
Secretary

To: House Judicary Committee
Chairman Representative Carmody

March 5, 1997

My name is Steven Meisel and I work for the Support Program for Independent Responsible Individuals in Transition Inc. (SPIRIT) as the office secretary.

I have recently read the House Bill numbered 2364 and I am appalled. The amendments to this bill being brought before you now have far reaching implications. This bill seems to remove all rights of the mentally ill who are under guardianship. In reading this bill and looking back, I see that anyone can be put into this situation. Being a person that is not involved in the mental health system I am quite concerned. For centuries people have been going on "Witch Hunts" and finding any reason to control other people. I see this bill as just that, a way to make a segment of the population seem unfit for normal society. This segment will then be segregated and told what to do and when to do it. This is similar to having Afro-Americans as slaves. At that point in our history they had no rights and if they ever showed any free will of their own they were punished. According to this bill a guardian can do the same. If the ward, at anytime, disagrees with the guardian, they can instantly have this person admitted to the hospital. The ward will have no way or right to speak out on his own behalf at that time, as a matter of fact he or she will not even be heard from, for up to 24 days after being admitted. I don't know about you, but I would be quite agitated at that, and would be trying to defend myself. This action would be considered out of the "norm" and used against me in the hearing when it finally came to pass.

The reason this concerns me so greatly is that according to earlier bills anyone can be classified unfit or "mentally ill" and thus be put under guardianship. So at anytime a so called "normal" person can be put into this segment of the population and thus lose all rights as an American Citizen. The term unfit applies not only to the mentally ill side, but also seems to apply to physical aspects. If a person has a dehabilitating medical disability they to can be put into guardianship. This can be related to a large part of the population. In guardianship they can be controlled and manipulated to a point where they are no longer a person but a robot. People like this can no longer be a functional part of society, so then they can be reclassified as mentally ill and further controlled. This is a never ending downward spiral that can only lead to a major problem.

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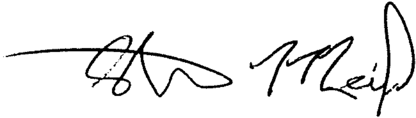
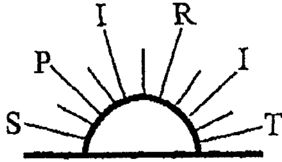
At this point in time the only people affected are the mentally ill. Do they not have any rights? This could blossom to all aspects of the population. I believe that it must be curtailed now before it gets out of control.

I believe that you should dismiss this bill, and that you should give people the right to decide the path of their own life and be a part of society rather than be segregated and a burden on it.

Thank you for your time and attention.



Steven Meisel
Office Secretary for SPIRIT INC.



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William Smith Office Manager
Steven Meisel Secretary

To: The House Judiciary Committee
Chairman Carmondy
Re: House Bill #2364

March 5, 1997

My name is William C Smith IV, the Office Manager For **SPIRIT Inc. CHDO** (Support Program for Independant Responsible Individuals in Transition Inc. Community Housing Development Organization) one of the CRO's (Consumer Run Organizations) in the state of Kansas. Frankly, I am surprised that House Bill # 2364 has gotten as far as it has. It seems to me that all the work that has been done on the Mental Health Reform was all for nothing.

If one day you were depressed or a little outside of what society calls "normal". How would you feel if someone decided that they didn't like the way you were acting and started the paperwork to have you committed involuntarily to the custody of a guardian and you were forced to go to a Community Mental Health Center (CMHC) on a daily basis. Can you hold down a job? No, because the court order says that you are to go to the CMHC 5 (five) days a week from 8:30a.m. until 4:00p.m. Now that you are going to the CMHC, two things will happen; first, you will gain the social stigma of being labeled mentally ill, and second you will lose your job. What happens when you lose your job? You would lose your house, probably your family and all because your spouse would have to support the family. Almose anything of value that you have you start selling, to help make both ends meet.

