

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Vice Chairperson Ward Loyd at 3:30 p.m. On February 28, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Geraldine Flaharty - Excused
Representative Kathe Lloyd - Excused
Representative Mike O'Neal - Excused
Representative Candy Ruff - Excused
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Chris Ross-Baze, Kansas Department Health & Environment, Child Care Licensing Division
Laura Howard, Assistant Secretary of Health Care Policy
Judge Sam Bruner, Kansas Judicial Council, Guardian & Conservator Subcommittee
Jean Krahn, Executive Director, Kansas Guardianship Program
Kirk Lowry, Topeka Independent Living Resource Center
Jim Germer, Kansas Advocacy & Protection Services
Whitney Damron, Kansas Bar Association
Dan Lykins, Kansas Trial Lawyers Association
Keith Landis, Christian Science Committee on Publication for Kansas

Hearings on **SB 66 - confidentiality of records, child in need of care**, were opened.

Chris Ross-Baze, Kansas Department Health & Environment, Child Care Licensing Division, explained that the proposed bill makes technical amendments to correct an error in referring to another statute. (Attachment 1)

Hearings on **SB 66** were closed.

Hearings on **SB 119 - mental health screening & placement**, were opened.

Laura Howard, Assistant Secretary of Health Care Policy, stated that it would be a requirement that community mental health screenings occur before child in need of care, juvenile offender and misdemeanor cases, be admitted to a state psychiatric hospital. The proposed bill would also clarify that neither a mental health professional nor a community mental health center be liable for an admission related decision. (Attachment 2)

John Randolph, Association of Community Mental Health Centers of Kansas, Inc., did not appear before the committee but provided written testimony, in which, he requested an amendment which would clarify the definition of "facility", and if it included mental health centers he requested that they be provided immunity from liability for performing related outpatient evaluation serviced. (Attachment 3)

Hearings on **SB 119** were closed.

Hearings on **SB 2469 - act for obtaining a guardian or a conservator or both**, were opened.

Judge Sam Bruner, Kansas Judicial Council, Guardian & Conservator Subcommittee, appeared as a proponent of the bill which contemplates a recodification of the act for obtaining a guardian or a conservator, or both. He provided the committee with a draft which shows the changes that the proposed bill makes in current law by strike-type and underscoring. At the bottom of each section is an explanation of the reason for the changes. (Attachment 4)

Written testimony was provided by Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, in support of the bill. ([Attachment 5](#))

Jean Krahn, Executive Director, Kansas Guardianship Program, was concerned with the provisions of the bill which removes SRS as surety on the bond for Kansas Guardianship Program (KGP) by making KGP serve as surety on the bond. The agency stressed that it does not have funds or legal resources to serve as surety. ([Attachment 6](#))

Kirk Lowry, Topeka Independent Living Resource Center, was opposed to using the word "impairment" because not every person who is impaired needs a guardian. He provided the committee with a list of twelve proposed amendments. ([Attachment 7](#))

Jim Germer, Kansas Advocacy & Protection Services, supported the concept of the bill but suggested that the committee consider everyone's suggestions which would make the bill even better. ([Attachment 8](#))

Whitney Damron, Kansas Bar Association, commented that because of the complexity of the bill, and lack of time for attorneys to evaluate all of its various provisions, it should be sent to an interim committee for further study. ([Attachment 9](#))

Dan Lykins, Kansas Trial Lawyers Association, suggested an amendment which would allow the courts to freeze monies so conservators couldn't use it and it would save unnecessary expenses and provides children with more money when they reach the age of 18. ([Attachment 10](#))

Keith Landis, Christian Science Committee on Publication for Kansas, requested an amendment that would include treatment by a spiritual means through prayer, in lieu of medical treatment. ([Attachment 11](#))

Hearings on **HB 2469** were closed.

The committee meeting adjourned at 5:45 p.m. The next meeting is scheduled for March 1, 2001.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

Testimony Concerning Senate Bill 66
to
House Judiciary Committee
Presented by
Christine Ross-Baze, Director
Child Care Licensing and Registration Section
Bureau of Consumer Health
February 28, 2001

Representative O'Neal and members of the House Judiciary Committee, I am pleased to appear before you today to discuss SB 66 and its impact on Kansas children.

Senate Bill 66 amends K.S.A. 38-1507 to correct an error in referencing another statute. K.S.A. 38-1507 (c)(12) and K.S.A. 38-1507(d)(9) reference K.S.A. **59-512** and the correct reference is K.S.A. **65-512**. In the 2000 Legislative session, Substitute HB 2224 amended the Child In Need of Care Code to allow the Kansas Department of Social and Rehabilitation Services to share information concerning child abuse investigations freely with the Kansas Department of Health and Environment and local health departments. **K.S.A. 65-512** is the correct reference in the Child Care Licensing Statutes to allow this free exchange of information.

The Department is concerned that if the error is not fixed there could be a challenge to the statutory authority to exchange information resulting in delays in investigations, duplication of fact finding, lack of cooperation between agencies and will ultimately hinder the Department's ability to protect children.

The Department supports Senate Bill 66. The Kansas Department of Health and Environment, the Kansas Department of Social and Rehabilitation Services and other agencies charged with protecting children should have free exchange of information.

I thank you for the opportunity to appear before the House Judiciary Committee and will gladly stand for questions the committee may have on this topic.

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary



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House Judiciary Committee

February 28, 2001

Testimony on Senate Bill 119

Health Care Policy
Laura Howard, Assistant Secretary
785.296.3773

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

House Judiciary Committee
February 28, 2001

Testimony in Favor of Senate Bill 119

Chairman O'Neal and members of the Committee, I am Laura Howard, Assistant Secretary for Health Care Policy in the Kansas Department of Social and Rehabilitation Services (SRS). Thank you for the opportunity to appear and testify today in support of Senate Bill 119.

SB 119 is the final piece in a series of statutory changes that have occurred since the Mental Health Reform Act was enacted in 1990. SB 119 extends to Children-in-Need-of-Care (CINC) cases, juvenile offender (JO) cases and misdemeanor cases the requirement that community mental health screenings occur prior to admission to state psychiatric hospitals. This will result in consistent admission criteria for all of the populations served at our state psychiatric hospitals.

SB 119 would require that before a court could order a person into one of our state psychiatric hospitals, the person would have to be either personally seen or their records and circumstances reviewed by a psychiatrist, psychologist or other qualified mental health professional employed by a participating Community Mental Health Center (CMHC). The purpose of this screening is to determine whether the needs of the person and the court's requirements can be met by community resources, rather than incurring the delays and expenses of placing the person in a state hospital.

If the CMHC determines that the person should be sent to a state psychiatric hospital, the CMHC must issue a written statement to the court and to the state psychiatric hospital and then arrange admission to the state hospital. Thereafter, the CMHC remains involved during the course of the patient's hospitalization and assists in the discharge and transfer of the person back to court and to any required follow-up care in the community.

Sections 1 through 6 of the bill deal with: competency to stand trial, commitments in cases of incompetency to stand trial, evaluations, and treatment in lieu of other dispositions after conviction. In felony cases, SB 119 does not change the direct commitment of persons to the state security hospital. However, in misdemeanor cases, SB 119 requires a written statement from a qualified mental health professional be filed with the court before a person charged with a misdemeanor may be admitted to a state psychiatric hospital. Typically when mental health issues are raised, the charges often involve trespassing, petty theft, simple assault, or disturbing the peace -- and are often a prelude to civil commitment proceedings. SB 119 will likely shorten the time between being charged with such crimes and the civil commitment proceeding at considerably less cost and delay.

Sections 10 thru 13 of the bill require the same process in juvenile offender cases.

Sections 7 thru 9 of the bill provide for CMHC screenings in child-in-need-of-care cases and juvenile offender cases when evaluations and possible inpatient psychiatric treatment of those children are considered. We believe that only in rare cases and when it is absolutely necessary, should children be sent to a state hospital. We have and are continuing to require CMHCs to expand their capacity to serve children in their homes and communities. The requirements of this bill would foster that progress.

The other thing that you may notice about this bill is that where the word “institution” appears in current law it is replaced with the term “facility.” We wish to no longer convey the message that mental health treatment should be provided in a place far away from home, where people are segregated away from society, and remain there for long periods of time. Rather, we wish to convey the message that treatment should be provided in a facility which is appropriate to the person’s needs. Such treatment may be outpatient in nature and integrated in the local community or short term treatment on an inpatient basis.

Additionally, the bill adds language that would provide immunity from liability for CMHCs. Community mental health centers not considered governmental entities are not currently covered under the tort claims act. This bill would provide immunity from liability for decisions to authorize or not authorize admission to state psychiatric hospitals in the instance of proceedings under the child in need of care or juvenile offender code, or in misdemeanor cases. Specifically, the bill clarifies that neither the professional or the facility would be liable for admission-related decisions.

The immunity granted in this bill is narrow, applying only to proceedings under the juvenile offender or child in need of care code or related to misdemeanor offenses. This immunity from liability is not currently in place, nor does this bill put it in place, for related outpatient evaluation and treatment services. This is not unprecedented. For example, statutes for the Juvenile Justice Authority specifically provide their contractors protection from liability.

Thank you for your consideration of this bill. I would be happy to answer any questions.



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Written Testimony to the House Judiciary Committee

February 28, 2001

Provided by John G. Randolph, Ph.D.

I am a clinical psychologist, and have been with the Mental Health Center of East Central Kansas since 1973. I am particularly interested in issues of psychology and the law.

The Association of Community Mental Health Centers of Kansas supports Senate Bill 119. It is our understanding that the bill requires that a qualified mental health professional screen certain adults and juveniles before they could be committed by a court to a state psychiatric hospital. The adults addressed in the bill are those involved in various criminal proceedings, and the children and adolescents are those either involved in child in need of care or juvenile justice proceedings. As this screening is consistent with civil care and treatment law, and as we have been told that the likely numbers of screenings are not large, community mental health centers are willing to perform these duties with current resources.

However, we would like clarification of the term "facility" as used throughout the bill. In the Care and Treatment Act for Mentally Ill Persons, the definition of "Treatment Facility" includes mental health centers (K.S.A. 59-2946), and centers occasionally do determination of mental illness evaluations on an outpatient basis. If centers are included in the definition of "facility" in S.B. 119, then it is likely that courts will commit some defendants to centers for outpatient evaluation or treatment. While staff of centers have had training regarding competency to stand trial evaluations, they are not accustomed to doing the sort of pre-sentence evaluations referred to in the bill. We believe that SRS should provide that focused training, should centers begin doing these evaluations.

We appreciate the immunity from liability that the bill provides in reference to performing screenings, particularly screenings of persons involved in criminal proceedings. Should the definition of "facility" include mental health centers, we would request an amendment to provide immunity from liability for performing related outpatient evaluation services.

Finally, we would ask you to consider amending the Care and Treatment Act to provide similar immunity to community mental health centers and staff for the screening and outpatient commitment work they do on behalf of Kansas citizens. It is remarkable to note that in 1990 there were over a thousand state hospital psychiatric beds, and now there are 375. The care and treatment and forensic work done under state tort immunity protections have been substantially transferred to community mental health centers, but without such protection.

Patricia Murray
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John Randolph
Treasurer
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Pete Zevenbergen
Member at Large
Kansas City

David Wiebe
Past President
Mission

House Judiciary
2-28-01
Attachment 3

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Guardians and Conservators

HB 246A Sec. #

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5	59-3004	Right to nominate guardian or conservator, or both.
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- 40 59-3026h Order to show cause for failure to fulfill duties of guardian or conservator; removal; forfeiture of conservator's bond; bench warrant.
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- 59-3030 *Repealed
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- 43 59-3031a Confidentiality of medical records and reports.
- 44 59-3032 Costs of proceedings; payment.
- 59-3033 Repealed
- 45 59-3033a Effect of 2001 amendments.
- 59-3034 ~~Invalidity of part.~~ *Repealed
- 59-3035 *Repealed
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- 59-3037 *Repealed
- 59-3038 *Repealed
- 59-3039 *Repealed
- 77 59-3039a ~~Invalidity of part~~
*Repealed by suggestion of the committee.

General Comment concerning the proposed amendments to the Guardianship & Conservatorship Act:

These suggested amendments, recommended to the 2001 Session of the Legislature by the Judicial Council, represent significant modifications to the current guardianship and conservatorship act. They include the outright repeal of 25 sections of the current law, an addition of 33 new sections, and amendments and modifications to every other section of the current law which would be carried over if this proposal were adopted. In most instances, the 25 repealed sections are replaced by substantially modified and revised sections concerning the same basic subject matter, however 12 of the proposed new sections provide for matters wholly unprovided for in the current code. This magnitude of change is not surprising when it is noted that the current code dates from 1965. While amendments and additions have been made to the '65 code over the years, including substantial amendments in 1983, they have been unable to keep up with the rapid changes which have occurred in the areas of personal civil rights, advancements in medical science, and the explosion in the number of cases which are being filed under the guardianship & conservatorship law owing to the aging of society and the addition of federal mandates in the area of disability rights.

The Judicial Council's Guardianship & Conservatorship Advisory Committee spent over 2 ½ years considering these suggested amendments and recommends them to the Legislature for adoption. The committee believes that these suggested amendments would significantly strengthen our code and carry the act forward for the next generation of Kansans.

This proposal utilizes "person first" language to emphasize the rights and dignity of the persons whose lives the code is intended to assist. The committee recognizes that as society ages, as science prolongs life, and as newly available services add to the quality of life for the seriously impaired, the more likely it has become that most of us will encounter the guardianship &

conservatorship laws at some point near the end of our lives, or will encounter those laws in caring for members of our extended families. This proposal is based on the concept of preserving to the ward or conservatee the greatest degree of personal independence possible, even in the face of disabling conditions.

This proposal is built around the six circumstances under which the committee found these cases to be filed. Two of these circumstances are wholly unprovided for in the current code. (The circumstances of minors with a permanent impairment, and that of an impaired person being moved into Kansas by a guardian who was appointed in another state.) The other four circumstances (voluntary conservatorships, adults with an impairment, minors and ancillary proceedings) are generally lumped together in the current law without much recognition that they derive from very different points. This proposal separates out each of these six circumstances, provides for their own petitions, and makes clear what evidence must be shown before the law will allow involvement in a person's affairs.

This proposal is further built upon a two prong formula for judicial involvement: 1) the showing of a serious impairment to a person's ability to meet for themselves basic needs for survival or for handling their estate, and 2) lack of some other non-judicial means of meeting those needs. Where persons can provide for themselves, even when unable to personally perform certain tasks on their own, no need exists for the state's courts to become involved, and under this proposal, that concept of need for involvement takes equal footing with the fact of impairment.

Significant features of this proposal include:

- provisions concerning time computations, particularly necessary because of the short time period involved between the filing of a petition and the trial (59-3002a) *Sec. 3*
- reinforcement of the concept that neither guardianship nor conservatorship relieves the

- natural parents of their parental obligation to support their minor children (59-3003) *Sec. 4*
- significant increases (in line with inflation since 1965) in the dollar values of small estates which can be administered without resort to a formal conservatorship (59-3005a) *Sec. 6*
- provisions for insuring that these cases are heard in a place most appropriate to the circumstances of the ward or conservatee (59-3009a, 59-3009b, 59-3009c, 59-3009d, 59-3009e, 59-3016a, 59-3017a, 59-3018d, and 59-3027a) *Secs. 9-13, 22, 23, 28 + 41*
- allowance for, and even the authority for the court to require that, the petitioner obtain in advance of filing the case a functional assessment and evaluation of the proposed ward or conservatee in sufficient detail so that issues of both impairment and need can be fully explored (59-3009a, 59-3009c and 59-3010a) *Secs. 9, 11 + 15*
- provisions allowing the court to excuse the presence of the proposed ward or conservatee from the trial when that person could not meaningfully participate (59-3010) *Sec. 14*
- specification with regard to when and under what circumstances temporary guardians or conservators may be appointed and what authorities they would have (59-3017b) *Sec. 24*
- provisions for co-guardians and co-conservators and stand-by guardians and stand-by conservators which clarify and structure these functions (59-3009a, 59-3009b, 59-3009c, 59-3009d, 59-3009e, 59-3017c and 59-3026f) *Secs. 9-13, 25 + 38*
- a requirement for designation of a resident agent for guardians and conservators who reside out of state (59-3014a) *Sec. 20*
- provisions more specifically setting out the powers and responsibilities of guardians and conservators, including guardians' authority with regard to end-of-life matters (59-3018b and 59-3019a) *Sec. 26 + 29*
- allowance for, and even the authority for the court to require that, the guardian or conservator

file with the court a plan for how the guardian or conservator intends to carry out their duties and responsibilities and for how and when the ward or conservatee will be encouraged and permitted to act with independence (59-3018c and 59-3019b) *Sec. 27 + 30*

- authority for a guardian to handle small estates for their wards, subject to court supervision, without the necessity for a formal conservatorship (59-3018b) *Sec. 26*
- authority for the conservator to suggest to the court, and for the court to provide for, the establishment of benefits qualifying trusts and for an extended distribution of conservatorship assets in the case of a minor becoming 18 years old (59-3019c and 59-3019d) *Sec. 31 + 32*
- enhanced provisions for meaningful and timely reviews that are likely to catch problem cases without burdening the system with required perfunctory reviews in cases where there are no disputes (59-3026b, 59-3026c and 59-3026d) *Secs. 34-36*
- enforcement and bond forfeiture provisions and contempt of court procedures to deal with guardians or conservators who fail to perform their duties or who take advantage of their ward or conservatee, tempered with corrective measures for inadvertent misuses of the ward's or conservatee's estate (59-3026e, 59-3026f, 59-3026g and 59-3026h) *Secs. 37-40*
- allowance for the assessment of costs against those parties who are either responsible for the ward or conservatee, or who unnecessarily litigate claims within the guardianship or conservatorship (59-3026a and 59-3032) *Sec. 33 + 44*
- provision for keeping confidential medical information which would otherwise be confidential except for the fact of guardianship or conservatorship proceedings (59-3031a) *Sec. 43*

1 *Sec. 2* **59-3002. Definitions.** When used in the act for obtaining a guardian or a conservator, or
 2 both:

3 ~~(a) "Disabled person" means any adult person whose ability to receive and evaluate~~
 4 ~~information effectively or to communicate decisions, or both, is impaired to such an extent that the~~
 5 ~~person lacks the capacity to manage such person's financial resources or, except for reason of~~
 6 ~~indigency, to meet essential requirements for such person's physical health or safety, or both. A~~
 7 ~~person shall not be considered to be disabled or to lack capacity to meet the essential requirements~~
 8 ~~for physical health or safety for the sole reason such person relies upon or is being furnished~~
 9 ~~treatment by spiritual means through prayer, in lieu of medical treatment, in accordance with the~~
 10 ~~tenets and practices of a recognized church or religious denomination of which such person is a~~
 11 ~~member or adherent.~~

12 ~~—— (b) "Manage financial resources" means those actions necessary to obtain, administer and~~
 13 ~~dispose of real and personal property, intangible property, business property, benefits and income.~~

14 ~~—— (c) "Meet essential requirements for physical health or safety" means those actions necessary~~
 15 ~~to provide the health care, food, shelter, clothing, personal hygiene and other care without which~~
 16 ~~serious physical injury or illness is more likely than not to occur.~~

17 (a) "Adult with an impairment in need of a guardian or a conservator, or both" means a
 18 person 18 years of age or older, or a minor who is considered to be of the age of majority pursuant
 19 to K.S.A. 38-101, and amendments thereto, or upon whom the rights of majority have been conferred
 20 pursuant to K.S.A. 38-108, and amendments thereto, whose ability to receive and evaluate relevant
 21 information, or to effectively communicate decisions, or both, even with the use of assistive

1 technologies or other supports, is impaired such that the person lacks the capacity to manage such
2 person's estate, or to meet essential needs for physical health, safety or welfare, and who is in need
3 of a guardian or a conservator, or both.

4 (b) "Conservatee" means a person who has a conservator.

5 (c) "Conservator" means an individual or a corporation who is appointed by the court to act
6 on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in
7 K.S.A. 59-3019a and amendments thereto.

8 (d) "Guardian" means an individual, a corporation or a nonprofit corporation certified in
9 accordance with K.S.A. ~~59-3037~~ 59-3014b and amendments thereto, who or which has been
10 appointed by a court to act on behalf of a ward, and who or which is possessed of some or all of the
11 powers and duties set out in K.S.A. ~~59-3018~~ 59-3018b and amendments thereto. "Guardian" does
12 not mean a "natural guardian" unless specified.

13 (e) "In need of a guardian" means a person who because of both an impairment and the lack
14 of appropriate alternatives for meeting essential needs, requires the appointment of a guardian.

15 (f) "In need of a conservator" means a person who because of both an impairment and the
16 lack of appropriate alternatives for managing such person's estate, requires the appointment of a
17 conservator.

18 (g) "Manage such person's estate" means making those determinations and taking those
19 actions which are reasonably necessary in order for a person to receive and account for personal or
20 business income, benefits and property, whether real, personal or intangible, and except for reasons
21 of indigency, to purchase or otherwise obtain necessary goods or services, to pay debts and expenses,

1 to sell, exchange or otherwise dispose of property, and to plan for future accumulation, conservation,
2 utilization, investment, and other disposition of financial resources.

3 (h) "Meet essential needs for physical health, safety or welfare" means making those
4 determinations and taking those actions which are reasonably necessary in order for a person to
5 obtain or be provided with shelter, sustenance, personal hygiene or medical care, and without which
6 serious illness or injury is likely to occur.

7 (i) "Minor" means any person defined by K.S.A. 38-101 and amendments thereto as being
8 within the period of minority.

9 (j) "Minor with an impairment in need of a guardian or a conservator, or both" means a
10 person under 18 years of age who otherwise meets the definition of an "adult with an impairment
11 in need of a guardian or conservator, or both" and whose impairment is expected to continue beyond
12 the age of 18.

13 (e) (k) "Natural guardian" means both the biological or adoptive mother and father and
14 mother of a minor if neither parent has been found to be a disabled person an adult with an
15 impairment in need of a guardian or has had parental rights terminated by a court of competent
16 jurisdiction. If either parent of a minor dies is deceased, or has been found to be a disabled person
17 an adult with an impairment in need of a guardian or has had parental rights terminated by a court
18 of competent jurisdiction, then the other parent shall be the natural guardian, unless also deceased,
19 or found to be an adult with an impairment in need of a guardian, or has had parental rights
20 terminated by a court of competent jurisdiction, in which case no person shall qualify as the natural
21 guardian.

1 (f) "~~Conservator~~" means an individual or a corporation who is appointed by the court to act
2 on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in
3 K.S.A. ~~59-3019~~ and amendments thereto.