This court appointed guardian and you get into a heated discussion about you going to the CMHC instead of going to work. So this guardian decides to have you committed to a Mental Health Hospital and the guardian has you admitted while this guardian files the necessary paperwork. It takes 14 (fourteen) days for your name to come up on the docket. For the fourteen days that you were in the hospital the doctors, because of your enraged attitude at being committed against your will, have been over medicating you to, get you to act as a socially acceptable person. In a court room, with no jury, as somebody decided it was unnecessary, you stand before a judge and other Mental Health professionals who have seen you in the past two weeks and are currently over medicating you because there was nothing wrong with you in the first place, and try to come out of the fog that the medication has put on you. Now

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remember that you don't have the right to jury so the next couple of years of your life hinge upon the decision of some Mental Health professionals that have only seen you while you were enraged about the injustice done to you. These professionals have seen you for at most one hour in the past two weeks and think that they can decide whats good for you in your future.

Lets say that the best happens and you get out of the courtroom a free man, you still have the stigma of having once being classified as mentally ill. If the worst happens and you are committed, you lose everything, your spouse, your house, your car, everything.

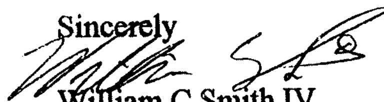
Guardianships, in my opinion, are nothing but trouble. If you give one person the power over another, in most cases the power will go to there heads. "Power corrupts" is an old adage that comes to mind. If you give a person that kind of power you are looking for trouble. Just like in the example I gave above, all that was wrong was that the guardian and the ward had a disagreement and the guardian got angry about it. Do we really want to put that kind of power in one persons hands? I think it would be a mistake. We haven't given that kind of power to anyone in over 100 (one hundred) years, and that caused a war, the Civil War.

As I understand this bill, it could not only be suitable for the mentally ill, but basically for anyone who doesn't act for there own safety or for their essential daily living skills. This includes smokers, the older generation that can't climb the stairs in their house, and people that drink alcohol. Now I think that covers most of the American population, and if this is so , then where are we going to get the guardians from?

In conclusion, I feel this bill is unfair and borders the side of being unconstitutional. We, as Americans, all have the same rights and privileges and the next person and this bill takes those rights and privileges away from the mentally ill and several other groups of people. Do we really have that right, or are we just trying to sweep a problem that we don't want to think about under the carpet? I think that it is utterly preposterous that this bill has gotten as far as it has, and that it needs to be stomped out before it gets any further and becomes a problem on our overburdened judicial system and society. There will be those who will take advantage of what this bill says to get what they want be it an easy divorce to getting even after a rather heated argument.

Thank you for the allowing me to state my views on this bill

Sincerely



William C Smith IV
Office Manager
SPIRIT Inc. CHDO

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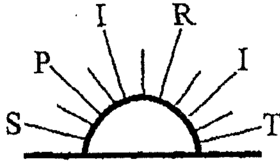

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To: House Judiciary Committee
Chairman Represenative Carmondy
Re: House Bill 2364

March 5, 1997

My name is Roxanna Lindquist, the Executive Director of **SPIRIT** Inc. **CHDO** (Support Program for Independent Responsible Individuals in Transition Inc. Community Housing Development Organization). Having been in this field for over 29 (twenty-nine) years and in being the Executive Director, I have seen consumers on conservatorship, guardianships, having payees, come and go. **SPIRIT** has had 5 (five) consumers placed in transitional housing with us on District Court orders. None of the 5 (five) court ordered consumers left **SPIRIT** on court orders, and all 5 (five) of these consumers are now living independently, not causing problems for or in their communities and all 5 (five) are voluntarily seeking services from their CMHC's (Community Mental Health Centers). If a CRO (Consumer Run Organization) can obtain this feat why can't the professional system do the same in as little time as we did, which was under a year in all 5 (five) cases.

House Bill #2364 implies that a guardian has the same experience as a mental health professional, if this is not what the bill says, I beg to differ, because in Section (f)(2) this bill states that any person has the right to put another person in any hospital, treatment facility and to decree medical services, even if not wanted by the ward.

Where is our freedom? The Jews had no rights in Germany because Hitler decreed it. The Blacks had no rights in being human beings until the Civil War freed the slaves, and still it took 100 (one hundred) more years for them to obtain their rights.

I thought we lived in the 20th Century, and that we were supposed to be compassionate, civilized people, but this bill proves that we live in the Dark Ages yet and that we are afraid of our brother, sister, mother, father, or any other relative, not to mention our neighbors or the person across the country. I don't know how you were taught but I was taught to love my fellow man, not to control him and this bill would do just that, "control".