4 (g) "~~Minor~~" means any person defined by K.S.A. ~~38-101~~ and amendments thereto as being
5 within the period of minority.

6 (l) "Person who has been previously adjudged as impaired in another state" means a person
7 who has been duly adjudged by a court of competent jurisdiction of any other state to be unable to
8 meet essential needs for physical health, safety or welfare or to manage such person's estate and for
9 whom a guardian or a conservator, or other similarly empowered fiduciary, has been appointed by
10 that court, but who now resides within Kansas or for whom plans have been made by such person's
11 guardian or other fiduciary to relocate the person to Kansas.

12 (m) "Person in need of an ancillary conservator" means a person not residing within Kansas,
13 who has been duly adjudged by a court of competent jurisdiction of another state to be unable to
14 manage such person's estate and for whom a conservator or other fiduciary of the person's estate
15 has been appointed by that court.

16 (h) (n) "Proposed ward" means a person for whom a petition for the appointment of a
17 guardian pursuant to K.S.A. ~~59-3006~~ 59-3009a, 59-3009b, 59-3009c or 59-3009d, and amendments
18 thereto, has been filed.

19 (i) (o) "Proposed conservatee" means a person for whom a petition for the appointment of
20 a conservator pursuant to K.S.A. ~~59-3006~~ 59-3009a, 59-3009b, 59-3009c, 59-3009d or 59-3009e,
21 and amendments thereto, has been filed.

1 (j) (p) "Ward" means a person who has a guardian.

2 (k) "~~Conservatee~~" means a person who ~~has a conservator~~.

3 (l) (q) The terms defined in K.S.A. ~~1996 Supp. 59-2946~~ and 59-29b46, and amendments
4 thereto, have the meanings provided by ~~that statute~~ those statutes.

5
6 Comment

7 The key definition found in subsection (a) of an "adult with an impairment
8 in need of a guardian or a conservator, or both" replaces the current term, "disabled
9 person," and clarifies that a two-prong question is involved in both guardianships and
10 conservatorships: (1) are the person's abilities impaired? and (2) is there a need for
11 judicial involvement in the person's affairs? The entire act is built around the
12 concept that, if measures short of establishing a guardianship or conservatorship can
13 be utilized to assist a person whose abilities are impaired, then those measures should
14 be employed first. "Person first" and empowerment language is used so as not to
15 convey disparagement of persons who, while impaired, should not be viewed first
16 and foremost as disabled.

17 Remaining definitions are to apply to the six circumstances under which a
18 guardian or conservator may be appointed. All definitions are listed in alphabetical
19 order for ease of reference.
20

Sec. 3

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59-3002a. Computation of time. In computing the date upon or by which any act must be done or hearing held under provisions of this article, the day on which an act or event occurred and from which a designated period of time is to be calculated shall not be included, but the last day in a designated period of time shall be included unless that day falls on a Saturday, Sunday or legal holiday, in which case the next day which is not a Saturday, Sunday or legal holiday shall be considered to be the last day.

Comment

This section is identical to K.S.A. 59-2947 and clarifies the calculation of time periods used within the act. This clarification is important because issues presented in a guardianship or conservatorship proceeding need to be resolved quickly in order to preserve the integrity of a person's independence.

1 Sec. 4

59-3003. Natural guardian; powers and duties. (a) A natural guardian shall have the

2 right to the custody of the natural guardian's minor child and the right to exercise control over the
3 person of the natural guardian's minor child as provided by law, unless a guardian has been
4 appointed for the minor. The natural guardian of such minor has the right and ~~duty~~, responsibility
5 to hold in trust and manage such person's estate for the his or her benefit of the minor, to
6 manage, mortgage, sell or otherwise dispose of all of the personal estate and real property vested
7 in such minor when the total of such estate property does not exceed ~~\$5,000~~ \$10,000 in value,
8 unless a guardian or conservator has been appointed for the minor.

9 (b) Nothing in this Act shall be construed to relieve a natural guardian of any obligation
10 imposed by law for the support, maintenance, care, treatment, habilitation or education of that
11 natural guardian's minor child.

12
13 Comment

14 The value of an estate not requiring judicial intervention is increased from
15 \$5,000 to \$10,000 because of inflation since the original enactment of this
16 provision, and from the "need and alternative measures" second prong of the
17 theory upon which the act is built.

Sec. 5 **59-3004. Right to nominate guardian or conservator, or both.** (a) Any natural

guardian, by last will, may nominate a conservator of only that portion of the estate of such guardian's minor ~~children~~ child, whether born at the time of the making execution of the will or afterwards, which is devised or bequeathed by such natural guardian to the child.

(b) A surviving natural guardian, by last will or by a trust instrument establishing an inter vivos trust, may nominate a guardian or conservator, or both, for any of such guardian's minor children, whether born at the time of the making execution of the will or trust instrument or afterwards.

(c) The nominated guardian or conservator, ~~so nominated~~, if a fit and proper person, shall ~~be appointed~~ strongly considered by the district court to be appointed pursuant to K.S.A. 59-3014 and amendments thereto if it is found, during the hearing trial held pursuant to K.S.A. 59-3013, and amendments thereto, that a guardian or conservator, or both, should be appointed for the minor ~~children~~ child of the testator or settlor.

Comment

The amendment in subsection (c) regarding nomination and appointment is consistent with the amendments to section 59-3014 which provide that the court shall consider the suggestions of various interested persons in appointing a guardian or conservator, but that final selection of an appropriate guardian or conservator is left to the discretion of the court.

This section has been restructured for ease of use and understanding.

11-3-00

1 **59-3005. Repealed.**

2

3

4

Sec. 6 **59-3005a. Small estates; investment; ~~bond requirements~~, exception disposition.** (a)

2 Any court having either control over or eustody possession of any amount of money not
 3 exceeding ~~\$5,000~~ \$50,000, the right to which is vested in a minor, shall have the discretion to
 4 authorize, without the appointment of a conservator or the giving of bond, and notwithstanding
 5 ~~the provisions of the authority of a natural guardian as provided for in~~ K.S.A. 59-3003 and
 6 amendments thereto, ~~(1) the deposit of the money in a savings account of a bank, credit union or~~
 7 savings and loan association, payable either to the a conservator when, if one shall be appointed
 8 for the minor, or to the minor upon attaining the age of majority 18 years; ~~or (2) the payment of~~
 9 ~~the money to any person, including the natural guardian of the minor or the minor. If paid to a~~
 10 ~~person other than the minor, the person to whom the money is paid shall have the right and duty~~
 11 ~~to manage, invest or otherwise dispose of the moneys for the benefit of the minor. If the minor is~~
 12 ~~a conservatee, the court may authorize the payment of the money to the conservator of the minor~~
 13 ~~without requiring the giving of bond.~~

14 (b) Any court having either control over or possession of any amount of money not
 15 exceeding \$10,000, the right to which is vested in a minor, shall have the discretion to order the
 16 payment of the money to any person, including the natural guardian of the minor, or the minor.
 17 If the person is the conservator for the minor, the court may waive or recommend the waiver of
 18 the requirement of a bond. If the person is anyone other than the minor, the court shall order that
 19 person to hold in trust and manage such person's estate for his or her benefit.

20 ~~(b)~~ (c) Any court having either control over or eustody possession of any amount of
 21 money not exceeding ~~\$5,000~~ \$10,000, the right to which is vested in a person ~~who has been~~

1 ~~adjudged to be a disabled person~~ for whom a guardian has been appointed, shall have the
 2 discretion to authorize, without the appointment of a conservator or the giving of bond, the
 3 deposit of the money in a savings account of a bank, credit union or savings and loan association,
 4 payable to the guardian for the benefit of the ward if authorized pursuant to K.S.A. 59-
 5 3018b(e)(9) and amendments thereto, payable to a conservator when , if one shall be appointed
 6 for the person, or payable to the disabled person ward on restoration to capacity. ~~If the disabled~~
 7 ~~person is a conservatee, the court may authorize the payment of the money to the conservator of~~
 8 ~~the disabled person with the giving by the conservator of a personal bond.~~

10 Comment

11 This section was brought over from 59-3015. Even though it will be an
 12 entirely new section in the bill, it is shown here in strike-type and underscoring to
 13 show the changes the committee made in current law.

14 In subsection (a), the value of funds which may be conserved without
 15 automatic resort to a conservatorship is increased from \$5,000 to \$50,000 because
 16 of inflation since the original enactment of this provision, and to give substance to
 17 new subsection (b).

18 Subsection (b) is consistent with the amendments to subsection 59-3004
 19 and with the "need" prong of the theory upon which the act is built.

20 Subsection (c) allows the payment of funds to a guardian. This is
 21 consistent with other provisions throughout the act allowing small estates to be
 22 handled more informally than a full conservatorship.

~~59-3006. Persons for whom a guardian or conservator may be appointed.~~ The

2 ~~district court having jurisdiction and venue of the proceedings may appoint:~~

3 ~~—— (a) A guardian for~~

4 ~~—— (1) a disabled person who lacks the capacity to meet essential requirements for such~~
5 ~~person's physical health or safety, or both;~~

6 ~~—— (2) a minor;~~

7 ~~—— (b) A conservator for~~

8 ~~—— (1) an adult who has filed a petition pursuant to K.S.A. 59-3007 and amendments thereto;~~

9 ~~—— (2) a disabled person who lacks the capacity to manage such person's financial resources;~~

10 ~~—— (3) a minor.~~

11
12 Comment

13
14 This section is deleted as unnecessary.
15

1 *Sec. 7* **59-3007. Voluntary application petition for the appointment of a conservator.** ~~Any~~

2 An adult person who is neither an adjudged disabled person nor is for whom no guardian or
 3 conservator has been appointed, and who is not a proposed ward or a proposed conservatee may
 4 file in the district court of the county of residence of such person a verified petition for
 5 requesting the appointment of a conservator for the petitioner. The petition shall state include:

6 (1) The person's name, age, date of birth, address of permanent residence, and present
 7 address or whereabouts, if different from the person's permanent residence of the petitioner;

8 (2) the reasons for the factual basis upon which the person alleges the need of for the
 9 appointment of the a conservator;

10 (3) the name, and address, and relationship to the person, if any, of the person to be
 11 appointed individual or corporation whom the person requests that the court appoint as the
 12 conservator and whether such individual or corporation should be required to file a bond. If the
 13 proposed conservator is under contract with the Kansas guardianship program, the petition shall
 14 state that fact;

15 (4) a request that the court make a determination that there is a need for the appointment
 16 of a conservator and that the court appoint a conservator;

17 (5) the names and addresses of the relatives nearest in kinship to the person;

18 (6) the general character and probable value of the real and personal property, including
 19 the amount and sources of income, of the person;

20 (7) the name, address of any existing fiduciary for the person and a description of that
 21 fiduciary relationship.

Comment

2 This section describes the first of the six circumstances under which a
3 petition for conservatorship might be filed. In this section, as throughout the act,
4 the contents of the petition are clearly specified to include the kinds of
5 information useful to the court's adjudication of the issues presented by the
6 petition. The petitioner may state whether the individual or corporation requested
7 to be the conservator should be required to file a bond.

1 *Sec. 8* **59-3008. Same; procedure.** Upon the filing of the a petition as provided for in K.S.A.

2 59-3007 and amendments thereto, the court shall issue an order fixing the date, time and place of
 3 the hearing trial on the petition, ~~which~~ and order that notice of this trial shall be given to such
 4 persons as the court shall direct. The hearing trial may be held forthwith and ~~with or~~ without
 5 notice ~~as the court shall direct~~ if the court determines that holding a trial forthwith and without
 6 notice is in the best interests of the petitioner. If Upon completion of the hearing trial, if the
 7 court finds that the petitioner has knowingly and voluntarily ~~requested the appointment~~ made this
 8 request and that it is in the best ~~interest~~ interests of the petitioner that a conservator be appointed
 9 ~~for such petitioner,~~ the court shall, upon the filing of an oath ~~according to law and of a bond;~~ in
 10 such an amount as the court may direct pursuant to K.S.A. 59-3014a and amendments thereto,
 11 issue letters of conservatorship to the ~~person~~ individual or corporation named in the petition, if a
 12 fit and proper ~~person~~ to be so appointed.

13
 14 Comment

15 The amendments are offered for clarification. The order of the statute was
 16 reversed to emphasize the order of notice.
 17

59-3009. Application for appointment of guardian or conservator; contents;

~~transcript of adjudication of incapacity in another state. Any person may file in the district court of the county of the residence or presence of the proposed ward a verified petition for the appointment of a guardian. Any person may file in the district court of the county of the residence of the proposed conservatee a verified petition for the appointment of a conservator. If the proposed conservatee resides without the state, such petition may be filed in any county in which any of the property of the proposed conservatee is situated.~~

~~_____ (a) If the proposed ward or proposed conservatee is alleged to be a disabled person the petition shall state:~~

~~_____ (1) The petitioner's belief that the proposed ward or proposed conservatee is a disabled person;~~

~~_____ (2) the name, age, residence and present address of the proposed ward or proposed conservatee, if known to the petitioner;~~

~~_____ (3) the name and address of the nearest relatives of the proposed ward or proposed conservatee, if known to the petitioner and if not known, that the petitioner has made diligent inquiry to learn the name of such relatives;~~

~~_____ (4) the general character and probable value of the real and personal property, including the amount and sources of income, of the proposed ward or proposed conservatee, if known to the petitioner;~~

~~_____ (5) the name and address of the person, if any, having custody and control of the proposed ward or proposed conservatee, if known to the petitioner;~~

1 ~~_____ (6) the names and addresses of witnesses by whom the truth of the petition may be~~
2 ~~proved;~~

3 ~~_____ (7) the reasons for the need of the appointment of a guardian or conservator, or both;~~

4 ~~_____ (8) a request that the court make a determination that the proposed ward or proposed~~
5 ~~conservatee is a disabled person, make one or more of the orders provided for in K.S. 59-3010~~
6 ~~and 59-3011 and amendments thereto, and appoint a guardian or conservator, or both; and~~

7 ~~_____ (9) the name, address, and relationship to the proposed ward or proposed conservatee, if~~
8 ~~any, of the person whom the court is requested to appoint as a guardian or as a conservator. If a~~
9 ~~proposed conservator is under contract with the Kansas guardianship program, the application for~~
10 ~~appointment of guardian or conservator shall so state. Any such petition may be accompanied, or~~
11 ~~the court may require that such petition be accompanied by a statement in writing of a physician~~
12 ~~or psychologist stating that the physician or psychologist has examined the proposed ward or~~
13 ~~proposed conservatee and the results of the examination on the issue of whether the proposed~~
14 ~~ward or proposed conservatee is a disabled person or the court may allow such petition to be~~
15 ~~accompanied by a verified statement by the petitioner that the proposed ward or proposed~~
16 ~~conservatee has refused to submit to an examination by a physician or psychologist.~~

17 ~~_____ (b) If the proposed ward or proposed conservatee is alleged to be a minor the petition~~
18 ~~shall state:~~

19 ~~_____ (1) The proposed ward or proposed conservatee is a minor;~~

20 ~~_____ (2) the name, age, residence and present address of the proposed ward or proposed~~
21 ~~conservatee, if known to the petitioner;~~

1 ~~_____ (3) the name and address of the natural guardian, guardian, conservator and custodian, if~~
2 ~~any, of the proposed ward or proposed conservatee, if known to the petitioner, and if not known~~
3 ~~that the petitioner has made diligent inquiry to learn their names;~~

4 ~~_____ (4) the general character and probable value of the real and personal property, including~~
5 ~~the amount and sources of income, of the proposed ward or proposed conservatee, if known to~~
6 ~~the petitioner;~~

7 ~~_____ (5) the names and addresses of witnesses by whom the truth of the petition may be~~
8 ~~proved;~~

9 ~~_____ (6) the reasons for the need for the appointment of a guardian or conservator, or both;~~

10 ~~_____ (7) a request that the court make a determination that the proposed ward or proposed~~
11 ~~conservatee is a minor, make one or more of the orders provided for by K.S. 59-3010 and~~
12 ~~59-3011 and amendments thereto, and appoint a guardian or a conservator, or both; and~~

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

15 ~~_____ (e) If the proposed conservatee has been duly adjudged an incapacitated person, a~~
16 ~~disabled person, an insane person or an incompetent person by any court of competent~~
17 ~~jurisdiction in any other state and a domiciliary conservator or guardian for the estate of such~~
18 ~~person has been appointed, a duly authenticated transcript of such adjudication and appointment~~
19 ~~shall be prima facie evidence of such incapacity and may be relied upon for the appointment of~~
20 ~~an ancillary conservator in this state. Such authenticated transcript shall be attached to the~~
21 ~~petition which shall state:~~

1 ~~—— (1) That the proposed conservatee has been duly adjudged an incapacitated person, a~~
2 ~~disabled person, an insane person or an incompetent person by a court of competent jurisdiction~~
3 ~~of another state and a domiciliary conservator or guardian for such conservatee's estate has been~~
4 ~~appointed, which adjudication and appointment are still in full force and effect;~~

5 ~~—— (2) the name, age, residence and present address of the proposed conservatee, if known to~~
6 ~~the petitioner;~~

7 ~~—— (3) the name and address of the nearest relatives of the proposed conservatee, if known to~~
8 ~~the petitioner and if not known, that the petitioner has made diligent inquiry to learn the name of~~
9 ~~such relatives;~~

10 ~~—— (4) the location and value of Kansas property for which an ancillary conservatorship is~~
11 ~~needed;~~

12 ~~—— (5) the name and address of the person, if any, having custody and control of the~~
13 ~~proposed conservatee, if known to the petitioner;~~

14 ~~—— (6) the reasons for the need for the appointment of an ancillary conservator; and~~

15 ~~—— (7) a request that the court appoint an ancillary conservator as provided in subsection (c)~~
16 ~~of K.S. 59-3010 and amendments thereto.~~

17 Comment

18 This section was replaced by the following five sections (59-3009a
19 through 59-3009e) which describe the last five of the six circumstances under
20 which a petition for guardianship or conservatorship might be filed.

Sec. 9

59-3009a. Petition for the appointment of a guardian or conservator for an adult with an impairment; contents; accompaniment.

(a) Any person may file in the district court of the county of residence of the proposed ward or proposed conservatee or of any county wherein the proposed ward or proposed conservatee may be found, a verified petition requesting the appointment of a guardian or a conservator, or both, for an adult with an impairment in need of a guardian or conservator, or both. If the proposed conservatee is not a resident of or present within the state of Kansas, such petition may be filed in the district court of any county in which any property of the proposed conservatee is situated.

If a petition is filed in the district court of a county other than the county of residence of the proposed ward or proposed conservatee, the court may consider whether it is in the best interests of the proposed ward or proposed conservatee or in the interests of justice for the proceedings to take place in that county.

If the court finds it is not in the best interests of the proposed ward or proposed conservatee or in the interests of justice that the proceedings take place in that county and the proposed ward or proposed conservatee is a non-resident of the state of Kansas, the court may dismiss the matter immediately, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the state of residence. After the expiration of that period of time, or upon the filing of proceedings in the state of residence, the court shall dismiss the petition without prejudice.

If the court finds it is not in the best interests of the proposed ward or proposed

1 conservatee or in the interests of justice that the proceedings take place in that county and the
2 proposed ward or proposed conservatee is a resident of a different county in Kansas, the court
3 may dismiss the matter immediately, or may transfer venue to the county of residence, or may
4 continue the matter for a specific period of time not to exceed 60 days to allow for the filing of
5 proceedings in the county of residence. After the expiration of that period of time, or upon the
6 filing of proceedings in the county of residence, the court shall dismiss the petition without
7 prejudice.

8 (b) The petition shall include:

9 (1) The petitioner's name and address:

10 (2) the proposed ward's or proposed conservatee's name, age, date of birth, address of
11 permanent residence, and present address or whereabouts, if different from the proposed ward's
12 or proposed conservatee's permanent residence;

13 (3) if the proposed ward or proposed conservatee is a non-resident of the county in which
14 the petition is filed, a statement of why it is in the best interests of the proposed ward or proposed
15 conservatee or in the interests of justice for the proceedings to take place in that county;

16 (4) if the proposed ward or proposed conservatee is under the age of 18 years, the factual
17 circumstances under which the petitioner alleges that the minor should be considered to be of the
18 age of majority pursuant to the provisions of K.S.A. 38-101 and amendments thereto, or
19 concerning when and where the rights of majority were conferred upon the minor pursuant to the
20 provisions of K.S.A. 38-108 and amendments thereto;

21 (5) a statement that it is the petitioner's belief that the proposed ward or proposed

conservatee is an adult with an impairment in need of a guardian or a conservator, or both:

2 (6) the factual basis upon which the petitioner makes that allegation;

3 (7) the names and addresses of any spouse, adult children and adult grandchildren of the
4 proposed ward or proposed conservatee, and those of any parent and adult siblings of the
5 proposed ward or proposed conservatee, or if no such names or addresses are known to the
6 petitioner, the name and address of at least one adult who is nearest in kinship to the proposed
7 ward or proposed conservatee, or if none, that fact. If no such names or addresses are known to
8 the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall
9 state that fact and that the petitioner has made diligent inquiry to learn those names and
10 addresses;

11 (8) the name and address of any person or agency having custody of the proposed ward or
12 proposed conservatee, or any other person or agency who has assumed responsibility for the
13 proposed ward or proposed conservatee, and the circumstances under which the proposed ward
14 or proposed conservatee came into such person's or agency's care or control;

15 (9) the name and address of any person or corporation acting for or nominated to act on
16 behalf of the proposed ward or proposed conservatee pursuant to any power of attorney, trust or
17 other fiduciary relationship established by any court order, and a description of that authority or
18 relationship. If not known, the petition shall state that the petitioner has made diligent inquiry to
19 learn this information;

20 (10) a list and description of all court proceedings in which the proposed ward or
21 conservatee is a party, or is the subject of, or may be a beneficiary of, or in which any rights of

1 the proposed ward or proposed conservatee may be determined or affected, and the name and
2 address of any attorney who represents the proposed ward or proposed conservatee in such
3 matter. If not known, the petition shall state that the petitioner has made diligent inquiry to learn
4 this information:

5 (11) in general terms, the location, type, and value of any real or personal property of the
6 proposed ward or proposed conservatee, including the amount and sources of any income of the
7 proposed ward or proposed conservatee. If not known, the petition shall state that the petitioner
8 has made diligent inquiry to learn this information:

9 (12) the names and addresses of witnesses by whom the truth of the petition may be
10 proved;

11 (13) the name, address, and relationship to the proposed ward or proposed conservatee, if
12 any, of the individual or corporation whom the petitioner suggests that the court appoint as the
13 guardian or as the conservator, or both, and if the suggested guardian or conservator is under
14 contract with the Kansas guardianship program, that fact;

15 (14) if the petitioner suggests the appointment of co-guardians or co-conservators, or
16 both, a statement of the reasons why such appointment is sought and whether the petitioner
17 suggests that the co-guardians or co-conservators, if appointed, should be able to act
18 independently or whether they should be required to act only in concert or only in concert with
19 regard to specified matters; and

20 (15) a request that the court make a determination that the proposed ward or proposed
21 conservatee is an adult with an impairment in need of a guardian or a conservator, or both, that

1 the court enter one or more of the orders provided for in K.S.A. 59-3010, 59-3010a, 59-3011 and
2 59-3011a, and amendments thereto, and that the court appoint a guardian or a conservator, or
3 both, for the proposed ward or proposed conservatee.