How is it possible for you to say that a guardian should be able to make decisions

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about a wards life when that guardian could be a spouse (dating someone else, mad at the ward, or just wanting control) or a stranger, not understanding anything about the ward. Please tell me how the court could know what the guardian is thinking...are the courts mind-readers? I believe this puts a heavy burden on the judicial system and also allows the State to relieve a ward of up to 24 (twenty-four) lost days of their lives. Personally, I don't know of any unprofessional person that would be qualified to make these serious decisions about a wards health, mental state, or well-being. This ability takes years of training in life experiences or professionalism deemed necessary. We also understand trained people and professionals are "people" too, and like people, make mistakes in judgements.

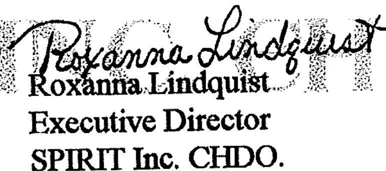
We all, black or white, professional or not, are human animals, subject to influences that make it easy to pass judgement over our fellow man, as long as we are not a part of the judgement. We call this the human touch, are we to be so humanly touched?

I believe, as do many of the people **SPIRIT** serves, that consumers of Mental Health, the physically challenged or ill, or any person should have the right to say what happens to their body and mind and to take that self-control away is bordering on controlling the masses like slavery or Hitlers concentration camps.

We control our pets, but should we control our brothers? At times it feels like we care more about our animals than we do for our fellow man. Personally, I would not want that kind of care or control

Thank you for your time end consideration in hearing what I have to say

Sincerely



Roxanna Lindquist
Executive Director
SPIRIT Inc. CHDO.

KANSAS ALLIANCE FOR THE MENTALLY ILL

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Testimony

To: House Judiciary Committee
From: Terry Larson, Kansas Alliance for the Mentally Ill
RE: House Bill 2364
Date: March 5, 1997

On behalf of the Kansas Alliance for the Mentally Ill and its president, Edward Moynihan of Concordia, I would like to take this opportunity to state our opposition to HB 2364.

Kansas AMI is proud to be counted among the major supporters of the 1990 Mental Health Reform law and its ongoing implementation. This bill appears contrary to the principle of reform, depriving the freedom of individuals who have not committed any crimes but are very, very ill. House Bill 2364 muddies the authority of the community mental health centers, which is where treatment decisions need to be made.

Last year the law was changed to allow guardians two-year commitment authority. However, the hearing must be held up front in order for commitment to occur. HB 2364, which allows for commitment without a hearing, seems not only unnecessary in light of the new law but also very punitive.

Remember, mental illnesses are physical disorders of the brain just like asthma is a disorder of the lungs. The key is humane and effective treatment tempered with a rational and enlightened approach to commitment when needed.

Thank you for allowing me to speak to you today.

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3/5/97

KAPS
KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.

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TO: House Judiciary Committee
FROM: Kansas Advocacy & Protective Services, Inc.
RE: House Bill 2364
DATE: March 5, 1997

Introduction

My name is Scott Letts. I am an attorney with Kansas Advocacy & Protective Services, Inc. (KAPS). KAPS is a federally funded nonprofit corporation. KAPS is the designated protection and advocacy agency for individuals with disabilities for Kansas. Each state and territory in the United States has a similar organization. KAPS' role is to advocate for the rights of individuals with disabilities. Pursuant to federal law, KAPS has authority to pursue resolution of disputes through legal, administrative, and other appropriate remedies. It is KAPS' belief that individuals should resolve disputes at the lowest level of intervention, if possible.

KAPS' Services

KAPS administers four federal programs: 1) Protection and Advocacy for Individuals with Developmental Disabilities (PADD), 2) Protection and Advocacy for Individuals with Mental Illness (PAIMI), 3) Protection and Advocacy for Individual Rights (PAIR), and 4) Protection and Advocacy for Assistive Technology (PAAT). Each program has a different federal funding source. KAPS averages approximately 125 requests for assistance each month. KAPS limits the number of cases it accepts for representation based on program priorities developed annually based on public comment. KAPS provides information, legal advice, and referrals to those individuals whose situation does not fall within program priorities.