4 (c) Any such petition may be accompanied by, or the court may require that such petition
5 be accompanied by, a report of an examination and evaluation which meets the requirements of
6 K.S.A. 59-3010a and amendments thereto. In such case, the petition may include a request that
7 the court accept this report in lieu of ordering any additional examination and evaluation
8 pursuant to K.S.A. 59-3010a and amendments thereto.

9 (d) Any such petition may be accompanied by, or the court may require that such petition
10 be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3018c and
11 amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3019b and
12 amendments thereto, or both.

13 Comment

14 This section addresses the second of the six circumstances under which a
15 guardian or conservator may be appointed. The section specifies venue as well as
16 the contents of the petition. (See also the comment to section 59-3007.)

17 Subsection (c) allows the petitioner to voluntarily include, or allows the
18 court to require that the petitioner include, along with the petition the medical and
19 evaluative information necessary for the adjudication of the issue. Given the short
20 time frames involved before trial, allowing the medical evaluation to be
21 completed prior to the filing of the petition should permit a more thorough
22 consideration of those issues than can often be given to them when the evaluation
23 and report must be completed within only a few days following the filing of the
24 petition, as is the case under current law. Filing of the medical information along
25 with the petition allows those persons entitled to notice of the proceedings to have
26 a copy of the report and may give them a better understanding of the needs of the
27 person involved. This may lead to fewer contested matters.

¹ Sec. 10 **59-3009b. Petition for the appointment of a guardian or conservator for a minor;**

2 **contents.**

3 (a) Any person may file in the district court of the county of residence of the proposed
4 ward or proposed conservatee or of any county wherein the proposed ward or proposed
5 conservatee may be found, a verified petition requesting the appointment of a guardian or a
6 conservator, or both, for a minor in need of a guardian or conservator, or both. If the proposed
7 conservatee is not a resident of or present within the State of Kansas, such petition may be filed
8 in the district court of any county in which any property of the proposed conservatee is situated.

9 If a petition is filed in the district court of a county other than the county of residence of
10 the minor, the court may consider whether it is in the best interests of the minor or in the interests
11 of justice for the proceedings to take place in that county.

12 If the court finds it is not in the best interests of the minor or in the interests of justice that
13 the proceedings take place in that county and the minor is a non-resident of the state of Kansas,
14 the court may dismiss the matter immediately, or may continue the matter for a specific period of
15 time not to exceed 60 days to allow for the filing of proceedings in the state of residence. After
16 the expiration of that period of time, or upon the filing of proceedings in the state of residence,
17 the court shall dismiss the petition without prejudice.

18 If the court finds it is not in the best interests of the minor or in the interests of justice that
19 the proceedings take place in that county and the minor is a resident of a different county in
20 Kansas, the court may dismiss the matter immediately, or may transfer venue to the county of
21 residence, or may continue the matter for a specific period of time not to exceed 60 days to allow

1 for the filing of proceedings in the county of residence. After the expiration of that period of
2 time, or upon the filing of proceedings in the county of residence, the court shall dismiss the
3 petition without prejudice.

4 (b) The petition shall include:

5 (1) The petitioner's name and address:

6 (2) the minor's name, age, date of birth, address of permanent residence, and present
7 address or whereabouts, if different from the minor's permanent residence;

8 (3) if the minor is a non-resident of the county in which the petition is filed, a statement
9 of why it is in the best interests of the minor or in the interests of justice for the proceedings to
10 take place in that county;

11 (4) a statement that it is the petitioner's belief that the proposed ward or proposed
12 conservatee is a minor in need of a guardian or conservator, or both;

13 (5) the factual basis upon which the petitioner makes that allegation;

14 (6) the names and addresses of any spouse of the minor, any natural guardian, any
15 grandparent, any person nominated by a natural guardian to be the guardian or conservator, or
16 both, any child or children of the minor, any permanent guardian appointed for the minor
17 pursuant to K.S.A. 38-1584 and amendments thereto, any fiduciary appointed for the minor by
18 any court order, and any other person or agency having or claiming a right to legal or physical
19 custody of or visitation with the minor or who has assumed responsibility for or care of the
20 minor, and the circumstances under which the minor came into such person's or agency's care or
21 control. If no such names or addresses are known to the petitioner, but the petitioner has reason

1 to believe such persons exist, then the petition shall state that fact and that the petitioner has
2 made diligent inquiry to learn those names and addresses:

3 (7) a list and description of all court proceedings in which the minor is or has recently
4 been a party, or is or has recently been the subject of, or was or may be a beneficiary of, or in
5 which any rights of the minor were or may be determined or affected, including any proceedings
6 concerning the custody of or visitation with the minor, any domestic relations matters, juvenile
7 proceedings or adoptions, and the name and address of any attorney who represents or has
8 represented the minor in any such matter. If not known, the petition shall state that the petitioner
9 has made diligent inquiry to learn this information:

10 (8) in general terms, the location, type, and value of any real or personal property of the
11 minor, including the amount and sources of any income of the minor. If not known, the petition
12 shall state that the petitioner has made diligent inquiry to learn this information:

13 (9) the names and addresses of witnesses by whom the truth of the petition may be
14 proved:

15 (10) the name, address, and relationship to the minor, if any, of the individual or
16 corporation whom the petitioner suggests that the court appoint as the guardian or as the
17 conservator, or both:

18 (11) if the petitioner suggests the appointment of co-guardians or co-conservators, or
19 both, a statement of the reasons why such appointment is sought and whether the petitioner
20 suggests that the co-guardians or co-conservators, if appointed, should be able to act
21 independently or whether they should be required to act only in concert or only in concert with

regard to specified matters: and

(12) a request that the court make a determination that the proposed ward or proposed conservatee is a minor in need of a guardian or a conservator, or both, that the court enter one or more of the orders provided for in K.S.A. 59-3010, 59-3011 and 59-3011a, and amendments thereto, and that the court appoint a guardian or a conservator, or both, for the minor.

(c) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3018c and amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3019b and amendments thereto, or both.

Comment

This section addresses the third of the six circumstances under which a guardian or conservator may be appointed (minors). (See also the comment to section 59-3007.)

1 *Sec. 11* **59-3009c. Petition for the appointment of a guardian or conservator for a minor**
2 **with an impairment; contents.**

3 (a) Any person may file in the district court of the county of residence of the proposed
4 ward or proposed conservatee or of any county wherein the proposed ward or proposed
5 conservatee may be found, a verified petition requesting the appointment of a guardian or a
6 conservator, or both, for a minor with an impairment in need of a guardian or conservator, or
7 both. If the proposed conservatee is not a resident of or present within the State of Kansas, such
8 petition may be filed in the district court of any county in which any property of the proposed
9 conservatee is situated.

10 If a petition is filed in the district court of a county other than the county of residence of
11 the minor, the court may consider whether it is in the best interests of the minor or in the interests
12 of justice for the proceedings to take place in that county.

13 If the court finds it is not in the best interests of the minor or in the interests of justice that
14 the proceedings take place in that county and the minor is a non-resident of the state of Kansas,
15 the court may dismiss the matter immediately, or may continue the matter for a specific period of
16 time not to exceed 60 days to allow for the filing of proceedings in the state of residence. After
17 the expiration of that period of time, or upon the filing of proceedings in the state of residence,
18 the court shall dismiss the petition without prejudice.

19 If the court finds it is not in the best interests of the minor or in the interests of justice that
20 the proceedings take place in that county and the minor is a resident of a different county in
21 Kansas, the court may dismiss the matter immediately, or may transfer venue to the county of

1 residence, or may continue the matter for a specific period of time not to exceed 60 days to allow
2 for the filing of proceedings in the county of residence. After the expiration of that period of
3 time, or upon the filing of proceedings in the county of residence, the court shall dismiss the
4 petition without prejudice.

5 (b) The petition shall include:

6 (1) The petitioner's name and address;

7 (2) the minor's name, age, date of birth, address of permanent residence, and present
8 address or whereabouts, if different from the minor's permanent residence;

9 (3) if the minor is a non-resident of the county in which the petition is filed, a statement
10 of why it is in the best interests of the minor or in the interests of justice for the proceedings to
11 take place in that county;

12 (4) a statement that it is the petitioner's belief that the proposed ward or proposed
13 conservatee is a minor with an impairment in need of a guardian or conservator, or both;

14 (5) the factual basis upon which the petitioner makes this allegation;

15 (6) the names and addresses of any spouse of the minor, any natural guardian, any
16 grandparent, any person nominated by a natural guardian to be the guardian or conservator, or
17 both, any child or children of the minor, any permanent guardian appointed for the minor
18 pursuant to K.S.A. 38-1584 and amendments thereto, any fiduciary appointed for the minor by
19 any court order, and any other person or agency having or claiming a right to legal or physical
20 custody of or visitation with the minor or who has assumed responsibility for or care of the
21 minor, and the circumstances under which the minor came into such person's or agency's care or

1 control. If no such names or addresses are known to the petitioner, but the petitioner has reason
2 to believe such persons exist, then the petition shall state that fact and that the petitioner has
3 made diligent inquiry to learn those names and addresses;

4 (7) a list and description of all court proceedings in which the minor is or has recently
5 been a party, or is or has recently been the subject of, or was or may be a beneficiary of, or in
6 which any rights of the minor were or may be determined or affected, including any proceeding
7 concerning the custody of or visitation with the minor, any domestic relations matters, juvenile
8 proceedings or adoptions, and the name and address of any attorney who represents or has
9 represented the minor in any such matter. If not known, the petition shall state that the petitioner
10 has made diligent inquiry to learn this information;

11 (8) in general terms, the location, type, and value of any real or personal property of the
12 minor, including the amount and sources of any income of the minor. If not known, the petition
13 shall state that the petitioner has made diligent inquiry to learn this information;

14 (9) the names and addresses of witnesses by whom the truth of the petition may be
15 proved;

16 (10) the name, address, and relationship to the minor, if any, of the individual or
17 corporation whom the petitioner suggests that the court appoint as the guardian or as the
18 conservator, or both;

19 (11) if the petitioner suggests the appointment of co-guardians or co-conservators, or
20 both, a statement of the reasons why such appointment is sought and whether the petitioner
21 suggests that the co-guardians or co-conservators, if appointed, should be able to act

1 independently or whether they should be required to act only in concert or only in concert with
 2 regard to specified matters; and

3 (12) a request that the court make a determination that the proposed ward or proposed
 4 conservatee is a minor with an impairment in need of a guardian or conservator, or both, that the
 5 court enter one or more of the orders provided for in K.S.A. 59-3010, 59-3010a, 59-3011 and 59-
 6 3011a, and amendments thereto, that the court appoint a guardian or a conservator, or both, for
 7 the minor and that the court order that this appointment shall extend beyond the minor's 18
 8 birthday.

9 (c) Any such petition may be accompanied by, or the court may require that such petition
 10 be accompanied by, a report of an examination and evaluation which meets the requirements of
 11 K.S.A. 59-3010a and amendments thereto. In such case, the petition may include a request that
 12 the court accept this report in lieu of ordering any additional examination and evaluation
 13 pursuant to K.S.A. 59-3010a and amendments thereto.

14 (d) Any such petition may be accompanied by, or the court may require that such petition
 15 be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3018c and
 16 amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3019b and
 17 amendments thereto, or both.

18 Comment

19 This section addresses the fourth of the six circumstances under which a
 20 guardian or conservator may be appointed (minors with a long lasting
 21 impairment). This is a new concept and may be useful to avoid the necessity of a
 22 second adjudication proceeding when the minor reaches the age of 18. (See also
 23 the comment to section 59-3007.)

1 Sec. 12

59-3009d. Petition for the appointment of a guardian or conservator for a person

2 **previously adjudged as impaired in another state; contents; accompaniment.** (a) The
3 guardian, conservator or other similarly empowered fiduciary appointed in any other state for a
4 person who has been previously adjudged as impaired in another state may file in the district
5 court of the county wherein the proposed ward or proposed conservatee may be found or wherein
6 the petitioner plans to relocate the proposed ward or proposed conservatee, a verified petition
7 requesting that the court give full faith and credit to the prior adjudication and appoint a guardian
8 or a conservator, or both, in Kansas. The petition shall also declare that immediately upon such
9 appointment, the petitioner will take the necessary action to terminate the proceedings in the
10 other state.

11 (b) The petition shall include:

12 (1) The petitioner's name and address;

13 (2) the proposed ward's or proposed conservatee's name, age, date of birth, address of
14 permanent residence, and present address or whereabouts, if different from the proposed ward's
15 or proposed conservatee's permanent residence;

16 (3) if the proposed ward or proposed conservatee is not already present within Kansas, the
17 address and nature of the place located within Kansas to which the petitioner plans to relocate the
18 proposed ward or proposed conservatee if the court does appoint a guardian or conservator, or
19 both, in Kansas;

20 (4) the place where and the date upon which the petitioner was appointed as the guardian,
21 conservator or other similarly empowered fiduciary for the proposed ward or proposed

conservatee and a statement that this appointment remains in full force and effect;

2 (5) the factual basis upon which the petitioner alleges the need for the appointment of a
3 guardian or conservator, or both, in Kansas;

4 (6) the names and addresses of any spouse, adult children and adult grandchildren of the
5 proposed ward or proposed conservatee, and those of any parent and adult siblings of the
6 proposed ward or proposed conservatee, or if no such names or addresses are known to the
7 petitioner, the name and address of at least one adult who is nearest in kinship to the proposed
8 ward or proposed conservatee, or if none, that fact. If no such names or addresses are known to
9 the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall
10 state that fact and that the petitioner has made diligent inquiry to learn those names and
11 addresses;

12 (7) the name and address of any person or corporation acting for or nominated to act on
13 behalf of the proposed ward or proposed conservatee pursuant to any power of attorney, trust or
14 other fiduciary relationship established by any court order, other than the appointment in the
15 other state of the petitioner as the guardian, conservator or other similarly empowered fiduciary
16 for the proposed ward or proposed conservatee, and a description of that authority or
17 relationship. If not known, the petition shall state that the petitioner has made diligent inquiry to
18 learn this information;

19 (8) a list and description of all court proceedings in which the proposed ward or
20 conservatee is a party, or is the subject of, or may be a beneficiary of, or in which any rights of
21 the proposed ward or proposed conservatee may be determined or affected, and the name and

1 address of any attorney who represents the proposed ward or proposed conservatee in such
2 matter. If not known, the petition shall state that the petitioner has made diligent inquiry to learn
3 this information:

4 (9) in general terms, the location, type and value of any real or personal property of the
5 proposed ward or proposed conservatee, including the amount and sources of any income of the
6 proposed ward or proposed conservatee. If not known, the petition shall state that the petitioner
7 has made diligent inquiry to learn this information:

8 (10) the names and addresses of the witnesses by whom the truth of the petition may be
9 proved:

10 (11) the name, address, and relationship to the proposed ward or proposed conservatee, if
11 any, of the individual or corporation whom the petitioner suggests that the court appoint as the
12 guardian or as the conservator, or both, and if the suggested guardian or conservator is under
13 contract with the Kansas guardianship program, that fact:

14 (12) if the petitioner suggests the appointment of co-guardians or co-conservators, or
15 both, a statement of the reasons why such appointment is sought and whether the petitioner
16 suggests that the co-guardians or co-conservators, if appointed, should be able to act
17 independently or whether they should be required to act only in concert or only in concert with
18 regard to specified matters:

19 (13) a declaration that, immediately upon the appointment of a guardian or conservator in
20 this state, the petitioner will take the necessary action to terminate the proceedings in the other
21 state; and

2 (14) a request that the court make a determination that the proposed ward or proposed
3 conservatee is a person who has been previously adjudged as impaired in another state, that the
4 court enter one or more of the orders provided for in K.S.A. 50-3010, 59-3011 and 59-3011a, and
5 amendments thereto, and that the court appoint a guardian or conservator, or both, for the
6 proposed ward or proposed conservatee in Kansas.

7 (c) Any such petition shall be accompanied by a duly authenticated copy of the order of
8 adjudication and appointment and documents showing the continuing authority of the petitioner
9 in the other state.

10 (d) Any such petition may be accompanied by, or the court may require that such petition
11 be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3018c and
12 amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3019b and
13 amendments thereto, or both.

14 Comment

15 This section addresses the fifth of the six circumstances under which a
16 guardian or conservator may be appointed (person with a previously appointed
17 guardian or conservator moving into Kansas). This is a new concept and is
18 recommended because of the mobility of modern society. Proceedings under this
19 section are predicated upon proceedings in the other state being terminated upon
20 the appointment of a guardian or conservator in Kansas. Only the guardian or
21 conservator appointed in the other state may petition under this section because
22 that person acts on behalf of the ward or conservatee, and in order to ensure that
23 multi-jurisdictional custody battles are avoided. (See also the comment to section
59-3007.)

1 *Sec. 13* **59-3009e. Petition for the appointment of an ancillary conservator; contents;**

2 **accompaniment.**

3 (a) The conservator or other similarly empowered fiduciary appointed in any other state
4 for a person in need of an ancillary conservator may file in the district court of any county in
5 which any property of the proposed conservatee is situated a verified petition requesting the
6 appointment of an ancillary conservator in Kansas.

7 (b) The petition shall include:

8 (1) the petitioner's name and address, and a statement that the petitioner is the
9 conservator or other similarly empowered fiduciary appointed in another state, and that this
10 appointment remains in full force and effect;

11 (2) the proposed conservatee's name, age, date of birth, address of permanent residence,
12 and present address or whereabouts, if different from the proposed conservatee's permanent
13 residence;

14 (3) a statement that the proposed conservatee is a person in need of an ancillary
15 conservator;

16 (4) the factual basis upon which the petitioner alleges the need for an ancillary
17 conservatorship in this state;

18 (5) the names and addresses of any spouse, adult children and adult grandchildren of the
19 proposed conservatee, and those of any parent and adult siblings of the proposed conservatee, or
20 if no such names or addresses are known to the petitioner, the name and address of at least one
21 adult who is nearest in kinship to the proposed conservatee. If no such names or addresses are

1 known to the petitioner, but the petitioner has reason to believe such persons exist, then the
2 petition shall state that fact and that the petitioner has made diligent inquiry to learn those names
3 and addresses;

4 (6) the name and address of any person or corporation acting for or nominated to act on
5 behalf of the proposed conservatee in this state pursuant to any power of attorney, trust or other
6 fiduciary relationship established by any court order, and a description of that authority or
7 relationship. If not known, the petition shall state that the petitioner has made diligent inquiry to
8 learn this information;

9 (7) the location and value of the property within Kansas for which an ancillary
10 conservatorship is being sought;

11 (8) the names and addresses of witnesses by whom the truth of the petition may be
12 proved;

13 (9) the name, address and relationship to the proposed conservatee, if any, of the
14 individual or corporation whom the petitioner suggests that the court appoint as the ancillary
15 conservator, and if the suggested ancillary conservator is under contract with the Kansas
16 guardianship program, that fact;

17 (10) if the petitioner suggests the appointment of co-ancillary conservators, a statement of
18 the reasons why such appointment is sought and whether the petitioner suggests that the co-
19 ancillary conservators, if appointed, should be able to act independently or whether they should
20 be required to act only in concert or only in concert with regard to specified matters; and

21 (11) a request that the court make a determination that the proposed conservatee is a

1 person in need of an ancillary conservator, that the court enter one or more of the orders provided
2 for in K.S.A. 59-3010, 59-3011 and 59-3011a, and amendments thereto, and that the court
3 appoint an ancillary conservator for the proposed conservatee in this state.

4 (c) The petition shall be accompanied by a duly authenticated copy of the order of
5 adjudication and appointment and documents showing the continuing authority of the petitioner
6 in the other state.

7 (d) Any such petition may be accompanied by, or the court may require that such petition
8 be accompanied by, a proposed conservatorship plan as provided for in K.S.A. 59-3019b and
9 amendments thereto.

10 Comment

11 This section addresses the last of the six circumstances under which a
12 conservator may be appointed (ancillary conservatorship). Only the conservator
13 appointed in the other state may petition under this section because that person
14 acts on behalf of the conservatee, and in order to ensure that full faith and credit is
15 afforded to the other state's adjudication and appointment. (See also the comment
16 to section 59-3007.)

Sec. 14

59-3010. Mandatory preliminary orders; ~~hearing on petition, time limits.~~ (a) Upon

the filing of ~~the~~ a petition as provided for in K.S.A. 59-3009 59-3009a and amendments thereto
alleging that the proposed ward or proposed conservatee is an adult with an impairment in need
of a guardian or conservator, or both, or as provided for in K.S.A. 59-3009c and amendments
thereto alleging that the proposed ward or proposed conservatee is a minor with an impairment in
need of a guardian or conservator, or both, :

~~(a) When the proposed ward or proposed conservatee is alleged to be a disabled person, the~~
 district court shall issue the following:

(1) An order fixing the date, time and place of the hearing trial on the petition. Such trial,
in the court's discretion, may be conducted in a courtroom, a treatment facility or at some other
suitable place. The time ~~designated~~ fixed in the order shall in no event be earlier than seven days
 or later than ~~14~~ 21 days after the date of the filing of the petition. If a demand for a trial by jury
is filed pursuant to K.S.A. 59-3013(b) and amendments thereto by the proposed ward or
proposed conservatee, the court may continue the trial and fix a new time and place of the trial at
a time beyond the 21 days but within a reasonable time not to exceed 30 days from the date of
the filing of the demand.

(2) An order requiring that the proposed ward or proposed conservatee appear at the time
 and place of the hearing trial unless the court ~~enters an order~~ makes a finding prior to the trial
 that the presence of the proposed ward or proposed conservatee is will be injurious to the
person's health or welfare of the proposed ward or proposed conservatee. , or that the proposed
ward's or proposed conservatee's impairment is such that the person could not meaningfully

1 participate in the proceedings, or that the proposed ward or proposed conservatee has filed with
2 the court a written waiver of his or her right to appear in person. In any such case, the court shall
3 enter in the record of the proceedings the facts upon which the court has found that the presence
4 of the proposed ward or proposed conservatee at the hearing trial would be injurious to such
5 person's welfare should be excused. Notwithstanding the foregoing provisions of this subsection,
6 if the proposed ward or proposed conservatee requests in writing to the court or to such person's
7 attorney that such person be present at the hearing files with the court at least one day prior to the
8 date of the trial a written notice stating the person's desire to be present at the trial, then the court
9 shall order that such person's presence cannot be waived the proposed ward or proposed
10 conservatee must be present at the trial.

11 (3) An order appointing an attorney to represent the proposed ward or proposed
12 conservatee at all stages of the proceedings. The court shall give preference, in the appointment
13 of the this attorney, to any attorney who has represented the proposed ward or proposed
14 conservatee in other matters if the court has knowledge of the that prior relationship
15 representation, or to an attorney whom the proposed ward or proposed conservatee has requested.
16 The proposed ward or proposed conservatee, if an adult, shall have the right to engage an
17 attorney of the proposed ward's or proposed conservatee's own choice and, in such case, the
18 attorney appointed by the court shall be relieved of all duties. Any appointment made by the
19 court shall terminate upon a final determination of the petition and any appeal therefrom, unless
20 the court continues the appointment by further order. Thereafter, an attorney may be appointed
21 by the court if requested, in writing, by the ward, conservatee, guardian or conservator, or upon

the court's own motion.

2 ~~The proposed ward or proposed conservatee shall have the right to choose and to engage~~
3 ~~an attorney and, in such an event, the attorney appointed herein shall be relieved of all duties by~~
4 ~~the court.~~

5 (4) An order fixing the date, time and a place that ~~the proposed ward or proposed~~
6 ~~conservatee shall appear at a time and place that is in the best interest~~ interests of the proposed
7 ward or proposed conservatee, at which the proposed ward or proposed conservatee shall have
8 the opportunity to consult with the court appointed attorney. ~~which time~~ This consultation shall
9 be scheduled to occur not later than five days prior to the scheduled trial on the petition, provided
10 that if an examination and evaluation as provided for in K.S.A. 59-3010a and amendments
11 thereto is ordered, then this consultation shall be scheduled to occur prior to the execution of the
12 ~~order for mental evaluation, if one is to be issued~~ time at which that examination and evaluation
13 is scheduled to occur. ~~unless an ex parte emergency custody order provided for in K.S.A. 1996~~
14 ~~Supp. 59-2958 and amendments thereto or a temporary custody order provided for in K.S.A.~~
15 ~~1996 Supp. 59-2959 and amendments thereto, has been issued and detention of the proposed~~
16 ~~ward or proposed conservatee thereunder is in a place outside the jurisdiction of the court.~~

17 (5) A notice ~~in the manner~~ as provided for in K.S.A. 59-3012 and amendments thereto.

18 (6) An order for ~~mental~~ an examination and evaluation as provided for in K.S.A. 59-
19 3010a and amendments thereto. If the petition is accompanied by a report of an examination and
20 evaluation of the proposed ward or proposed conservatee, as provided for in K.S.A. 59-3009a or
21 59-3009c, and amendments thereto, and the court determines that such report meets the

1 requirements of K.S.A. 59-3010a and amendments thereto, the court may determine that no
2 additional examination or evaluation is required and that none shall be ordered unless requested
3 by the proposed ward or proposed conservatee pursuant to subsection (c) of K.S.A. 59-3010a and
4 amendments thereto. Such order may be served on the proposed ward or proposed conservatee at
5 the same time or after notice is given. It shall be served in the manner provided for in K.S.A.
6 59-3012 and amendments thereto. It shall order the proposed ward or proposed conservatee to
7 submit for a mental evaluation and to undergo such evaluation at a general hospital or a
8 psychiatric hospital, an institution within the department of social and rehabilitation services,
9 mental health clinic, private psychiatrist, physician or psychologist designated by the court in the
10 order. An institution within the department of social and rehabilitation services shall receive and
11 evaluate any proposed ward or proposed conservatee ordered evaluated therein. At the time
12 designated by the court in the order, but in no event later than three days prior to the date of the
13 hearing provided for in K.S.A. 59-3013 and amendments thereto, the examiner shall submit to
14 the court a report, in writing, of the evaluation which report also shall be made available to
15 counsel for the parties at least three days prior to such hearing. Such report shall state that the
16 examiner has made an independent evaluation and examination of the proposed ward or proposed
17 conservatee and shall state the results of the examination on the issue of whether the proposed
18 ward or proposed conservatee is a disabled person.

19 (b) When Upon the filing of a petition as provided for in K.S.A. 59-3009b and
20 amendments thereto alleging that the proposed ward or proposed conservatee is alleged to be a
21 minor in need of a guardian or conservator, or both, the court shall issue an order fixing the date,

time and place of the ~~hearing trial~~ on the petition. If the petition is filed on behalf of the minor by such ~~the~~ minor's next friend ~~or by the~~ natural guardian of the ~~minor~~, the time of the hearing designated in the order may be forthwith and without notice, ~~but in no event later than 14 days after the date of filing of the petition.~~ In all other cases ~~the time designated in the order~~ the trial shall in no event be held no earlier than seven days or later than 14 21 days after the date of the filing of the petition, unless those persons or agencies entitled to notice pursuant to K.S.A. 59-3012(d) and amendments thereto have entered their appearances, waived notice and consented to the appointment of the suggested guardian or conservator, or both, in which case the trial may be held forthwith and without notice.

(c) Upon the filing of a petition as provided for in K.S.A. 59-3009d and amendments thereto alleging that the proposed ward or proposed conservatee is a person who has been previously adjudged as impaired in another state, the court shall issue an order fixing the date, time and place of the trial on the petition, which trial shall be held no earlier than seven days or later than 21 days after the date of the filing of the petition, unless those persons or agencies entitled to notice pursuant to K.S.A. 59-3012(f) and amendments thereto have entered their appearances, waived notice, agreed to the court's accepting jurisdiction of the case if transferred from the other state, and consented to the appointment in Kansas of the suggested guardian or conservator, or both, in which case the trial may be held forthwith and without notice.

~~(e) When~~ (d) Upon the filing of a petition as provided for in K.S.A. 59-3009e and amendments thereto alleging that the proposed conservatee has been duly adjudged an incapacitated person, a disabled person, an insane person or an incompetent person and a

~~conservator or guardian of such person's estate has been appointed by any court of competent jurisdiction of any other state, the court, relying upon is a person in need of an ancillary conservator and requesting the appointment of an ancillary conservator in Kansas, the petition which incorporates the duly authenticated transcript required by subsection (e) of K.S.A. 59-3009 and amendments thereto, the court shall issue an order fixing the date, time and place of the hearing trial on the petition, which hearing may trial shall be held no earlier than seven days or later than 21 days after the date of the filing of the petition, unless those persons or agencies entitled to notice pursuant to K.S.A. 59-3012(e) and amendments thereto have entered their appearances, waived notice and consented to the appointment in Kansas of the suggested ancillary conservator, in which case the trial may be held forthwith immediately and without notice.~~

Comment

This section addresses the mandatory preliminary orders to be issued upon the filing of a petition. It is divided into subsections (a), (b), (c) and (d) with each setting forth the orders which must be entered for the particular circumstance under which the petition requests the appointment of a guardian or conservator. Each of the subsections provide for the fixing of the date, time and place of trial with the trial to be set not less than seven days or later than 21 days, instead of the current 14 days.

Subsection (a)(1) provides for a continuance for a reasonable time but not to exceed 30 days if a demand for jury trial is filed. It is necessary for there to be additional time allowed for a jury trial since the request can be filed as late as four days prior to the scheduled trial and it is impossible to reasonably have jurors present in such a short time frame. Subsection (a)(2) sets out the procedure for excusing the presence of the proposed ward or proposed conservatee. Subsection (a)(3) provides for the mandatory appointment in circumstances where the basis of the appointment is impairment, when the appointed attorney's duties terminate

2 and gives the court discretion to continue an appointment or make a new
3 appointment as needed. Subsection (a)(6) provides for "examination and
4 evaluation" rather than just a "mental evaluation" consistent with the underlying
5 concepts of the act. It also provides the court with the discretion not to order any
6 additional evaluation if a report is filed with the petition which meets the
7 requirements of K.S.A. 59-3010a unless requested by the proposed ward or
8 proposed conservatee. The preferred practice under the act will be for a complete
9 "examination and evaluation" report to accompany the petition so that more
10 detailed information can be provided to the court and the proposed ward or
11 conservatee will have notice of the facts relied upon by the petitioner from the
12 beginning of the proceeding.

13 Subsections (b), (c) and (d) provide for waiver of notice by the persons or
14 agencies entitled to notice pursuant to K.S.A. 59-3012(d) and the holding of the
trial forthwith.

1 *Sec. 15*

59-3010a. An Order for mental examination and evaluation. Such order may be

2 served on the proposed ward or proposed conservatee at the same time or after notice is given. It

3 shall be served in the manner provided for in K.S.A. 59-3012 and amendments thereto. It (a)

4 Upon the filing of a petition as provided for in K.S.A. 59-3009a and amendments thereto

5 alleging that the proposed ward or proposed conservatee is an adult with an impairment in need

6 of a guardian or conservator, or both, or as provided for in K.S.A. 59-3009c and amendments

7 thereto alleging that the proposed ward or proposed conservatee is a minor with an impairment in

8 need of a guardian or conservator, or both, the court shall order the proposed ward or proposed

9 conservatee to submit for a mental to an examination and evaluation and to undergo such

10 evaluation at to be conducted through a general hospital, or a psychiatric hospital, an institution

11 within the department of social and rehabilitation services, community mental health clinic

12 center, community developmental disability organization, or by a private psychiatrist, physician,

13 psychiatrist, or psychologist or other professional appointed by the court who is qualified to

14 evaluate the proposed ward's or proposed conservatee's alleged impairment, designated by the

15 court in the order. An institution within the department of social and rehabilitation services shall

16 receive and evaluate any proposed ward or proposed conservatee ordered evaluated therein. The

17 order shall be served in the manner provided for in K.S.A. 59-3012 and amendments thereto, and

18 may be served at the same time or after the notice provided for therein.

19 (b) Unless otherwise specified by the court, the report of the examination and evaluation

20 submitted to the court shall contain:

21 (1) The proposed ward's or proposed conservatee's name, age and date of birth:

2 (2) A description of the proposed ward's or proposed conservatee's physical and mental
3 condition;

4 (3) A description of the nature and extent of the proposed ward's or proposed
5 conservatee's cognitive and functional abilities and limitations, including adaptive behaviors and
6 social skills, and, as appropriate, educational and developmental potential;

7 (4) A prognosis for any improvement and, as appropriate, any recommendation for
8 treatment or rehabilitation;

9 (5) A list and description of any prior assessments, evaluations or examinations of the
10 proposed ward or proposed conservatee, including the dates thereof, which were relied upon in
11 the preparation of this evaluation;

12 (6) The date and location where this examination and evaluation occurred, and the name
13 or names of the professional or professionals performing the examination and evaluation and
14 their qualifications;

15 (7) A statement by the professional that he or she has personally completed an
16 independent examination and evaluation of the proposed ward or proposed conservatee, or by a
17 professional on behalf of the professionals who have together completed an independent
18 examination and evaluation of the proposed ward or proposed conservatee that they have done
19 so, and that the report submitted to the court contains the results of that examination and
20 evaluation, and the professional's or professionals' opinion with regard to the issues of whether
21 or not the proposed ward or proposed conservatee is an adult or a minor with an impairment in
need of a guardian or conservator, or both, and, if ascertainable, whether it would be injurious to

1 the proposed ward or proposed conservatee to be required to be present at the trial on the
2 petition, or whether the proposed ward or proposed conservatee could meaningfully participate in
3 those proceedings; and

4 (8) The signature of the professional who prepared the report.

5 (c) At the time designated by the court in the order, but in no event later than three days
6 prior to the date of the hearing provided for in K.S.A. 59-3013 and amendments thereto; The
7 examiner professional shall submit to file with the court, at least five days prior to the date of the
8 trial, a his or her written report, in writing, of concerning the examination and evaluation as
9 instructed ordered by the court in its order. ; which The report shall also be made available by the
10 court to counsel for the all parties at least three days prior to such hearing. Such report shall state
11 that the examiner has made an independent evaluation and examination of the proposed ward or
12 proposed conservatee and shall state the results of the examination on the issue of whether the
13 proposed ward or proposed conservatee is a disabled person.

14 (d) In lieu of entering an order for an examination and evaluation as provided for herein,
15 the court may determine that the report accompanying the petition as provided for in K.S.A. 59-
16 3009a(c) or 59-3009c(c), and amendments thereto, is in compliance with the requirements of this
17 section and that no further examination or evaluation should be required, unless the proposed
18 ward or proposed conservatee, or his or her attorney, requests such an examination and
19 evaluation in writing. Any such request shall be filed with the court, and a copy thereof
20 delivered to the petitioner, at least four days prior to the date of the trial. Accompanying the
21 request shall be a statement of the reasons why an examination and evaluation is requested and

1 *Sec. 16* **59-3011. Discretionary preliminary orders; procedure.** ~~At or after~~ (a) Upon the filing

2 of the a petition as provided for in K.S.A. ~~59-3009~~ 59-3009a, 59-3009b, 59-3009c, 59-3009d or
 3 59-3009e, and any amendments thereto, and prior to the hearing or at any time thereafter until the
 4 trial provided for in K.S.A. 59-3013 and amendments thereto, the court may enter any of the
 5 following:

6 (a) ~~When the proposed ward or proposed conservatee is alleged to be either a disabled~~
 7 adult person or a minor, the court may issue either of the following orders:

8 (1) An order for an investigation. ~~Such investigation may, at the direction of the court,~~
 9 cover the character, and report concerning the proposed ward's or proposed conservatee's family
 10 relationships, and past conduct, the nature and extent of any property or income of the proposed
 11 ward or proposed conservatee; whether or not the proposed ward or proposed conservatee is
 12 likely to injure oneself self or others, or other matters as the court may specify. ; the character
 13 and past conduct of any proposed guardian or conservator; the nature and extent of the property
 14 and income of the proposed ward or proposed conservatee; and other pertinent factors. If
 15 requested to do so by the court, the secretary of social and rehabilitation services shall make such
 16 conduct this investigation. At the direction of Otherwise, the court; may appoint any other person
 17 who is qualified, appointed by the court, may make such to conduct this investigation, and the
 18 costs of this investigation shall be assessed as provided for in K.S.A. 59-3032 and amendments
 19 thereto. The person who conducts the investigation shall promptly make a report to the court, in
 20 writing, which report shall be made available to counsel for the parties at least three days prior to
 21 such hearing.

1 the name and address of a qualified professional or facility willing and able to conduct this
2 examination and evaluation. If the court orders a further examination and evaluation, the court
3 may continue the trial and fix a new date, time and place of the trial at a time not to exceed 30
4 days from the date of the filing of the request.

5
6 Comment

7 This section is key to the concept of the act as described in the comment to
8 59-3002 and requires more than just a "mental evaluation." It specifies what the
9 "examination and evaluation" report shall contain. The detailed report is
10 necessary for the court to fully evaluate the need for the appointment of a
11 guardian or conservator consistent with the concepts of the act. It expands the list
12 of persons and entities who may conduct the examination and evaluation and
13 provide the report to the court.

14 This section was brought over from 59-3010 (a)(6). Even though it will be
15 a completely new section in the bill, it is shown in strike-type and underscoring to
show the changes the committee made in current law.

(2) Any orders requested or authorized pursuant to K.S.A. 59-3011a and amendments thereto.

(3) For good cause shown, an order of continuance of the trial set pursuant to K.S.A. 59-3010 and amendments thereto.

(4) For good cause shown, an order of advancement of the trial set pursuant to K.S.A. 59-3010 and amendments thereto.

(5) For good cause shown, an order changing the place of the trial set pursuant to K.S.A. 59-3010 and amendments thereto.

(6) A notice in the manner provided for in K.S.A. 59-3012 and amendments thereto.

~~(2) An order of continuance. For good cause shown, a continuance may be granted to either the petitioner or the proposed ward or proposed conservatee.~~

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

(b) When Upon the filing of a petition as provided for in K.S.A. 59-3009b and amendments thereto alleging that the proposed ward or proposed conservatee is alleged to be a minor in need of a guardian or conservator, or both, the court may issue any of the following orders:

(1) An order of temporary custody of the minor.

(2) An order requiring that the ~~proposed ward or proposed conservatee~~ minor appear at the time and place of the ~~hearing~~ trial set pursuant to K.S.A. 59-3010(b) and amendments

1 thereto. If an order to appear is entered, but is later rescinded, the court shall enter in the record
 2 of the proceedings the facts upon which the court found subsequent to the issuance of the order
 3 that the presence of the minor should be excused.

4 (3) An order appointing an attorney to represent the ~~proposed ward or proposed~~
 5 ~~conservatee~~ minor at all stages of the proceedings. The court shall give preference, in the
 6 appointment of the attorney, to any attorney who has represented the minor in other matters if the
 7 court has knowledge of that prior representation, or to an attorney whom the minor, if 14 years of
 8 age or older, has requested. Any appointment made by the court shall terminate upon a final
 9 determination of the petition and any appeal therefrom, unless the court continues the
 10 appointment by further order. Thereafter, an attorney may be appointed by the court if requested,
 11 in writing, by the guardian, conservator, or minor, if 14 years of age or older, or upon the court's
 12 own motion. If over 14 years of age, the proposed ward or proposed conservatee shall have the
 13 right to choose and to engage an attorney and, in such an event, the attorney appointed herein
 14 shall be relieved of all duties by the court.

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

16 (5) An order for a psychological testing. Such order may be served on the proposed ward
 17 or proposed conservatee at the same time or after notice is given. It shall be served in the manner
 18 provided for in K.S.A. 59-3012 and amendments thereto. It shall or other examination and
 19 evaluation of the minor as may be specified by the court. The court may order the proposed ward
 20 or proposed conservatee minor to submit for psychological tests and to undergo such tests at to
 21 such an examination and evaluation to be conducted through a general hospital, psychiatric

1 hospital, community mental health clinic center, community developmental disability
2 organization, psychological clinic or with by a psychologist or private physician, psychiatrist,
3 psychologist or other person appointed designated by the court who is qualified to examine and
4 evaluate the minor in the order. The examiner shall submit to the court a report of the evaluation
5 at the time designated by the court. The costs of this examination and evaluation shall be
6 assessed as provided for in K.S.A. 59-3032 and amendments thereto.

7 (c) Upon the filing of a petition as provided for in K.S.A. 59-3009c and amendments
8 thereto alleging that the proposed ward or proposed conservatee is a minor with an impairment in
9 need of a guardian or conservator, or both, the court may issue an order of temporary custody of
10 the minor.

11 (d) Upon the filing of a petition as provided for in K.S.A. 59-3009d alleging that the
12 proposed ward or proposed conservatee is a person who has been previously adjudged as
13 impaired in another state, the court may issue any of the following:

14 (1) An order appointing an attorney to represent the proposed ward or proposed
15 conservatee. In making this appointment, the court shall consider the appointment of any
16 attorney who has represented the proposed ward or proposed conservatee in other matters if the
17 court has knowledge of that prior representation. Any appointment made by the court shall
18 terminate upon a final determination of the petition and any appeal therefrom, unless the court
19 continues the appointment by further order. Thereafter, an attorney may be appointed at any time
20 if requested, in writing, by the ward, conservatee, guardian, or conservator, or upon the court's
21 own motion.

1 (2) An order requiring that the proposed ward or proposed conservatee appear at the time
2 and place of the trial set pursuant to K.S.A. 59-3010(d) and amendments thereto. If an order to
3 appear is entered, but later rescinded, the court shall enter in the record of the proceedings the
4 facts upon which the court found subsequent to the issuance of the order that the presence of the
5 proposed ward or proposed conservatee should be excused:

6 (3) An order for an examination and evaluation of the proposed ward or proposed
7 conservatee as may be specified by the court. The court may order the proposed ward or
8 proposed conservatee to submit to such an examination and evaluation to be conducted through a
9 general hospital, psychiatric hospital, community mental health center, community
10 developmental disability organization, or by a private physician, psychiatrist, psychologist or
11 other person appointed by the court who is qualified to examine and evaluate the proposed ward
12 or proposed conservatee. The costs of this examination and evaluation shall be assessed as
13 provided for in K.S.A. 59-3032 and amendments thereto.

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

15 (e) Upon the filing of a petition as provided for in K.S.A. 59-3009e and amendments
16 thereto alleging that the proposed conservatee is a person in need of an ancillary conservator and
17 requesting the appointment of an ancillary conservator in Kansas, the court may issue any of the
18 following:

19 (1) An order appointing an attorney to represent the proposed conservatee. In making
20 this appointment, the court shall consider the appointment of any attorney who has represented
21 the proposed conservatee in other matters if the court has knowledge of that prior representation.

2 Any appointment made by the court shall terminate upon a final determination of the petition and
3 any appeal therefrom, unless the court continues the appointment by further order. Thereafter, an
4 attorney may be appointed at any time if requested, in writing, by the conservatee or conservator,
5 or upon the court's own motion.

6 (2) A notice in the manner provided for in K.S.A. 59-3012 and amendments thereto.

7 Comment

8 This section sets out the discretionary orders that may be entered by the
9 court. Subsection (a) sets out the orders applicable in all cases. Subsection (b),
10 (c), (d) and (e) are applicable to the individual circumstances that the petition is
11 based upon.