PADD serves individuals who have a lifelong disability that manifests itself before age 22 and impairs three of seven life activities including mobility, learning, ability to live independently, language, economic self-sufficiency, self-care, and self-direction. KAPS' caseload is approximately 60% special education issues and 40% adults living in residential and community settings.

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PAIMI serves individuals with mental illness who are in 24-hour residential facilities or if an issue arises within 90 days of the individual's discharge from a residential facility. Because of the eligibility limitations imposed by federal law, the PAIMI program primarily serves individuals with mental illness admitted to one of the state psychiatric hospitals or who reside in nursing facilities.

PAIR serves "other" individuals with disabilities. PAIR can serve anyone with a lifelong disability who is not eligible for services under either PADD or PAIMI. Because KAPS does not have the funding to serve this large group, PAIR's priorities are generally limited to Americans With Disabilities Act issues, particularly access to state and local government services and access to public accommodations.

The Kansas University Affiliated Program at Parson administers the PAAT Program. KAPS performs the legal advocacy component of the program to advocate for individuals with disabilities to obtain assistive technology from public or private funding sources so that they can live and work independently in the community.

PROPOSED AMENDMENT TO KANSAS STATUTES § 59-3018a

KAPS believes that proposed amendment to Kan. Stat. § 59-3018a will create an unnecessary alternative form of commitment that is inconsistent with the care and treatment act (Kan. Stat. §§ 59-2945-2986). The amendment would allow a guardian to commit a ward to a treatment facility for an extended time (between 5 and 29 days) before a court hearing on the petition for commitment. This situation can occur whenever a guardian unilaterally decides that the ward's ability to receive and evaluate information is impaired and that the ward cannot provide for his or her physical health, mental health or safety. The proposed amendment would allow the guardian to make this determination without consulting a qualified mental health professional or anyone else.

This amendment creates an alternative procedure for emergency detention in treatment facilities that has few of the procedural safeguards the care and treatment act provides for emergency detention and civil commitment. Guardians will have authority under the amendment to commit their wards that the district court does not have under the care and treatment act. We view this proposed amendment, if passed, to be a serious infringement of individual rights.

THE AMOUNT OF TIME BEFORE JUDICIAL REVIEW IS EXCESSIVE

Under the proposed amendment, the guardian has 14 days to file a petition notifying the district court that he or she has committed the ward to a treatment facility (f)(2). Then the court has an additional 10 days to set a hearing date (f)(3), and finally, the court requires service of the hearing notice on the ward not less than 5 days before the hearing (f)(6). Adding these days, the hearing might not occur until the ward has been in a treatment facility for almost one month. Naturally, the best case scenario would occur when the guardian filed the petition on the same days as the commitment and the court scheduled a hearing 5 days later. We suspect that

guardians will rarely file the petition immediately.

Contrast the long periods described in the preceding paragraph with the time requirements of the care and treatment act. Emergency observation is authorized by Kan. Stat. § 59-2953 and § 59-2954 and may last only for a short time. Unless the treatment facility receives further orders from the court, it must discharge the individual at the end of the first day that the district court is open after the individual was admitted to the treatment facility.

Ex parte emergency orders the district court enters pursuant to Kan. Stat. § 59-2958 expire at the end of the second day that the district court is open after the individual was admitted to the treatment facility. Courts cannot issue successive ex parte orders.

A court generally orders a hearing to occur on a treatment petition within 7 to 14 days after the petitioner files the petition for commitment. Before the hearing, the individual does not stay in a treatment facility unless the court enters a temporary custody order as provided by Kan. Stat. § 59-2959. The court may enter a temporary custody order if a petition requests the order pending a hearing on a petition for commitment. The court must hold the hearing within 2 days after the petitioner requests the temporary custody order.

Under the care and treatment act, emergency orders and ex parte orders expire within 2 days and hearings for temporary custody orders also must occur within 2 days. Generally, the hearing on the commitment petition follows within 14 days. Under the proposed amendment, the guardian will merely have to inform the court that he or she has committed the ward within that time. We know of no reason that a commitment action a guardian initiates should move so slowly. Any individual facing a civil commitment should have an opportunity to appear before a court before a commitment of any substantial length of time occurs. The proposed amendment would allow commitment for a substantial length of time based only upon the guardian's decision that the ward should be in a treatment facility.