1 *Sec. 17* **59-3012. Notice; contents; service.** (a) The notice ~~provided~~ required by K.S.A.
 2 59-3010(a)(5) ~~and 59-3011~~, and amendments thereto, and any notice which the court may require
 3 pursuant to K.S.A. 59-3011 and amendments thereto, shall be given to the ~~proposed ward or~~
 4 ~~proposed conservatee named in the petition, the attorney of the proposed ward or proposed~~
 5 ~~conservatee, if any, and to such other persons as the court shall direct. If the proposed ward or~~
 6 ~~proposed conservatee has a spouse, natural guardian, custodian, guardian, or conservator notice~~
 7 ~~shall also be given them.~~

8 ~~_____~~ (1) The notice shall state:

9 (A) (1) That a petition has been filed; alleging that the proposed ward or proposed
 10 conservatee is either ~~a disabled person~~ an adult with an impairment in need of a guardian or
 11 conservator, or both, or a minor in need of a guardian or conservator, or both, or a minor with an
 12 impairment in need of a guardian or conservator, or both, or a person who has been previously
 13 adjudged as impaired in another state, or a person in need of an ancillary conservator, and
 14 requesting ~~that the court appoint~~ the appointment of a guardian or a conservator, or both, or an
 15 ancillary conservator in this state;

16 (B) (2) the date, time and place of when the trial hearing upon the petition shall be held
 17 ~~and whether the proposed ward or proposed conservatee shall be present thereat~~;

18 (3) whether the proposed ward or proposed conservatee has been ordered to appear at this
 19 trial, or whether the court has made any finding which excuses the presence of the proposed ward
 20 or proposed conservatee at the trial;

21 (C) (4) ~~the name of the~~ whether any attorney, if any, has been appointed by the court to

1 represent the proposed ward or proposed conservatee, and if so, the name of that attorney and the
2 date, time and place where the proposed ward or proposed conservatee shall have the opportunity
3 to consult with ~~such~~ that attorney;

4 (5) whether the court has entered any order appointing a temporary guardian or a
5 temporary conservator, or both, or a temporary ancillary conservator, and if so, the name and
6 address of this individual or corporation;

7 (6) that if the court has appointed a temporary guardian or a temporary conservator, or
8 both, or a temporary ancillary conservator, that the proposed ward or proposed conservatee, or
9 certain others, may request a hearing upon that appointment if that request is made in writing and
10 filed with the court not later than the third day following the entry of the ex parte order
11 appointing a temporary guardian or temporary conservator, or both, or a temporary ancillary
12 conservator, or of the service of that order upon the proposed ward or proposed conservatee, if
13 later;

14 (7) the name and address of the individual or corporation whom the petitioner has
15 suggested that the court appoint as the guardian or the conservator, or both, or as the ancillary
16 conservator;

17 (~~D~~) (8) that the proposed ward or proposed conservatee, if alleged to be a ~~disabled person~~
18 an adult with an impairment in need of a guardian or a conservator, or both, has a right to
19 demand a hearing before a jury trial by filing a written request for such with the court at least
20 four days prior to the date of the trial; and

21 (9) that if the proposed ward or proposed conservatee demands a jury trial, that the trial

1 may have to be continued by the court for a reasonable time in order to empanel a jury, but that
 2 this continuance will not exceed 30 days from the date of the filing of the demand.

3 ~~(2)~~ (b) The court may order any of the following persons to serve the notice upon the
 4 proposed ward or proposed conservatee:

5 ~~(A) The physician or psychologist currently administering to the proposed ward, or~~
 6 ~~proposed conservatee provided the physician or psychologist consents;~~

7 ~~—— (B) the head of the local mental health clinic or designee of such head;~~

8 ~~—— (C) the local health officer or designee of the local health officer;~~

9 ~~—— (D) the commissioner of adult services or the commissioner's designee;~~

10 (1) The petitioner or the attorney for the petitioner;

11 (2) the attorney appointed by the court to represent the proposed ward or proposed
 12 conservatee;

13 ~~(E)~~ (3) any law enforcement officer; or

14 ~~(F) the attorney of the proposed conservatee~~ (4) any other person whom the court finds to
 15 be a proper person to serve this notice.

16 ~~(b)~~ (c) If the proposed ward or proposed conservatee is alleged to be an adult with an
 17 impairment in need of a guardian or conservator, or both:

18 (1) This ~~The~~ notice shall be personally served personally on the proposed ward or
 19 proposed conservatee as soon as possible, but in no case later than 10 days prior to the date of the
 20 trial and immediate return thereof shall be made to the court by the person serving this notice. If
 21 the proposed ward or proposed conservatee cannot be personally served with this notice within

Kansas, the court shall direct how this notice shall be served upon the proposed ward or proposed conservatee. and

(2) This notice shall be served on the attorney of the proposed ward or proposed conservatee, if any, as soon as possible, but in no case later not less than five 10 days prior to the date of the hearing trial and immediate return thereof shall be made to the court by the person serving this notice. If the proposed ward or proposed conservatee may not be personally served within the state, the court may direct notice be given to the proposed ward or proposed conservatee in such manner and for such a period of time as the court shall deem reasonable. Notice required to be given to any other person shall be given in such manner and for such a period of time as the court shall deem reasonable. If the proposed ward or proposed conservatee is a patient in any psychiatric hospital notice by mail shall be given to the head of the hospital.

(3) The court may order that a copy of this notice shall be served on such other persons as the court determines and in such manner as the court directs.

(d) If the proposed ward or proposed conservatee is alleged to be a minor in need of a guardian or conservator, or both, or a minor with an impairment in need of a guardian or conservator, or both:

(1) This notice shall be served on the attorney appointed by the court to represent the minor, if one has been appointed, and on those persons and agencies, if any, required to be named by the petitioner pursuant to K.S.A. 59-3009b(b)(5) and amendments thereto as soon as possible, but in no case later than 10 days prior to the date of the trial and immediate return thereof shall be made to the court by the person serving this notice.

1 (2) The court may order that a copy of this notice shall be served on such other persons,
2 including the minor, as the court determines and in such manner as the court directs.

3 (e) If the proposed ward or proposed conservatee is alleged to be a person who has been
4 previously adjudged as impaired in another state:

5 (1) This notice shall be served on the attorney appointed by the court to represent the
6 proposed ward or proposed conservatee, if one has been appointed, and on those persons and
7 agencies, if any, required to be named by the petitioner pursuant to K.S.A. 59-3009d(b)(6) and
8 (7) and amendments thereto as soon as possible, but in no case later than 10 days prior to the date
9 of the trial and immediate return thereof shall be made to the court by the person serving this
10 notice.

11 (2) The court may order that a copy of this notice shall be served on such other persons,
12 including the proposed ward or proposed conservatee, as the court determines and in such
13 manner as the court directs.

14 (f) If the proposed conservatee is alleged to be a person in need of an ancillary
15 conservator:

16 (1) This notice shall be served on the attorney appointed by the court to represent the
17 proposed conservatee, if one has been appointed, and on those persons and agencies, if any,
18 required to be named by the petitioner pursuant to K.S.A. 59-3009e(b)(5), (6) and (7), and
19 amendments thereto as soon as possible, but in no case later than 10 days prior to the date of the
20 trial and immediate return thereof shall be made to the court by the person serving this notice.

21 (2) The court may order that a copy of this notice shall be served on such other persons,

1 including the proposed conservatee, as the court determines and in such manner as the court
2 directs.

3 (g) If the proposed ward or proposed conservatee is a patient in any psychiatric hospital,
4 this notice shall also be served on the head of that hospital.

5
6
7 Comment

8 This section provides for the notice to be given, its contents and how it is
9 to be served. It deals with the general provisions common to all proceedings and
10 specifically with the individual circumstances which the petition may be based
11 upon.

12 The amendments to subsection (b), which sets out the persons who may be
13 ordered to serve the notice upon the proposed ward or proposed conservatee, were
14 not intended to exclude any of the persons previously listed. Rather, these
15 persons were intended to be encompassed by subsection (b)(4), as "any other
16 person whom the court finds to be a proper person to serve notice."
17

1 *Sec. 18* **59-3013. Hearing Trial; procedure; ancillary conservator, when appointment of**

2 **guardian or conservator; denial.** (a) The hearing trial upon a petition filed pursuant to K.S.A.
 3 59-3009a, 59-3009b, 59-3009c, 59-3009d or 59-3009e and amendments thereto shall be held at
 4 the time and place specified in the court's order entered pursuant to K.S.A. 59-3010 and
 5 amendments thereto, unless an order of advancement, or a continuance or change of place has
 6 been granted issued pursuant to K.S.A. 59-3011 and amendments thereto, and may be
 7 consolidated with the hearing trial provided for in K.S.A. 1996 Supp. 59-2965 and amendments
 8 thereto the Care and Treatment Act for Mentally Ill Persons or the Care and Treatment Act for
 9 Persons with an Alcohol or Substance Abuse Problem, if the petition also incorporates the
 10 allegations required by, and is filed in compliance with, the provisions of either of those Acts.

11 (b) The hearing shall be held to the court only, unless the court shall determine that it
 12 shall be held before a jury or unless the proposed ward or proposed conservatee shall, at least 48
 13 hours prior to the time of the hearing, request in writing a hearing before a jury. If the petition
 14 alleges that the proposed ward or proposed conservatee is an adult with an impairment in need of
 15 a guardian or conservator, or both, the trial may be held to a jury if, at least 4 days prior to the
 16 date of the trial, a written demand for jury trial is filed with the court by the proposed ward or
 17 proposed conservatee. In all other cases, the trial shall be held to the court.

18 (c) The jury, if one is ordered or requested demanded, shall consist of six persons and
 19 shall be selected in the manner provided in K.S.A. 1996 Supp. 59-2965 and amendments thereto
 20 as provided by law. Notwithstanding any provision of K.S.A. 43-166 and amendments thereto to
 21 the contrary, a panel of prospective jurors may be assembled by the clerk upon less than 20 days

notice in this circumstance. From this panel, 12 qualified jurors who have been passed for cause shall be empaneled. Prior service as a juror in any other court shall not exempt, for that reason alone, any person from jury service hereunder. From the panel so obtained, the proposed ward or proposed conservatee, or the attorney for the proposed ward or proposed conservatee, shall strike one name; then the petitioner, or the petitioner's attorney, shall strike one name; and so on alternatively until each has stricken three names so as to reach the jury of six persons. During this process, if either party neglects or refuses to aid in striking the names, the court shall strike a name on behalf of such party.

(d) The petitioner and the proposed ward or proposed conservatee shall each be afforded an opportunity to appear at the hearing trial, to testify and to present and cross-examine witnesses. If the trial has been consolidated with a trial being held pursuant to either the Care and Treatment Act for Mentally Ill Persons or the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem. All persons not necessary for the conduct of the proceedings may be excluded as provided for in those Acts. The hearing trial 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 proposed ward or proposed conservatee. The court shall have the authority to receive all relevant and material evidence which may be offered, including the testimony or written report, findings and or recommendations of the hospital, clinic, physician or psychologist any professional or other person who has examined or evaluated the proposed ward or proposed conservatee and the testimony and written findings and recommendations of the investigators appointed pursuant to subsection (a)(1) of the secretary of

1 social and rehabilitation services or any other person appointed by the court to conduct an
2 investigation pursuant to K.S.A. 59-3011 and amendments thereto. Such evidence shall not be
3 privileged for the purpose of this hearing trial.

4 (e) Upon completion of the trial:

5 (1) If the court finds by clear and convincing evidence that the proposed ward or
6 proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or
7 both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in
8 need of a guardian or a conservator, or both, or a person who has been previously adjudged as
9 impaired in another state, the court shall, pursuant to K.S.A. 59-3014 and amendments thereto,
10 appoint a qualified and suitable individual or corporation as the guardian or conservator, or both,
11 and shall specify what duties, responsibilities, powers and authorities as provided for in K.S.A.
12 59-3018b, 59-3018c, 59-3018d, 59-3019a or 59-3019b, and amendments thereto, the guardian or
13 conservator shall have. If the court appoints co-guardians or co-conservators, or both, the court
14 shall specify whether such co-guardians or co-conservators, or both, shall have the authority to
15 act independently, to act only in concert, or under what circumstances or with regard to what
16 matter they may act independently and when they may act only in concert.

17 (2) If a jury has been demanded in the case of an adult and the jury finds by clear and
18 convincing evidence that the proposed ward or proposed conservatee is unable to meet essential
19 needs for physical health, safety or welfare, or is unable to manage such person's estate, then the
20 court shall determine if the proposed ward or proposed conservatee is in need of a guardian or a
21 conservator, or both, and if so, the court shall, pursuant to K.S.A. 59-3014 and amendments

1 thereto, appoint a qualified and suitable individual or corporation as the guardian or conservator,
2 or both, and shall specify what duties, responsibilities, powers and authorities as provided for in
3 K.S.A. 59-3018b, 59-3018c, 59-3018d, 59-3019a or 59-3019b, and amendments thereto, the
4 guardian or conservator shall have. If the court appoints co-guardians or co-conservators, or
5 both, the court shall specify whether such co-guardians or co-conservators, or both, shall have the
6 authority to act independently or whether they shall be required to act only in concert.

7 (3) If the court finds by clear and convincing evidence that the proposed conservatee is a
8 person in need of an ancillary conservator, the court shall, pursuant to K.S.A. 59-3014 and
9 amendments thereto, appoint a qualified and suitable individual or corporation as the ancillary
10 conservator, and shall specify what duties, responsibilities, powers and authorities as provided
11 for in K.S.A. 59-3019a or 59-3019b, and amendments thereto, the ancillary conservator shall
12 have. If the court appoints co-ancillary conservators, the court shall specify whether such co-
13 ancillary conservators shall have the authority to act independently or whether they shall be
14 required to act only in concert.

15 (f) If the court does not find by clear and convincing evidence that the proposed ward or
16 proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or
17 both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in
18 need of a guardian or a conservator, or both, or a person who has been previously adjudged as
19 impaired in another state, or a person in need of an ancillary conservator, or does not find that the
20 proposed ward or proposed conservatee is in need of a guardian or a conservator, even though the
21 jury has determined that the proposed ward or proposed conservatee is unable to meet essential

1 needs for physical health, safety or welfare, or is unable to manage such person's estate, because
2 other alternative means exist and are sufficient to meet those needs of the proposed ward or
3 proposed conservatee, then the court shall deny the requested appointments.

4 ~~If the proposed conservatee has been duly adjudged an incapacitated person, a disabled~~
5 ~~person, an insane person or an incompetent person by any court of competent jurisdiction in any~~
6 ~~other state and a domiciliary conservator or guardian for the estate of such person has been~~
7 ~~appointed, and such facts have been established in accordance with subsection (c) of K.S.A.~~
8 ~~59-3009 and amendments thereto, the court shall appoint a suitable ancillary conservator.~~

9 ~~—— If, upon the completion of the hearing, the court or jury finds by clear and convincing~~
10 ~~evidence that the proposed ward or proposed conservatee is a disabled person in need of a~~
11 ~~guardian or conservator, or both, or if the court or jury finds that the proposed ward or proposed~~
12 ~~conservatee is a minor in need of a guardian or conservator, or both, the court shall make a~~
13 ~~finding as to what extent the disabled person is able to, and should be permitted to, make~~
14 ~~decisions which affect that person and the court shall specifically set forth such findings of fact~~
15 ~~in the court's order and pursuant to K.S.A. 59-3014 and amendments thereto shall appoint one or~~
16 ~~more suitable individuals or corporations as guardian or conservator, or both, of such disabled~~
17 ~~person.~~

18 ~~—— If, upon the completion of the hearing, the court or jury finds that clear and convincing~~
19 ~~evidence that the proposed ward or proposed conservatee is a disabled person or a minor has not~~
20 ~~been shown, the court shall enter the finding in the record and the court by an appropriate order~~
21 ~~shall terminate the proceedings.~~

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Comment

This section provides for the trial procedure and the appointment or denial of the appointment of a guardian or conservator. Subsection (b) provides for a jury trial to determine the issue of impairment only, when requested by an adult who is alleged to have an impairment and to be in need of a guardian or conservator, or both. In all other cases the trial is to be held to the court. Subsection (c) provides for the jury procedure if a jury is demanded.

1 *Sec. 19* 59-3014. Appointment of guardian or conservator; priority consideration of
 2 nominee; qualifications; ~~limited guardianship or conservatorship; appointment of~~
 3 ~~successor guardian or conservator.~~ (a) Subject to K.S.A. 59-3004, and amendments thereto;
 4 The court in appointing a suitable guardian or conservator shall give priority in the following
 5 order consideration to the individual or corporation suggested by:

6 (1) To the nominee of ~~The petitioner;~~ a minor over the age of 14 years who is not a
 7 disabled person;

8 (2) to the nominee of a natural guardian if such suggestion is made pursuant to K.S.A. 59-
 9 3004 and amendments thereto or made in any other manner;

10 (3) the proposed ward or proposed conservatee, if such suggestion is made within any
 11 power of attorney or made in any other manner;

12 (4) a minor who is the proposed ward or proposed conservatee, if over 14 years of age; or

13 (5) the spouse, adult child or other close family member of the proposed ward or
 14 proposed conservatee.

15 (b) The court, in appointing a guardian or conservator, shall consider the workload and
 16 capabilities of the proposed any suggested guardian or conservator, or both, before making such
 17 appointment, and the court shall give particular attention in making such appointment to all the
 18 number of other cases in which the proposed suggested guardian or conservator, or both, other
 19 than a corporation, is currently serving as guardian or conservator, or both, for particularly if that
 20 number is more than 15 or more wards or conservatees, or both.

21 (c) Subject to K.S.A. 59-3004, and amendments thereto; In appointing a suitable guardian

for a person who is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the court shall consider, but shall not be limited to, the appointment of a person an individual as guardian who is sympathetic to and ~~will~~ willing to support such this system of healing.

(d) ~~Upon the filing of an oath according to law, letters of guardianship shall be granted. If the court, pursuant to K.S.A. 59-3013 and amendments thereto, has made a finding that a disabled person is able to and should be permitted to make some decisions which affect the person, a guardian shall be appointed and "Letters of Limited Guardianship" shall specify which of the powers and duties of a guardian shall be assigned to the limited guardian. If the court, pursuant to K.S.A. 59-3013 and amendments thereto, has made a finding that a disabled person is unable to, and should not be permitted to, make any decisions which will affect the person of the disabled person, or if the ward is a minor, a guardian shall be appointed and the guardian shall be possessed of all the powers and duties of a guardian as set out in K.S.A. 59-3018 and amendments thereto. Upon the filing of a bond in such an amount as the court may direct and an oath according to law, letters of conservatorship shall be granted. The secretary of social and rehabilitation services, in the secretary's official capacity, shall be appointed by the court to act as surety on the bond of any conservator providing advocacy services to a conservatee under contract with the Kansas guardianship program. The court shall send a certified copy of the order appointing a conservator who is providing advocacy services under contract with the Kansas guardianship program to the secretary. If the court, pursuant to K.S.A. 59-3013 and amendments thereto has made a finding that a disabled person is able to and should be permitted to make~~

1 some decisions which affect the person's property, a limited conservator shall be appointed and
2 the "Letters of Limited Conservatorship" shall specify which of the powers and duties of a
3 conservator shall be assigned to the limited conservator. If the court, pursuant to K.S.A. 59-3013
4 and amendments thereto, has made a finding that the disabled person is unable to make any
5 decisions which affect the property of the disabled person, or the ward is a minor, a conservator
6 shall be possessed of all powers and duties of a conservator as set out in K.S.A. 59-3019 and
7 amendments thereto. If there is no property, the court may waive the filing of a bond, but if the
8 conservator receives or becomes entitled to any property, the conservator shall immediately file a
9 report thereof and a bond in such amount as the court may direct. If the guardian or conservator
10 appointed is the one named by a testator or settlor under the provisions of K.S.A. 59-3004, and
11 amendments thereto and the testator or settlor has provided by will that no bond be required of
12 such guardian or conservator, then no bond shall be required, unless the court shall otherwise
13 direct.

14 (c) If the guardian dies, resigns or is removed, the court, after notice to the ward as the
15 court directs, shall appoint a successor selected in accordance with this section unless the
16 guardianship is terminated or a guardian is serving on a standby basis under subsection (c) of
17 K.S.A. 59-3036, and amendments thereto. If a guardian is serving on a standby basis under
18 subsection (c) of K.S.A. 59-3036, and amendments thereto, the court shall appoint a successor
19 selected in accordance with this section upon the conclusion of the proceedings under K.S.A.
20 59-3029, and amendments thereto. If the conservator dies, resigns or is removed, the court, after
21 notice to the conservatee as the court directs, shall appoint a successor selected in accordance

with this section unless the conservatorship is terminated.

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The original 59-3014 contained three separate subject matters which are important enough to have separate statutes. Subsections (a), (b) and (c) dealt with the identity and qualifications of the guardian or conservator to be appointed. Subsection (d) dealt with the process of the appointment. Subsection (d) was separated out to form the new section 59-3014a. Subsection (e) dealt with the death, resignation and removal of a guardian or conservator. It has been moved to 59-3026g.

Subsection (a) is changed to reflect that the court has the ultimate responsibility to decide who shall be appointed as the guardian or conservator. It has also enlarged the list of nominees from whom the court can receive recommendations. The changes in subsection (b) reflect the changes to subsection (a). Subsection (c) likewise is cleaned up for clarification purposes. The one significant change in this subsection is the replacement of the phrase "a person" with the phrase "an individual." This eliminates a corporate guardian being appointed. Religious tenets and practices are personal in nature. The appointment of an individual as guardian under this circumstance will help ensure that these tenets and practices are not unnecessarily violated.

1 *Sec. 20* **59-3014a. Oaths; bonds; resident agent; letters.** (a) When the court appoints an
2 individual or a corporation as a guardian, the court shall require that the individual or a
3 representative on behalf of the corporation file with the court an oath or affirmation as required
4 by K.S.A. 59-1702 and amendments thereto.

5 (b) When the court appoints an individual or a corporation as a conservator, except as
6 provided for in subsections (c), (d) or (e), or in K.S.A. 59-3005a and amendments thereto, the
7 court shall require that the individual or a representative on behalf of the corporation file with the
8 court a bond in the amount of 125% of the combined value of the tangible and intangible
9 personal property in the conservatee's estate and the total of any annual income from any source
10 which the conservator may be expected to receive on behalf of the conservatee, minus any
11 reasonably expected expenses, conditioned upon the faithful discharge of all the duties of the
12 conservator's trust according to law, and with sufficient sureties as determined by the court.

13 (c) When the court appoints an individual or a corporation as a conservator pursuant to a
14 request for a voluntary conservatorship as provided for in K.S.A. 59-3007 and amendments
15 thereto, and the person for whom the voluntary conservatorship is established has requested that
16 the individual or corporation appointed not be required to file a bond, the court may waive the
17 filing of a bond; provided that the court may later require the filing of a bond if circumstances so
18 require.

19 (d) If, at the time of the appointment of a conservator, there is no property in the
20 possession of the conservatee requiring a conservatorship, but the court finds that there is likely
21 to be such at some point in time, the court may waive the filing of a bond at this time, and order

1 that the conservator shall immediately file a report with the court upon either coming into
2 possession of any property of the conservatee, or if the conservatee becomes entitled to receive
3 any property which should require a conservatorship. Upon the filing of such a report, the court
4 may, following any hearing the court may determine appropriate, require the conservator to file a
5 bond as provided for herein.

6 (e) If the conservator appointed is the individual or corporation suggested by a testator or
7 settlor as provided for in K.S.A. 59-3004 and amendments thereto, and the testator or settlor has
8 provided by will or trust that no bond should be required of such conservator, the court may
9 waive the filing of a bond; provided that the court may later require the filing of a bond if
10 circumstances so require.

11 (f) If the conservator is a bank having trust authority or a trust company organized and
12 having its principal place of business within the state of Kansas, the court may waive the filing of
13 a bond.

14 (g) If the conservator appointed is under contract with the Kansas guardianship program,
15 the Kansas guardianship program shall act as surety on the bond. The court shall order that a
16 certified copy of the order appointing a conservator who is under contract with the Kansas
17 guardianship program be sent to the director of the Kansas guardianship program.

18 (h) If the individual appointed as the guardian or as the conservator, or both, resides
19 outside of Kansas, the court shall require that person, and in the case of a corporation being
20 appointed as the guardian or the conservator, or both, the court shall require a representative of
21 the corporation, to appoint, in writing, a resident agent pursuant to K.S.A. 59-1706 and

1 amendments thereto.

2 (i) Upon the filing of the required oath or bond, and appointment and consent of a
3 resident agent, the court shall issue Letters of Guardianship to the guardian or Letters of
4 Conservatorship to the conservator, or both. The court may order that a certified copy of these
5 Letters be sent to such persons or agencies as the court specifies.

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7 Comment

8 Subsection (d) of the original 59-3014 has been moved and modified in
9 this new section. The major change to this subsection is the deletion of "limited
10 guardianships." This concept has been replaced by use of plans to be submitted to
11 the court by the guardian or conservator setting forth what, if any, decisions
12 should be left to the ward or conservatee to make in regard to their personal needs
13 or management of their finances. The required contents of these plans are set out
14 in the new 59-3018c for guardians and the new 59-3019b for conservators.

15 The other notable change to the original subsection (d) is that it has been
16 expanded to include the requirements in regard to bonds as set out in K.S.A. 59-
17 1101 et seq., and resident agents as set out in K.S.A. 59-1706.
18

Sec. 21

59-3014b. Appointment of nonprofit corporation as guardian; qualifications;

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

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

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

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

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

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

20 (c) Application for certification under this section shall be made to the secretary of social
 21 and rehabilitation services ~~on forms supplied by~~ in such manner as the secretary may direct. The

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

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

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

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

16 Comment

17 This section is current K.S.A. 59-3037 with some minor language
18 changes. It is appropriate to move this statute to the sections dealing with the
19 appointments and qualifications of all other guardians.

~~59-3015. Small estates; investment; bond requirements, exception.~~ (a) Any court having control over or custody of any amount of money not exceeding \$5,000, the right to which is vested in a minor, shall have the discretion to authorize, without the appointment of a conservator or the giving of bond, and notwithstanding the provisions of K.S.A. 59-3003 and amendments thereto: (1) The deposit of the money in a savings account of a bank, credit union or savings and loan association, payable to the conservator when appointed or to the minor upon attaining the age of majority; or (2) the payment of the money to any person, including the natural guardian of the minor or the minor. If paid to a person other than the minor, the person to whom the money is paid shall have the right and duty to manage, invest or otherwise dispose of the moneys for the benefit of the minor. If the minor is a conservatee, the court may authorize the payment of the money to the conservator of the minor without requiring the giving of bond.

~~(b) Any court having control over or custody of any amount of money not exceeding \$5,000, the right to which is vested in a person who has been adjudged to be a disabled person, shall have the discretion to authorize, without the giving of bond, the deposit of the money in a savings account of a bank, credit union or savings and loan association, payable to the conservator when appointed or to the disabled person on restoration to capacity. If the disabled person is a conservatee, the court may authorize the payment of the money to the conservator of the disabled person with the giving by the conservator of a personal bond.~~

Comment

This section was moved to K.S.A. 59-3005a and modified.

1 ~~59-3016. Change of place of hearing.~~ After the petition provided for in K.S.A. ~~59-3009~~
2 or ~~59-3027~~, and amendments to these sections, is filed, the district court may at any time, on its
3 own motion or upon the written request of any person, change the place of hearing on such
4 petition:

5 ~~—— (a) To the county of the residence of the proposed ward or ward;~~

6 ~~—— (b) To the county in which the proposed ward or proposed conservatee or ward or~~
7 ~~conservatee is a patient receiving care or treatment under the authority of a psychiatric hospital;~~

8 ~~—— (c) To any other county designated by the court, when the proposed ward or proposed~~
9 ~~conservatee or ward or conservatee has made a request for a change of hearing and the district~~
10 ~~court finds that the proposed ward or proposed conservatee or ward or conservatee cannot obtain~~
11 ~~a fair hearing.~~

12 ~~—— If any proposed ward or proposed conservatee, who is alleged to be a disabled person, or~~
13 ~~any ward or conservatee who was found to be a disabled person, is in a psychiatric hospital the~~
14 ~~district court of the county in which is located such hospital may not change the hearing under~~
15 ~~any circumstances unless the proposed ward or proposed conservatee or ward or conservatee has~~
16 ~~requested such change.~~

17 ~~—— When any order changing the place of hearing is issued, the district court issuing such~~
18 ~~order shall transmit to the district court in which the hearing is to be held a certified copy of all~~
19 ~~pleadings and orders in the case.~~

20 ~~—— Any district court to which the hearing is changed shall proceed in the case as if the~~
21 ~~petition had been originally filed therein and shall cause notice of the change of the place of the~~

1 hearing to be given to the persons and in the manner provided for in K.S.A. 59-3012 and
2 amendments thereto, except that the court need not issue the order for mental evaluation pursuant
3 to subsection (a)(6) of K.S.A. 59-3010 and amendments thereto, if such order has previously
4 been issued and the court shall not determine the suitability of nor appoint or discharge a
5 guardian or conservator.

6 ~~Any district court holding such a hearing shall transmit a statement of any court costs~~
7 ~~incurred and a certified copy of all pleadings and findings of fact in the case to the district court~~
8 ~~having venue. Upon receipt of such certified copy, the court having venue shall hold a hearing,~~
9 ~~after having given such notice as the court may direct. At such hearing, the court shall either~~
10 ~~grant or deny the request contained in the petition or shall dismiss the case as the findings of fact~~
11 ~~in the certified copy may indicate.~~

13 Comment

14 This section was replaced by new K.S.A. 59-3016a.
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1 *Sec. 22* **59-3016a. Referral for trial.** (a) At any time after the filing of the petition provided for
2 in K.S.A. 59-3009a, 59-3009b, 59-3009c or 59-3009d, and amendments thereto, but prior to the
3 trial thereon, the court may, upon the request of the proposed ward or proposed conservatee, or
4 upon the court's own motion, issue an order of referral for trial to the district court of:

5 (1) The county of residence of the proposed ward or proposed conservatee;

6 (2) the county wherein the proposed ward or proposed conservatee may be found; or

7 (3) any other county, if the referral has been requested by the proposed ward or proposed
8 conservatee and the court finds that the proposed ward or proposed conservatee cannot obtain a
9 fair trial otherwise.

10 (b) If the petition filed pursuant to K.S.A. 59-3009a, 59-3009b, 59-3009c or 59-3009d,
11 and amendments thereto, is filed in a county in which the proposed ward or proposed conservatee
12 is found because the proposed ward or proposed conservatee is confined to a psychiatric hospital,
13 the court may not issue an order of referral for trial pursuant to this section unless the proposed
14 ward or proposed conservatee has requested or consented to this referral.

15 (c) When any order of referral for trial has been issued pursuant to this section, the court
16 shall transmit to the district court to which the referral has been made a certified copy of all
17 pleadings and orders in the case.

18 (d) Upon receipt of an order of referral for trial and certified copies of the pleadings and
19 orders in the case, the district court to which a referral has been made shall cause notice of the
20 referral for trial to be given to all persons entitled to notice pursuant to K.S.A. 59-3012 and
21 amendments thereto, and shall thereafter proceed in the case as if the petition had been originally

2 filed therein, except that if the original court having venue has previously set the matter for trial
3 pursuant to K.S.A. 59-3010 and amendments thereto, but the court to which the order of referral
4 for trial has been made cannot conduct the trial at that time because notice of a change of
5 location of the trial cannot be served on any interested party at least 48 hours prior to the trial, or
6 because of scheduling conflicts, then the court to which the matter has been transferred for trial
7 may set a new date and time for the trial at a time not to exceed 21 days from the issuance of the
8 order of referral for trial, and shall cause notice thereof to be given as provided for in K.S.A. 59-
9 3012 and amendments thereto.

10 (e) At the conclusion of the trial held pursuant to K.S.A. 59-3013 and amendments
11 thereto, the court to which the matter has been referred for trial shall determine the issues as
12 provided for in K.S.A. 59-3013(d) and amendments thereto, and may deny the request contained
13 in the petition as the findings of the court require, but shall not appoint a guardian or a
14 conservator even if the need for such has been shown. In such case, the court shall transmit the
15 findings of the court following the trial, along with any statement of the costs incurred, and a
16 certified copy of all pleadings filed and orders entered during the course of the referral and trial,
17 to the original court having venue.

18 (f) Upon receipt of such findings, pleadings and orders, the original court having venue
19 shall proceed as provided for under this Act, and may appoint the guardian or conservator, or
20 both.
21

Comment

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2 The intent of current K.S.A. 59-3016 was retained in this new section.
3 This new section is a reorganization and expansion of the original for purposes of
4 clarification. The two notable changes are in subsections (a) and (f). In
5 subsection (a) the request to change the place of trial can be made only by the
6 proposed ward or proposed conservatee or the court. The "request of any person"
7 found in current 59-3016 has been deleted. Subsection (f) is added to clarify that
8 it is the original court having venue that appoints the guardian or conservator, or
9 both, and not the trial court to which the case was transferred for trial.
10

~~59-3017. Transfer of venue, when. The venue of any case may be transferred at any time after the appointment of a guardian or conservator, when it is for the best interest of such ward or conservatee, to the county in which the ward or conservatee is or becomes a resident. Upon the filing of a petition by any person interested in such ward or conservatee or in the estate of such ward or conservatee, the court shall fix the time and place for the hearing, notice of which shall be given to such persons and in such manner as the court shall direct. Upon proof that a transfer of venue is for the best interests of such ward or conservatee or the estate of the ward or conservatee, and upon the settlement and allowance of the accounts of the conservator to and including the time of such hearing, the court, after making and retaining a true copy of the essential files, not previously recorded, shall transmit the original file to the court to which venue is transferred where all subsequent proceedings shall be had.~~

Comment

This section was replaced by new K.S.A. 59-3017a.

1 *Sec. 23***59-3017a. Transfer of venue.** (a) At any time after the trial and appointment of a

2 guardian or conservator as provided for in K.S.A. 59-3013 and amendments thereto, and upon
3 the written request of the guardian or conservator, or upon the court's own motion, and after
4 notice to any persons as the court may direct, the court may transfer venue to another district
5 court for good cause shown. In such case, the transferring court shall transmit to the court to
6 which venue is being transferred a certified copy of all pleadings and orders in the case.

7 (b) Any district court to which venue is transferred shall proceed in the case as if the
8 petition and all proceedings to that point had originally been filed or occurred therein. In the
9 event that, due to the transfer of venue, notice of a change of location of a hearing previously
10 scheduled is required, but cannot be served on any interested party at least 48 hours prior to the
11 hearing, or if any hearing previously scheduled by the transferring court cannot be held as
12 scheduled by the receiving court because of scheduling conflicts, then the receiving court may
13 continue the hearing for up to seven full working days to allow adequate time for notice to be
14 given and the hearing to be held.

16 Comment

17 This is a reorganization of current K.S.A. 59-3017 for purposes of
18 clarification. It divides the two parts of 59-3017 into separate subsections. The
19 new subsection (b) is consistent with subsection (d) of 59-3016a. Both are
20 included in recognition of the current work loads and crowded dockets of the
21 courts. It is also consistent with similar provisions included in the mental illness
22 code. The restrictions as to who may file a petition for change of venue are the
23 same as found in 59-3016a. The main difference between 59-3016a and this
24 section is that 59-3016a deals with transfers after the filing of the petition but
25 before trial and this sections deals with transfers after trial. Due to that difference,
26 the criteria for changing venue has been changed from "best interest of such ward

or conservatee” to “good cause shown.” The majority of the transfers that occur after trial are transfers to the county of residence of the ward or conservatee after being released from a hospital or other institution.

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1 *Sec. 24* **59-3017b. Temporary guardian; temporary conservator; petition; order; hearings.**

2 (a) At any time after the filing of the petition provided for in K.S.A. 59-3009a, 59-3009b, 59-
3 3009c, 59-3009d or 59-3009e, and amendments thereto, but prior to the trial provided for in
4 K.S.A. 59-3013 and amendments thereto, any person may file in addition to that original petition,
5 or as a part thereof, a verified petition requesting the appointment of a temporary guardian or a
6 temporary conservator, or both, except if the petition alleges that the proposed conservatee is a
7 person in need of an ancillary conservator, and requests the appointment of an ancillary
8 conservator in Kansas, in which case the petition may request the appointment of a temporary
9 ancillary conservator. The petition shall include:

10 (1) The petitioner's name and address;

11 (2) the proposed ward's or proposed conservatee's name, age, date of birth, address of
12 permanent residence, and present address or whereabouts, if different from the proposed ward's
13 or proposed conservatee's permanent residence;

14 (3) a statement that it is the petitioner's belief that there is an imminent danger to the
15 physical health or safety of the proposed ward requiring immediate action to be taken to protect
16 the proposed ward, or that there is an imminent danger that the estate of the proposed conservatee
17 will be significantly depleted unless immediate action is taken to protect the estate, or both;

18 (4) the factual basis upon which the petitioner alleges this imminent danger;

19 (5) the names and addresses of witnesses by whom the truth of this petition may be
20 proved;

21 (6) the name, address and relationship to the proposed ward or proposed conservatee, if

any, of the individual or corporation whom the petitioner suggests that the court appoint as the
2 temporary guardian or temporary conservator, or both, and if the proposed temporary guardian or
3 temporary conservator is under contract with the Kansas guardianship program, that fact; and

4 (7) a request that the court make an ex parte determination that there exists such
5 imminent danger, and that the court appoint a temporary guardian or a temporary conservator, or
6 both, with such powers as the court deems necessary to protect the proposed ward or the estate of
7 the proposed conservatee.

8 (b) If the court determines that there is probable cause to believe that the proposed ward
9 or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or
10 both, or is a minor in need of a guardian or a conservator, or both, or is a minor with an
11 impairment in need of a guardian or a conservator, or both, or is a person who has been
12 previously adjudged as impaired in another state, or is a person in need of an ancillary
13 conservator, as alleged in the original petition, and that there exists an imminent danger to the
14 physical health or safety of the proposed ward, or that there exists an imminent danger that the
15 estate of the proposed conservatee will be significantly depleted, the court may enter an ex parte
16 emergency order appointing a temporary guardian or a temporary conservator, or both, and the
17 court shall specify what powers and duties as provided for in K.S.A. 59-3018, K.S.A. 59-3018a
18 or K.S.A. 59-3019, and amendments thereto, the temporary guardian or temporary conservator
19 shall have. The court may further authorize the temporary guardian or temporary conservator to
20 seek appropriate injunctive or other immediate relief from any appropriate court or other
21 authority.

1 (c) If the court enters an ex parte order appointing a temporary guardian or a temporary
2 conservator, or both, the proposed ward or proposed conservatee, the attorney for the proposed
3 ward or proposed conservatee, the spouse of the proposed ward or proposed conservatee, or in
4 the case of a minor, the natural guardian of the minor, may request a hearing on the matter if a
5 written request for such is filed with the court not later than the third day following the entry of
6 the ex parte order, or of service of the ex parte order upon the proposed ward or proposed
7 conservatee, if later. Upon receipt of such a request, the court shall fix the time and place for a
8 hearing upon the request and shall direct how and to whom notice of such hearing shall be given.

9 (d) In lieu of entering an ex parte emergency order of appointment of a temporary
10 guardian or a temporary conservator, or both, the court may deny the relief requested or set the
11 time and place for a hearing to be held on the request for the appointment of a temporary
12 guardian or a temporary conservator, or both, which hearing shall be held not later than the
13 second day following the filing of the petition, excluding any Saturday, Sunday or legal holidays.
14 The court may direct that notice thereof be given to the petitioner, the original petitioner, if
15 different, the proposed ward or proposed conservatee, the spouse of the proposed ward or
16 proposed conservatee, in the case of a minor, the natural guardian of the minor, and such other
17 persons as the court determines appropriate. The court shall determine by whom and in what
18 manner such notice shall be given. The court may enter an order requiring that the proposed
19 ward or proposed conservatee appear at the time and place of the hearing unless the court makes
20 a finding prior to the hearing that the presence of the proposed ward or proposed conservatee will
21 be injurious to the person's health or welfare, or that the proposed ward's or proposed

1 conservatee's impairment is such that the person could not participate in the proceedings, or that
2 the proposed ward or proposed conservatee has filed with the court a written waiver of his or her
3 right to appear in person. In any such case, the court shall enter in the record of the proceedings
4 the facts upon which the court has found that the presence of the proposed ward or proposed
5 conservatee at the hearing should be excused.

6 (e) Any hearing held pursuant to subsection (c) or (d) shall be conducted in as informal a
7 manner as may be consistent with orderly procedure. The rules governing evidentiary and
8 procedural matters shall be applied in a manner so as to facilitate informal, efficient presentation
9 of all relevant, probative evidence and resolution of the issues with due regard for the interests of
10 all parties.

11 (f) If after any hearing held pursuant to subsection (c) or (d) the court determines that
12 there is probable cause to believe that the proposed ward or proposed conservatee is an adult with
13 an impairment in need of a guardian or a conservator, or both, or a minor in need of a guardian or
14 a conservator, or both, or a minor with an impairment in need of a guardian or a conservator, or
15 both, or a person who has been previously adjudged as impaired in another state, or a person in
16 need of an ancillary conservator, as alleged in the original petition, and that there exists an
17 imminent danger to the physical health or safety of the proposed ward, or that there exists an
18 imminent danger that the estate of the proposed conservatee will be significantly depleted, the
19 court may appoint, or continue the appointment of, a temporary guardian or a temporary
20 conservator, or both, and the court shall specify what duties, responsibilities, powers and
21 authorities as provided for in K.S.A. 59-3018b, 59-3018c, 59-3018d, 59-3019a or 59-3019b, and

1 amendments thereto, the temporary guardian or temporary conservator shall have. The court
2 may further authorize the temporary guardian or temporary conservator to seek appropriate
3 injunctive or other immediate relief from any appropriate court or other authority. Otherwise, if
4 the court determines that there is probable cause to believe that the proposed ward or proposed
5 conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or a
6 minor in need of a guardian or a conservator, or both, or a minor with an impairment in need of a
7 guardian or a conservator, or both, or a person who has been previously adjudged as impaired in
8 another state, or a person in need of an ancillary conservator, as alleged in the original petition,
9 but that there is not probable cause to believe that there exists an imminent danger to the physical
10 health or safety of the proposed ward, or that there exists an imminent danger that the estate of
11 the proposed conservatee will be significantly depleted, the court shall deny the request for the
12 appointment of a temporary guardian or a temporary conservator, or both, or shall terminate the
13 earlier appointment of the temporary guardian or temporary conservator, or both, but shall
14 continue the matter to the trial on the original petition provided for in K.S.A. 59-3013 and
15 amendments thereto.

16 (g) The appointment and authority of any temporary guardian or temporary conservator
17 shall expire at the conclusion of the trial provided for in K.S.A. 59-3013 and amendments thereto
18 if the petition is denied, or upon the issuance of appropriate Letters to any guardian or
19 conservator appointed by the court at the conclusion of the trial, or as otherwise ordered by the
20 court, but such expiration shall not affect the validity of any action taken pursuant to the
21 authority of the temporary guardian or temporary conservator during the time of his or her

1 appointment. The temporary guardian or temporary conservator shall be required to provide an
2 accounting as directed by the court.

3 (h) If after any hearing held pursuant to subsection (c) or (d) the court finds that there has
4 not been shown sufficient evidence to cause the court to believe that the proposed ward or
5 proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or
6 both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in
7 need of a guardian or a conservator, or both, or a person who has been previously adjudged as
8 impaired in another state, or a person in need of an ancillary conservator, as alleged in the
9 original petition, the court shall dismiss the petition requesting the appointment of a temporary
10 guardian or a temporary conservator, or both, and may dismiss the original petition.

11 Comment

13 This new section is a clarification and expansion of subsection (a) of
14 current K.S.A. 59-3036. The petition for a temporary guardian or conservator or
15 both may be filed as a part of the original petition or by a separate petition filed at
16 or subsequent to the filing of the petition to appoint a guardian or conservator or
17 both, but prior to the trial. This statute contains three important subsections that
18 needed clarification and expansion. Due to the importance of emergencies that
19 can arise in an individual's life, the appointment of a temporary guardian or
20 conservator should be brought forward in the statutes. The contents of the
21 petition to be filed are made to be consistent with other petitions filed with the
22 court and include more details of the emergency. The balance of the new section
23 sets out the procedures that are to be followed and makes it clear that the court has
24 discretion to enter an ex parte order or require a hearing. If the court does enter an
25 ex parte order, that order must be served on the interested parties listed and those
26 parties are given an opportunity to have the order set aside. The new section also
27 clarifies that a temporary guardian or conservator can be appointed in all of the
28 various petitions that can be presented to the court for the appointment of a
29 guardian or conservator.
30

1 *Sec. 25* **59-3017c. Standby guardian; standby conservator; request for; appointment;**

2 **oath; bond; authority; reports.** (a) Any person may file at any time after the filing of the
3 petition provided for in K.S.A. 59-3009a, 59-3009b, 59-3009c or 59-3009d, and amendments
4 thereto, in addition to that original petition, or as a part thereof, or at any time after the
5 appointment of a guardian or a conservator as provided for in K.S.A. 59-3013 and amendments
6 thereto, a verified petition requesting the appointment of a standby guardian or a standby
7 conservator, or both. The petition shall include:

8 (1) The petitioner's name and address, and if the petitioner is the ward's or conservatee's
9 court appointed guardian or conservator, that fact;

10 (2) the proposed ward's, ward's, proposed conservatee's or conservatee's name, age, date
11 of birth, address of permanent residence, and present address or whereabouts, if different from
12 the proposed ward's, ward's, proposed conservatee's or conservatee's permanent residence;

13 (3) the name and address of the ward's or conservatee's court appointed guardian or
14 conservator, if different from the petitioner;

15 (4) the factual basis upon which the petitioner alleges the need for a standby guardian or
16 standby conservator, or both, or that it would be in the best interests of the proposed ward, ward,
17 proposed conservatee or conservatee to have the court appoint a standby guardian or standby
18 conservator, or both;

19 (5) the names and addresses of witnesses by whom the truth of this petition may be
20 proved;

21 (6) the name, address and relationship to the proposed ward, ward, proposed conservatee

1 or conservatee, if any, of the individual or corporation whom the petitioner suggests that the
2 court appoint as the standby guardian or standby conservator, and if the suggested standby
3 guardian or conservator is under contract with the Kansas guardianship program, that fact; and

4 (7) a request that the court make a determination that there is a need for the court to
5 appoint a standby guardian or a standby conservator, or both, or that it would be in the best
6 interests of the proposed ward, ward, proposed conservatee or conservatee for the court to
7 appoint a standby guardian or standby conservator, or both, and that the court make such
8 appointment.