QUALIFIED MENTAL HEALTH PROFESSIONALS INVOLVEMENT

Throughout the care and treatment act is the idea that an individual should not be subjected to any form of involuntary commitment unless a qualified mental health professional has first evaluated whether the individual needs treatment in a psychiatric facility. The care and treatment act defines "qualified mental health professional" at Kan. Stat. § 59-2946(j). The proposed amendment ignores the "gatekeeper" role of these community mental health center staff persons.

Under the care and treatment act, no individual will be transported to a state psychiatric hospital for emergency observation unless a qualified mental health professional has authorized such an evaluation (Kan. Stat. § 59-2953 and § 59-2954). A statement from a qualified mental health or other appropriate professional that the individual is subject to involuntary commitment must accompany a petition for an ex parte order (Kan. Stat. § 59-2958(b). Courts will not enter temporary custody orders unless a qualified mental health professional has authorized admission to a state psychiatric facility (Kan. Stat. 59-2959(e)(2).

Obviously, the legislature by requiring evaluations by qualified mental health professionals throughout the care and treatment act, recognized the importance of involving community mental health centers in the commitment process. The proposed amendment, by cutting out mental health center involvement or at least not requiring the center's involvement, is contrary to the principles of mental health reform. The amendment violates an individual's right to an evaluation before any type of extended commitment in a treatment facility.

PROCEDURES ALREADY EXIST FOR EMERGENCY OBSERVATION AND TREATMENT

A procedure already exists in the care and treatment act that allows a guardian to obtain an emergency observation order and a temporary custody order that requires his or her ward to remain in an institution pending adjudication of a commitment petition. Kan. Stat. § 59-2954(c) provides that emergency observation can take place upon an application by "any individual." The statutory requirements of the application are reasonable and a guardian should have no trouble complying with the requirements if the ward is truly likely to harm himself or herself. One requirement is that the applicant must agree to file a petition for an involuntary commitment pursuant to Kan. Stat. § 59-2957. The petition for involuntary commitment can include a request for an ex parte order or a temporary order if the guardian believes either is necessary.

The procedures outlined in the preceding paragraph will allow a guardian to start a commitment action, if appropriate, and more importantly the procedures in the care and treatment act assure that the ward will not be detained in a treatment facility for many days or weeks without a hearing. Again, the proposed amendment does not offer any assurances of a speedy hearing, though the ward will remain at a treatment facility involuntarily.

CONCLUSION

KAPS does not believe that the Committee should recommend passage of the proposed amendment to Kan. Stat. § 59-3018a. The proposed amendment does not provide adequate provisions for a hearing within a reasonable time, nor does the amendment even address the involvement of the community mental health centers as required by the care and treatment act. Determining whether a ward's ability to receive and evaluate information or to express decisions is impaired to the extent that the ward lacks the capacity to meet essential requirements for physical health, mental health or safety is a complex decision. To give a guardian the authority to make that decision without a professional's evaluation is to give a guardian too much authority over another individual's life. Such authority is contrary to philosophy behind the Kansas guardianship laws. Another shortcoming is that the proposed amendment is that it attempts to create an emergency procedure especially for guardians to commit their wards to treatment facilities; the care and treatment act already provides a mechanism that a guardian could use in appropriate situations.

In short, KAPS believes that the proposed amendment to Kan. Stat. § 59-3018a and the amendment to subsection c the legislature passed last session (guardians given authority to readmit wards to treatment facilities without court approval) are steps backward. These provisions ignore the safeguards the legislature incorporated into the care and treatment act and

they give guardians the opportunity to be far too controlling of their wards. We also oppose the amendment and last year's amendment because they create a special commitment process that affects only wards and their guardians. During the involuntary commitment process, wards should have the same rights as individuals who do not have guardians. If this amendment passes, that will not be the case.

KAPS urges the Committee to not pass House Bill 2364. I want to thank the Chair for setting time aside for consideration of KAPS' comments.