9 (b) When the court appoints either an individual or a corporation as a guardian or a
10 conservator, or both, the court may appoint an additional individual or corporation as the standby
11 guardian or standby conservator, or both. Such standby guardian or conservator shall be selected
in accordance with the provisions of K.S.A. 59-3014 and amendments thereto.

13 (c) If the court appoints a standby guardian, the court shall require that the individual or a
14 representative on behalf of the corporation file with the court an oath or affirmation as required
15 by K.S.A. 59-1702 and amendments thereto, and upon the filing of such oath or affirmation, the
16 court may issue Letters of Authority to the standby guardian.

17 (d) If the court appoints a standby conservator, the court shall require that the individual
18 or a representative on behalf of the corporation file with the court a bond in such amount and
19 with such surety as the court shall specify, and upon the filing of such bond, if required, the court
20 may issue Letters of Authority to the standby conservator.

21 (e) A standby guardian shall have the authority and responsibility to assume the duties.

1 responsibilities, powers and authorities assigned to the guardian upon the temporary absence or
2 impairment of the guardian, or the resignation or death of the guardian. Within 10 days of such
3 assumption, the standby guardian shall file with the court a written notice of that fact and a
4 written report of the circumstances which caused the standby guardian to have assumed those
5 duties, responsibilities, powers and authorities. The report shall specify whether such
6 assumption is intended to be only temporary and the date by which it is expected that the
7 guardian shall be able to reassume such duties, responsibilities, powers and authorities, or that
8 the guardian is thought to be permanently unable to reassume such duties, responsibilities,
9 powers and authorities. This notice and report may be accompanied by or include a petition
10 pursuant to K.S.A. 59-3026g and amendments thereto requesting the appointment of a successor
11 guardian.

12 (f) A standby conservator shall have the authority and responsibility to assume the duties,
13 responsibilities, powers and authorities assigned to the conservator upon the temporary absence
14 or impairment of the conservator, or the resignation or death of the conservator, only if the
15 standby conservator shall file with the court a written notice of temporary absence, impairment,
16 resignation or death of the conservator. The notice shall specify if the absence or impairment of
17 the conservator is expected to be only temporary, the date by which it is expected that the
18 conservator shall be able to reassume such duties, responsibilities, powers and authorities, and
19 the reasons why the standby conservator believes it is necessary for the standby conservator to
20 assume the duties, responsibilities, powers and authorities of the conservator. Otherwise, the
21 notice shall advise the court that proceedings pursuant to K.S.A. 59-3026g and amendments

2 thereto to appoint a successor conservator are required, or the notice may be accompanied by or
3 include a petition requesting the appointment of a successor conservator. Upon receipt of such
4 notice, the court may specify a bond that the standby conservator shall file with the court before
5 assuming such duties, responsibilities, powers and authorities, or may authorize the standby
6 conservator to assume such of the conservator's duties, responsibilities, powers and authorities as
7 the court shall specify.

8 (g) Upon receipt of a notice as provided for in subsection (e) or (f), the court may set a
9 hearing to review the circumstances of the ward or conservatee as provided for in K.S.A. 59-
10 3026c or 59-3026d, and amendments thereto, or may otherwise proceed pursuant to K.S.A. 59-
11 3026g and amendments thereto to remove the guardian or conservator, or both, and to appoint a
12 successor guardian or conservator, or both.

13 (h) If before proceedings pursuant to K.S.A. 59-3026g and amendments thereto to
14 remove the guardian or conservator, or both, or to appoint a successor guardian or conservator, or
15 both, have been commenced, the guardian or conservator is able to reassume the duties,
16 responsibilities, powers and authorities of such appointment, the guardian or conservator, or
17 both, shall so notify the court, in writing, of that reassumption and shall appropriately report to
18 the court within the next scheduled report or accounting as required pursuant to K.S.A. 59-3029
19 and amendments thereto. Such report or accounting may include or attach a report or accounting
20 of the standby guardian or standby conservator.

21 Comment

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This new section is the clarification and expansion of subsection (c) of current K.S.A. 59-3036. It answers the questions of when and how a standby guardian or conservator is to assume the duties of the guardian or conservator and sets forth procedures to be followed.

~~59-3018. Guardian and limited guardian; rights, powers and duties.~~ (a) A guardian shall be subject to the control and direction of the court at all times and in all things. It is the general duty of an individual or corporation appointed to serve as a guardian to carry out diligently and in good faith the specific duties and powers assigned by the court. In carrying out these duties and powers, the guardian shall assure that personal, civil and human rights of the ward or minor whom the guardian services are protected.

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

(c) A limited guardian shall have only such of the general duties and powers herein set out as shall be specifically set forth in the dispositional order pursuant to K.S.A. 59-3013 and amendments thereto and as shall also be specifically set forth in "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014 and amendments thereto.

(d) A guardian shall have all of the general duties and powers as set out herein and as also set out in the dispositional order and in the letters of guardianship.

(e) The general powers and duties of a guardian shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance and to file an annual accounting. The powers and duties shall include, but not be limited to, the following:

(1) Assuring that the ward resides in the least restrictive setting reasonably available;

(2) assuring that the ward receives medical care or nonmedical remedial care and other services that are needed;

1 ~~—— (3) promoting and protecting the care, comfort, safety, health and welfare of the ward;~~

2 ~~—— (4) providing required consents on behalf of the ward;~~

3 ~~—— (5) exercising all powers and discharging all duties necessary or proper to implement the~~
4 ~~provisions of this section.~~

5 ~~—— (f) A guardian of a ward is not obligated by virtue of the guardian's appointment to use~~
6 ~~the guardian's own financial resources for the support of the ward.~~

7 ~~—— (g) A guardian shall not have the power:~~

8 ~~—— (1) To place a ward in a facility or institution, other than a treatment facility, unless the~~
9 ~~placement of the ward has been approved by the court.~~

10 ~~—— (2) To place a ward in a treatment facility unless approved by the court, except that a~~
11 ~~ward shall not be placed in a state psychiatric hospital or state institution for the mentally~~
12 ~~retarded unless authorized by the court pursuant to K.S.A. 59-3018a.~~

13 ~~—— (3) To consent, on behalf of a ward, to psychosurgery, removal of a bodily organ, or~~
14 ~~amputation of a limb unless the procedure is first approved by order of the court or is necessary,~~
15 ~~in an emergency situation, to preserve the life or prevent serious impairment of the physical~~
16 ~~health of the ward.~~

17 ~~—— (4) To consent on behalf of the ward to the withholding of life-saving medical~~
18 ~~procedures, except in accordance with provisions of K.S.A. 65-28,101 through 65-28,109, and~~
19 ~~amendments thereto.~~

20 ~~—— (5) To consent on behalf of a ward to the performance of any experimental biomedical or~~
21 ~~behavioral procedure or to participation in any biomedical or behavioral experiment without the~~

~~review and approval by an institutional review board under title 45, part 46 of the code of federal regulations, where title 45, part 46 of the code of federal regulations applies, or by a review committee where title 45, part 46, of the code of federal regulations does not apply unless:~~

~~—— (A) It is intended to preserve the life or prevent serious impairment of the physical health of the ward and it does not involve the application of aversive stimulation; or~~

~~—— (B) it involves a behavioral procedure or experiment that does not involve the application of aversive stimulation; or~~

~~—— (c) it is intended to assist the ward to develop or regain that person's abilities and has been approved for that person by the court; and~~

~~—— (D) in the case of any procedure or experiment involving the application of aversive stimulation, the procedure or experiment has been approved by the court.~~

~~—— No public or private entity or agency shall require or allow a ward to perform any experimental biomedical or behavioral procedure or to participate in any biomedical or behavioral experiment without the consent of the guardian.~~

~~—— (6) To prohibit the marriage or divorce of a ward.~~

~~—— (7) To consent, on behalf of a ward, to the termination of the ward's parental rights.~~

~~—— (8) To consent, on behalf of a ward, to sterilization of the ward, unless the procedure is first approved by order of the court after a full due process hearing where the ward is represented by a guardian ad litem.~~

~~—— (h) The guardian shall at least annually file a report concerning the personal status of the ward as provided by K.S.A. 59-3029 and amendments thereto.~~

Comment

This section was replaced by new K.S.A. 59-3018b.

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59-3018a. Placement of ward in treatment facility; procedure. ~~(a) A guardian may~~

2 file with the court a verified petition seeking authority to be able to admit the guardian's ward to
3 a treatment facility. Upon the filing of such petition, the court shall issue the following:

4 ~~—— (1) An order fixing the time and place of the hearing on the petition. The time designated~~
5 ~~in the order shall in no event be earlier than seven days or later than 14 days after the date of the~~
6 ~~filing of the petition.~~

7 ~~—— (2) An order that the ward appear at the time and place of the hearing unless the court~~
8 ~~enters an order that the presence of the ward would be injurious to the ward's welfare. The court~~
9 ~~shall enter in the record of the proceedings the facts upon which the court has found that the~~
10 ~~presence of the ward at the hearing would be injurious to the ward's welfare. Notwithstanding the~~
11 ~~foregoing provisions of this subsection, if the ward or the ward's attorney files with the court a~~
12 ~~written request that the ward be present at the hearing, the ward's presence cannot be waived.~~

13 ~~—— (3) An order appointing an attorney to represent the ward at all stages of the proceedings.~~
14 ~~The court shall give preference, in the appointment of the attorney, to any attorney who has~~
15 ~~represented the ward in other matters if the court has knowledge of the prior relationship. The~~
16 ~~ward shall have the right to choose and to engage an attorney and, in that event, the attorney~~
17 ~~appointed by the court shall be relieved of all duties by the court.~~

18 ~~—— (4) An order that the ward appear at the time and place that is in the best interest of the~~
19 ~~ward to consult with the court appointed attorney, which time shall be prior to the hearing on the~~
20 ~~petition.~~

21 ~~—— (5) Notice in the manner provided by subsections (a)(1)(A) through (C), (a)(2) and (b) of~~

1 ~~K.S.A. 59-3012 and amendments thereto.~~

2 ~~—— (b) At or after the filing of a petition pursuant to this section, the court may issue the~~
3 ~~following:~~

4 ~~—— (1) An order for mental evaluation in the manner provided by subsection (a)(6) of K.S.A.~~
5 ~~59-3012 and amendments thereto.~~

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

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

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

21 ~~—— If, upon the completion of the hearing, the court finds by clear and convincing evidence~~

2 that the criteria set out in subsection (c) of K.S.A. 1996 Supp. 59-2946 and amendments thereto
3 or K.S.A. 76-12b03 and amendments thereto are met, and after a careful consideration of
4 reasonable alternatives to placement treatment, the court may enter an order granting such
5 authority to the guardian as is appropriate, including continuing authority to readmit the ward to
6 an appropriate treatment facility as may become necessary. Any such grant of continuing
7 authority shall expire two years after the date of final discharge of the ward from such a
8 treatment facility if the ward has not had to be readmitted to that type of a treatment facility
9 during that two-year period of time. Thereafter any such grant of continuing authority may be
10 renewed only after the filing of another petition in compliance with the provisions of this section.
11 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.

12 ~~—— (d) Except as otherwise provided by law, a ward may voluntarily consent to the ward's~~
13 ~~admission to a treatment facility if able and permitted to do so according to the court's findings of~~
14 ~~fact set forth in the court's order issued at the conclusion of the hearing on the petition for~~
15 ~~guardianship.~~

16 ~~—— (e) This section shall be part of and supplemental to the act for obtaining a guardian or~~
17 ~~conservator, or both.~~

18
19 Comment

20 This section was replaced by new K.S.A. 59-3018d.

1 *Sec. 26* **59-3018b. Guardian's duties, responsibilities, powers and authorities.** (a) The
2 individual or corporation appointed by the court to serve as the guardian shall carry out diligently
3 and in good faith, the general duties and responsibilities, and shall have the general powers and
4 authorities, provided for in this section as well as any specific duties, responsibilities, powers and
5 authorities assigned to the guardian by the court. In doing so, a guardian shall at all times be
6 subject to the control and direction of the court, and shall act in accordance with the provisions of
7 any guardianship plan filed with the court pursuant to K.S.A. 59-3018c and amendments thereto.
8 The court shall have the authority to appoint counsel for the guardian, and the fees of such
9 attorney may be assessed as costs pursuant to K.S.A. 59-3032 and amendments thereto.

10 A guardian shall become and remain personally acquainted with the ward, the spouse of
11 the ward and with other interested persons associated with the ward and who are knowledgeable
12 about the ward, the ward's needs and the ward's responsibilities. A guardian shall exercise
13 authority only as necessitated by the ward's limitations. A guardian shall encourage the ward to
14 participate in making decisions affecting the ward. A guardian shall encourage the ward to act
15 on the ward's own behalf to the extent the ward is able. A guardian shall encourage the ward to
16 develop or regain the skills and abilities necessary to meet the ward's own essential needs and to
17 otherwise manage the ward's own affairs. In making decisions on behalf of the ward, a guardian
18 shall consider the expressed desires and personal values of the ward to the extent known to the
19 guardian. A guardian shall strive to assure that the personal, civil and human rights of the ward
20 are protected. A guardian shall at all times act in the best interests of the ward and shall exercise
21 reasonable care, diligence and prudence.

(b) A guardian shall have the following general duties, responsibilities, powers and authorities:

(1) If the ward is a minor, to have the custody and control of the minor, and to provide for the minor's care, treatment, habilitation, education, support and maintenance;

(2) If the ward is an adult, to take charge of the person of the ward, and to provide for the ward's care, treatment, habilitation, education, support and maintenance;

(3) To consider and either provide on behalf of the ward necessary or required consents or refuse the same;

(4) To assure that the ward resides in the least restrictive setting appropriate to the needs of the ward and which is reasonably available;

(5) To assure that the ward receives any necessary and reasonably available medical care, consistent with the provisions of K.S.A. 59-3018d and amendments thereto, when applicable, and any reasonably available non-medical care or other services as may be needed to preserve the health of the ward or to assist the ward to develop or retain skills and abilities;

(6) To promote and protect the comfort, safety, health and welfare of the ward;

(7) To make necessary determinations and arrangements for, and to give the necessary consents in regard to, the ward's funeral arrangements, burial or cremation, the performance of an autopsy upon the body of the ward, and anatomical gifts of the ward, subject to the provisions and limitations provided for in K.S.A. 65-2893, K.S.A. 65-3210 and K.S.A. 65-1734, and amendments thereto; and

(8) To exercise all powers and to discharge all duties necessary or proper to implement

1 the provisions of this section.

2 (c) A guardian shall not be obligated by virtue of the guardian's appointment to use the
3 guardian's own financial resources for the support of the ward.

4 (d) A guardian shall not be liable to a third person for the acts of the ward solely by virtue
5 of the guardian's appointment, nor shall a guardian who exercises reasonable care in selecting a
6 third person to provide any medical or other care, treatment or service for the ward be liable for
7 any injury to the ward resulting from the wrongful conduct of that third person.

8 (e) A guardian shall not have the power:

9 (1) To prohibit the marriage or divorce of the ward;

10 (2) To consent, on behalf of the ward, to the termination of the ward's parental rights;

11 (3) To consent to the adoption of the ward, unless approved by the court;

12 (4) To consent, on behalf of the ward, to any psychosurgery, removal of any bodily
13 organ, or amputation of any limb, unless such surgery, removal or amputation has been approved
14 in advance by the court, except in an emergency and when necessary to preserve the life of the
15 ward or to prevent serious and irreparable impairment to the physical health of the ward;

16 (5) To consent, on behalf of the ward, to the sterilization of the ward, unless approved by
17 the court following a due process hearing held for the purposes of determining whether to
18 approve such, and during which hearing the ward is represented by an attorney appointed by the
19 court;

20 (6) To consent, on behalf of the ward, to the performance of any experimental biomedical
21 or behavioral procedure on the ward, or for the ward to be a participant in any biomedical or

1 behavioral experiment, without the prior review and approval of such by either an institutional
2 review board as provided for in title 45, part 46 of the code of federal regulations, or if such
3 regulations do not apply, then by a review committee established by the agency, institution or
4 treatment facility at which the procedure or experiment is proposed to occur, composed of
5 members selected for the purposes of determining whether the proposed procedure or
6 experiment:

7 (A) Does not involve any significant risk of harm to the physical or mental health of the
8 ward, or the use of aversive stimulants, and is intended to preserve the life or health of the ward
9 or to assist the ward to develop or regain skills or abilities; or

10 (B) Involves a significant risk of harm to the physical or mental health of the ward, or the
11 use of an aversive stimulant, but that the conducting of the proposed procedure or experiment is
12 intended either to preserve the life of the ward, or to significantly improve the quality of life of
13 the ward, or to assist the ward to develop or regain significant skills or abilities, and that the
14 guardian has been fully informed concerning the potential risks and benefits of the proposed
15 procedure or experiment or of any aversive stimulant proposed to be used, and as to how and
16 under what circumstances the aversive stimulant may be used, and has specifically consented to
17 such:

18 (7) To consent, on behalf of the ward, to the withholding of life-saving medical care,
19 treatment, services or procedures, except:

20 (A) in accordance with the provisions of any declaration of the ward made pursuant to the
21 provisions of K.S.A. 65-28,101 through 65-28,109, and amendments thereto; or

1 (B) if the ward, prior to the court's appointment of a guardian pursuant to K.S.A. 59-3013
2 and amendments thereto, shall have executed a durable power of attorney for health care
3 decisions pursuant to K.S.A. 58-629 and amendments thereto and such shall not have been
4 revoked by the ward prior thereto, and there is included therein any provision relevant to the
5 withholding of life-saving medical care, treatment, services or procedures, then the guardian shall
6 have the authority to act as provided for therein, even if the guardian has revoked or otherwise
7 amended that power of attorney pursuant to the authority of K.S.A. 58-627 and amendments
8 thereto, or the guardian may allow the agent appointed by the ward to act on the ward's behalf if
9 the guardian has not revoked or otherwise amended that power of attorney; or

10 (C) in the circumstances where the ward's treating physician shall certify in writing to
11 the guardian that the ward is suffering from an illness for which further treatment, other than for
12 the relief of pain, would not likely prolong the life of the ward other than by artificial means, nor
13 would be likely to restore to the ward any significant degree of capabilities beyond those the
14 ward currently possesses, and which opinion is concurred in by either a second physician or by
15 any "medical ethics" or similar committee established by the hospital or treatment facility at
16 which the ward is being treated, for the purposes of reviewing such circumstances and the
17 appropriateness of any type of "comfort care only" physician's order;

18 (8) To consent, on behalf of the ward, to the withdrawal of life-sustaining medical care,
19 treatment, services or procedures, except:

20 (A) in accordance with the provisions of any declaration of the ward made pursuant to the
21 provisions of K.S.A. 65-28,101 through 65-28,109, and amendments thereto; or

(B) if the ward, prior to the court's appointment of a guardian pursuant to K.S.A. 59-3013

2 and amendments thereto, shall have executed a durable power of attorney for health care
3 decisions pursuant to K.S.A. 58-629 and amendments thereto and such shall not have been
4 revoked by the ward prior thereto, and there is included therein any provision relevant to the
5 withdrawal of life-sustaining medical care, treatment, services or procedures, then the guardian
6 shall have the authority to act as provided for therein, even if the guardian has revoked or
7 otherwise amended that power of attorney pursuant to the authority of K.S.A. 58-627 and
8 amendments thereto, or the guardian may allow the agent appointed by the ward to act on the
9 ward's behalf if the guardian has not revoked or otherwise amended that power of attorney; or

10 (C) in the circumstances where the ward's treating physician shall certify in writing to the
11 guardian that the ward is in a vegetative state without likelihood of reversal or is suffering from
12 an illness for which further treatment, other than for the relief of pain, would not likely prolong
13 the life of the ward other than by artificial means, nor would be likely to restore to the ward any
14 significant degree of capabilities beyond those the ward currently possesses, and which opinion
15 is concurred in by either a second physician or by any "medical ethics" or similar committee
16 established by the hospital or treatment facility at which the ward is being treated, for the
17 purposes of reviewing such circumstances and the appropriateness of any type of physician's
18 order which would have the effect of withdrawing life-sustaining care;

19 (9) To exercise any control or authority over the ward's estate, except if the court shall
20 specifically authorize such. The court may assign such authority to the guardian, including the
21 authority to establish certain trusts as provided in K.S.A. 59-3019c and amendments thereto, and

1 may waive the requirement of the posting of a bond, only if:

2 (A) initially, the combined value of any funds and property in the possession of the ward
3 or in the possession of any other person or entity, but which the ward is otherwise entitled to
4 possess, equals \$10,000.00 or less; and

5 (B) either the court requires the guardian to report to the court the commencement of the
6 exercising of such authority, or requires the guardian to specifically request of the court the
7 authority to commence the exercise of such authority, as the court shall specify; and

8 (C) the court also requires the guardian, whenever the combined value of such funds and
9 property exceeds \$10,000, to:

10 (i) file a guardianship plan as provided for in K.S.A. 59-3018c and amendments thereto,
11 which contains elements similar to those which would be contained in a conservatorship plan as
12 provided for in K.S.A. 59-3019a and amendments thereto; or

13 (ii) petition the court for appointment of a conservator as provided for in K.S.A. 59-
14 3009a, 59-3009b or 59-3009c, and amendments; or

15 (iii) notify the court as the court shall specify that the value of the conservatee's estate has
16 equaled or exceeded \$10,000, if the court has earlier appointed a conservator but did not issue
17 Letters of Conservatorship pending such notification.

18 (10) To place the ward in a treatment facility as defined in K.S.A. 59-3018d and
19 amendments thereto, except if authorized by the court as provided for therein.

20 (f) The guardian shall file with the court reports concerning the status of the ward and the
21 actions of the guardian as the court shall direct pursuant to K.S.A. 59-3029 and amendments

thereto.

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Comment

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This section replaces current K.S.A. 59-3018. This section delineates the guardian's responsibilities with respect to his or her ward such as becoming personally acquainted with the ward and other interested parties, exercising only the authority necessitated by the ward's limitations, and considering the expressed desires of the ward in making decisions on his or her behalf. Duties for guardians of adults and minors are differentiated. Specific prohibitions on the authority of a guardian are provided. The section also requires the guardian, whenever the combined value of the ward's assets exceeds \$10,000, to either file a guardianship plan similar to a conservatorship plan or to petition the court to appoint a conservator. The section also describes the circumstances under which a guardian is authorized to make medical decisions on behalf of the ward.

Subsection (d) is taken from the Uniform Guardianship and Protective Proceedings Act.

19

1 *Sec. 27* **59-3018c. Guardianship plan; contents; effectuation; revision.** (a) At any time, the
2 court may require the guardian, or the guardian may at any time choose, to develop and file with
3 the court a plan for the care of the ward. This plan shall be developed consistent with the
4 provisions of K.S.A. 59-3018b(a) and amendments thereto. This plan may provide for, but need
5 not be limited to providing for:

6 (1) Where the ward will reside, including any proposal to admit the ward to any nursing
7 facility;

8 (2) what degree of autonomy the ward will have with regard to making choices
9 concerning such matters as attending any educational or vocational training, employment,
10 volunteering for any type of service or activity, traveling independently, and obtaining either
11 routine or specified medical care without the guardian's consent, and what restrictions the
12 guardian will place upon the ward with regard to such choices; and

13 (3) what restrictions, if any, the guardian will place on whom the ward may associate
14 with, and if so, the names of any persons the guardian will restrict from association with the
15 ward.

16 (b) If the court has not also appointed a conservator for the ward, the court may further
17 require the guardian, or the guardian may choose, to include as a part of the guardian's plan,
18 what restrictions, if any, the guardian will place upon the ward's use of the ward's financial
19 assets or the ward's access to those assets. In any case, the court shall not approve any
20 guardianship plan which does not comply with the provisions of K.S.A. 59-3018b(e)(9) and
21 amendments thereto, if applicable.

1 (c) If required by the court, the court may set a date by which this guardianship plan shall
2 be filed with the court. Otherwise, the guardian may at any time file a plan with the court. Upon
3 the filing of a plan, the court may require the guardian to give notice thereof to such persons as
4 the court directs. Any interested party may request that the court conduct a hearing concerning
5 any plan filed with the court. The court may require the guardian to amend or withdraw any plan
6 filed.

7 (d) Any guardianship plan filed with the court shall be effectuated by the guardian to the
8 maximum extent possible consistent with any changing circumstances of the ward. Within each
9 report concerning the status of the ward submitted to the court as the court directs pursuant to
10 K.S.A. 59-3029 and amendments thereto, the guardian shall explain any actions taken in
11 deviance from the plan and the reasons therefor.

12 (e) At any time deemed appropriate by the guardian, the guardian may file a revised
13 guardianship plan consistent with the provisions of this section.

14
15 Comment

16 This section contains a provision allowing the court to require
17 development and filing of a guardianship plan. The plan may provide for the
18 ward's residence, degree of autonomy, restrictions on associations with
19 individuals, and restrictions on financial assets in lieu of an appointed
20 conservator.
21

1 *Sec. 28* **59-3018d. Authority of the guardian to admit ward to a treatment facility; petition;**
 2 **contents; notice; hearing; procedure; definition of "treatment facility."** (a) At any time after
 3 the filing of the petition provided for in K.S.A. 59-3009a, 59-3009b, 59-3009c or 59-3009d, and
 4 amendments thereto, any person may file in addition to that original petition, or as a part thereof,
 5 or at any time after the appointment of a temporary guardian as provided for in K.S.A. 59-3011a
 6 and amendments thereto, or a guardian as provided for in K.S.A. 59-3013 and amendments
 7 thereto, the temporary guardian or guardian may file, a verified petition requesting that the court
 8 grant authority to the temporary guardian or guardian to admit the proposed ward or ward to a
 9 treatment facility and to consent to the care and treatment of the proposed ward or ward therein.
 10 The petition shall include:

11 (1) The petitioner's name and address, and if the petitioner is the proposed ward's or
 12 ward's court appointed temporary guardian or guardian, that fact;

13 (2) the proposed ward's or ward's name, age, date of birth, address of permanent
 14 residence, and present address or whereabouts, if different from the proposed ward's or ward's
 15 permanent residence;

16 (3) the name and address of the proposed ward's or ward's court appointed temporary
 17 guardian or guardian, if different from the petitioner;

18 (4) the factual basis upon which the petitioner alleges the need for the proposed ward or
 19 ward to be admitted to and treated at a treatment facility, or for the proposed ward or ward to
 20 continue to be treated at treatment facility to which the proposed ward or ward has already been
 21 admitted, or for the guardian to have continuing authority to admit the ward for care and

treatment at a treatment facility pursuant to K.S.A. 59-2949(b)(3) and amendments thereto, or
2 K.S.A. 59-29b49(b)(3) and amendments thereto:

3 (5) the names and addresses of witnesses by whom the truth of this petition may be
4 proved; and

5 (6) a request that the court find that the proposed ward or ward is in need of being
6 admitted to and treated at treatment facility, and that the court grant to the temporary guardian or
7 guardian the authority to admit the proposed ward or ward to a treatment facility and to consent
8 to the care and treatment of the proposed ward or ward therein.

9 (b) The petition may be accompanied by a report of an examination and evaluation of the
10 proposed ward or ward conducted by an appropriately qualified professional, which shows that
11 the criteria set out in subsection (e) of K.S.A. 59-2946 and amendments thereto, or K.S.A. 76-
12b03 and amendments thereto, are met.

13 (c) Upon the filing of such a petition, the court shall issue the following:

14 (1) An order fixing the date, time and place of a hearing on the petition. Such hearing, in
15 the court's discretion, may be conducted in a courtroom, a treatment facility or at some other
16 suitable place. The time fixed in the order shall in no event be earlier than seven days or later
17 than 21 days after the date of the filing of the petition. The court may consolidate this hearing
18 with the trial upon the original petition filed pursuant to K.S.A. 59-3009a, 59-3009b, 59-3009c or
19 59-3009d, and amendments thereto, or with the trial provided for in the Care and Treatment Act
20 for Mentally Ill persons or the Care and Treatment Act for Persons with an Alcohol or Substance
21 Abuse Problem, if the petition also incorporates the allegations required by, and is filed in

1 compliance with, the provisions of either of those Acts.

2 (2) An order requiring that the proposed ward or ward appear at the time and place of the
3 hearing on the petition unless the court makes a finding prior to the hearing that the presence of
4 the proposed ward or ward will be injurious to the person's health or welfare, or that the
5 proposed ward's or ward's impairment is such that the person could not meaningfully participate
6 in the proceedings, or that the proposed ward or ward has filed with the court a written waiver of
7 his or her right to appear in person. In any such case, the court shall enter in the record of the
8 proceedings the facts upon which the court has found that the presence of the proposed ward or
9 ward at the hearing should be excused. Notwithstanding the foregoing provisions of this
10 subsection, if the proposed ward or ward files with the court at least one day prior to the date of
11 the hearing a written notice stating the person's desire to be present at the hearing, the court shall
12 order that the person must be present at the hearing.

13 (3) An order appointing an attorney to represent the proposed ward or ward. The court
14 shall give preference, in the appointment of this attorney, to any attorney who has represented the
15 proposed ward or ward in other matters, if the court has knowledge of that prior representation.
16 The proposed ward, or the ward with the consent of the ward's conservator, if one has been
17 appointed, shall have the right to engage an attorney of the proposed ward's or ward's choice
18 and, in such case, the attorney appointed by the court shall be relieved of all duties by the court.
19 Any appointment made by the court shall terminate upon a final determination of the petition and
20 any appeal therefrom, unless the court continues the appointment by further order.

21 (4) An order fixing the date, time and a place that is in the best interest of the proposed

ward or ward, at which the proposed ward or ward shall have the opportunity to consult with his
or her attorney. This consultation shall be scheduled to occur prior to the time at which the
examination and evaluation ordered pursuant to subsection (d)(1), if ordered, is scheduled to
occur.

(5) A notice similar to that provided for in K.S.A. 59-3012 and amendments thereto.

(d) Upon the filing of such a petition, the court may issue the following:

(1) An order for a psychological or other examination and evaluation of the proposed
ward or ward, as may be specified by the court. The court may order the proposed ward or ward
to submit to such an examination and evaluation to be conducted through a general hospital,
psychiatric hospital, community mental health center, community developmental disability
organization, or by a private physician, psychiatrist, psychologist or other person appointed by
the court who is qualified to examine and evaluate the proposed ward or ward. The costs of this
examination and evaluation shall be assessed as provided for in K.S.A. 59-3032 and amendments
thereto.

(2) If the petition is accompanied by a report of an examination and evaluation of the
proposed ward or ward as provided for in subsection (b), an order granting temporary authority
to the temporary guardian or guardian to admit the proposed ward or ward to a treatment facility
and to consent to the care and treatment of the proposed ward or ward therein. Any such order
shall expire immediately after the hearing upon the petition, or as the court may otherwise
specify, or upon the discharge of the proposed ward or ward by the head of the treatment facility,
if the proposed ward or ward is discharged prior to the time at which the order would otherwise

1 expire.

2 (3) For good cause shown, an order of continuance of the hearing.

3 (4) For good cause shown, an order of advancement of the hearing.

4 (5) For good cause shown, an order changing the place of the hearing.

5 (e) The hearing on the petition shall be held at the time and place specified in the court's
6 order issued pursuant to subsection (c), unless an order of advancement, continuance, or a change
7 of place of the hearing has been issued pursuant to subsection (d). The petitioner and the
8 proposed ward or ward shall each be afforded an opportunity to appear at the hearing, to testify
9 and to present and cross-examine witnesses. If the hearing has been consolidated with a trial
10 being held pursuant to either the Care and Treatment Act for Mentally Ill Persons or the Care and
11 Treatment Act for Persons with an Alcohol or Substance Abuse Problem, persons not necessary
12 for the conduct of the proceedings may be excluded as provided for in those Acts. The hearing
13 shall be conducted in as informal a manner as may be consistent with orderly procedure. The
14 court shall have the authority to receive all relevant and material evidence which may be offered,
15 including the testimony or written report, findings or recommendations of any professional or
16 other person who has examined or evaluated the proposed ward or ward pursuant to any order
17 issued by the court pursuant to subsection (d). Such evidence shall not be privileged for the
18 purposed of this hearing.

19 (f) Upon completion of the hearing, if the court finds by clear and convincing evidence
20 that the criteria set out in subsection (e) of K.S.A. 59-2946 and amendments thereto, or K.S.A.
21 76-12b03 and amendments thereto, are met, and after a careful consideration of reasonable

alternatives to admission of the proposed ward or ward to a treatment facility, the court may enter an order granting such authority to the temporary guardian or guardian as is appropriate, including continuing authority to the guardian to re-admit the ward to an appropriate treatment facility as may later 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 re-admitted to 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 seeking authority in compliance with the provision of this section.

(g) Nothing herein shall be construed so as to prohibit the head of a treatment facility from admitting a proposed ward or ward to that facility as a voluntary patient if the head of the treatment facility is satisfied that the proposed ward or ward at that time has the capacity to understand his or her illness and need for treatment, and to consent to his or her admission and treatment. Upon any such admission, the head of the treatment facility shall give notice to the temporary guardian or guardian as soon as possible of the ward's admission, and shall provide to the temporary guardian or guardian copies of any consents the proposed ward or ward has given. Thereafter, the temporary guardian or guardian shall timely either seek to obtain proper authority pursuant to this section to admit the proposed ward or ward to a treatment facility and to consent to further care and treatment, or shall otherwise assume responsibility for the care of the proposed ward or ward, consistent with the authority of the temporary guardian or guardian, and may arrange for the discharge from the facility of the proposed ward or ward, unless the head of the treatment facility shall file a petition requesting the involuntary commitment of the proposed

1 ward or ward to that or some other facility.

2 (h) As used herein, "treatment facility" means: the Kansas Neurological Institute, Larned
3 State Hospital, Osawatomie State Hospital, Parsons State Hospital and Training Center, the
4 Rainbow Mental Health Facility, any intermediate care facility for the mentally retarded, any
5 psychiatric hospital licensed pursuant to K.S.A. 75-3007b and amendments thereto, and any
6 other facility for mentally ill persons or mentally retarded or developmentally disabled persons
7 licensed pursuant to K.S.A. 75-3007b and amendments thereto, if the proposed ward or ward is
8 to be admitted as an inpatient or resident of that facility.

9
10 Comment

11 This section replaces current K.S.A. 39-3018a and contains specific
12 contents for the petition, and actions to be taken by the court upon the filing of
13 such petition. "Treatment facility" is also defined.

59-3019. Conservator; rights and duties. A conservator shall be subject to the control

and direction of the court at all times and in all things. Such conservator shall: (1) Prosecute and defend for the conservatee; (2) sell assets of the estate when the interests of the conservatee and the estate require the sale thereof; (3) pay the reasonable charges for the support, maintenance, and education of the conservatee in a manner suitable to the conservatee's station in life and the value of the conservatee's estate; but nothing herein contained shall release a natural guardian from obligations imposed by law as to the support, maintenance, and education of such guardian's minor children; (4) pay all just and lawful debts of the conservatee and the reasonable charges incurred for the support, maintenance, and education of the conservatee's spouse and children; (5) possess and manage the estate, collect all debts and claims in favor of the conservatee, or with the approval of the court compromise the same; (6) possess and manage any going business that the conservatee was managing and operating prior to appointment of a conservator, when such conservator deems it in the best interest of the conservatee's estate; and (7) invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate, in: (A) Such securities as are proper for the investment of trust funds, including securities approved by the comptroller of the currency of the United States for the investment of trust funds by national banks; (B) direct obligations of this state, any county or city or school district in this state; (C) direct obligations of the United States government, and obligations, the interest and principal of which are both unconditionally guaranteed by the United States government; (D) legally issued notes of the owner of unencumbered real property located in this state secured by first mortgage or deed of trust thereon, if the total debt secured by such encumbrance does not exceed 50% of the actual cash value of such real property at the time of

1 such investment; (E) the entire fee simple title to real estate or an interest therein, and also, with
2 the approval of the court, the conservator may acquire title to real estate whenever necessary to
3 reasonably protect the investment or interest of the conservatee in such property. The title to real
4 property acquired by the conservator shall in all cases be taken in the name of the conservatee;
5 (F) shares or savings deposits in a federally insured savings and loan association; (G) insured
6 time deposits or savings accounts in a bank within the state of Kansas, including such deposits or
7 accounts in a bank operated by a conservator; (H) shares of investment trusts or mutual funds; (I)
8 a contract or contracts for annuities or for life, health or accident insurance on the person of the
9 ward, or of another in whom the ward has an insurable interest, or a combination of any such
10 contracts, as long as any such contract is approved by the court, payable to the ward or to such
11 ward's estate and is in the usual form and is issued by an insurance company authorized to do
12 business in the state of Kansas. Any such contract shall reserve the right in the ward to change
13 the beneficiary thereof after termination of such ward's disability or incompetency; (J) any other
14 investment as may be otherwise now authorized by the laws of the state of Kansas.

15 ——— Whenever and so long as the funds of the conservatee shall be invested as provided under
16 (D) and (E) it shall be the duty of the conservator to cause to be insured and to keep insured any
17 and all buildings or other improvements located on such real property against loss or damage by
18 fire, lightning, windstorm or hail, or any combination thereof, in a reasonable amount for the
19 benefit of the conservatee as such conservatee's interest may appear.

20
21 Comment

22 This section was replaced by new K.S.A. 59-3019a.

Sec. 29 **59-3019a. Conservator's duties, responsibilities, powers and authorities.** (a) The

2 individual or corporation appointed by the court to serve as the conservator shall carry out
3 diligently and in good faith the general duties and responsibilities, and shall have the general
4 powers and authorities, provided for in this section, as well as any specific duties,
5 responsibilities, powers and authorities assigned to the conservator by the court. In doing so, a
6 conservator shall at all times be subject to the control and direction of the court, and shall act in
7 accordance with the provisions of any conservatorship plan filed with the court pursuant to
8 K.S.A. 59-3019b and amendments thereto. The court shall have the authority to appoint counsel
9 for the conservator, and the fees of such attorney may be assessed as costs pursuant to K.S.A. 59-
10 3032 and amendments thereto.

11 A conservator, in the exercise of the conservator's responsibilities and authorities, should
12 become aware of the conservatee's needs and responsibilities. A conservator shall exercise
13 authority only as necessitated by the conservatee's limitations. A conservator shall encourage
14 the conservatee to participate in the making of decisions affecting the conservatee's estate. A
15 conservator shall encourage the conservatee to manage as much of the conservatee's estate as the
16 conservatee is able to manage. A conservator shall consider and, to the extent possible, act in
17 accordance with the expressed desires and personal values of the conservatee. A conservator
18 shall assist the conservatee in developing or regaining the skills and abilities necessary in order
19 for the conservatee to be able to manage the conservatee's own estate. A conservator shall strive
20 to assure that the personal, civil and human rights of the conservatee are protected. A
21 conservator shall at all times act in the best interests of the conservatee and shall exercise

1 reasonable care, diligence and prudence.

2 (b) A conservator shall have the following general duties, responsibilities, powers and
3 authorities:

4 (1) To pay the reasonable charges for the support, maintenance, care, treatment,
5 habilitation and education of the conservatee in a manner suitable to the conservatee's station in
6 life and the value of the conservatee's estate; but nothing herein shall be construed to release a
7 natural guardian from the ordinary obligations imposed by law for the support, maintenance,
8 care, treatment, habilitation and education of the natural guardian's minor children;

9 (2) To pay all just and lawful debts of the conservatee and the reasonable charges for the
10 support, maintenance, care, treatment, habilitation and education of the conservatee's spouse and
11 minor children;

12 (3) To separately possess and manage all the assets of the estate of the conservatee and to
13 collect all debts and assert all claims in favor of the conservatee, and with the approval of the
14 court, to compromise the same. The conservator shall keep any property of the conservatee's
15 estate insured against theft, other loss or damage, in reasonable amounts based upon the value of
16 the estate, and for the benefit of the conservatee or the conservatee's estate;

17 (4) To prosecute and defend all actions in the name of the conservatee or as necessary to
18 protect the interests of the conservatee;

19 (5) To sell assets of the conservatee's estate when the interests of the conservatee or
20 conservatee's estate require the sale thereof;

21 (6) To possess and manage any ongoing business that the conservatee was managing and

operating prior to the appointment of the conservator, and to divest the conservatee's estate of any interests therein, with the approval of the court, when the conservator deems it in the best interests of the conservatee or the conservatee's estate to do so; and

(7) To invest all funds in a manner which is reasonably prudent in view of the value of the conservatee's estate, except as may be currently needed for payment of any debts and charges as provided for herein. If the conservator shall expend or invest any funds from the conservatee's estate for the purchase of any policy of insurance or annuity contract, the conservator shall reserve to the conservatee the right to change the beneficiary thereof upon the termination of the conservatorship and of any guardianship which may have been established for the conservatee.

(c) A conservator shall not be obligated by virtue of the conservator's appointment to use the conservator's own financial resources for the support of the conservatee.

(d) A conservator shall not be personally liable:

(1) to a third person for the acts of the conservatee solely by virtue of the conservator's appointment, nor shall a conservator who exercises reasonable care in selecting a third person to provide any service to the conservatee's estate be liable for any loss to the conservatee's estate resulting from the wrongful conduct of that third person;

(2) on any mortgage note or by reason of the covenants in any instrument of conveyance duly executed by the conservator in the conservator's representative capacity as authorized by the court;

(3) on a contract properly entered into in a fiduciary capacity in the course of

1 administration of the estate unless the conservator fails to reveal in the contract the representative
2 capacity and to identify the estate;

3 (4) for obligations arising from ownership or control of property of the estate or for other
4 acts or omissions occurring in the course of administration of the estate unless the conservator is
5 personally at fault;

6 (5) for any environmental condition on or injury resulting from any environmental
7 condition on land owned or acquired by the conservatee's estate; or

8 (6) for retaining, until maturity, any security or investment which is included in the
9 conservatee's estate at the time of the establishment of the conservatorship, even though such
10 security or investment may not be considered prudent or reasonable.

11 (e) A conservator shall be entitled to receive on behalf of the conservatee's estate any
12 distributive share of the assets of an estate or trust, and shall have the same right as any other
13 distributee or beneficiary to accept or demand distribution in kind, and may retain, until maturity,
14 any security or investment so distributed to the conservator, even though such security or
15 investment may not be considered prudent or reasonable.

16 (f) A conservator shall not have the power:

17 (1) To use the assets of a minor's estate to pay any obligation imposed by law upon the
18 minor's natural guardian or natural guardians, including the support, maintenance, care,
19 treatment, habilitation or education of the minor, except with the specific approval of the court
20 granted upon a showing of extreme hardship.

21 (2) To sell, convey, lease or mortgage the conservatee's interest in the homestead of the

conservatee, except with the approval of the court, and no conservator's deed or other instrument executed by virtue of the court's approval shall be valid unless the spouse, or if the spouse has been adjudicated a person with an impairment in need of a conservator, the conservator appointed for the spouse, shall join therein as one of the grantors thereof;

(3) To lease, except with the approval of the court, the possession or use of any real estate within the conservatee's estate for any period of greater than three years;

(4) To sell, convey or mortgage, except with approval of the court, any real estate within the conservatee's estate;

(5) To sell, convey, lease or mortgage, except with approval of the court, any oil, gas or other mineral interest within the conservatee's estate;

(6) To sell, convey, lease or mortgage, except with the approval of the court, the inchoate interest of the conservatee in any real estate the title to which is in the spouse of the conservatee, and no conservator's deed or other instrument executed by virtue of the court's approval shall be valid unless the spouse, or if the spouse has been adjudicated a person with an impairment in need of a conservator, the conservator appointed for the spouse, shall join therein as one of the grantors thereof;

(7) To extend, except with the approval of the court, an existing mortgage in favor of the conservatee or conservatee's estate, for a period of more than five years;

(8) To extend, except with the approval of the court, an existing mortgage which obligates the conservatee or the conservatee's estate, unless the extension agreement contains the

1 same prepayment privileges, the rate of interest does not exceed the lowest rate in the mortgage
2 extended, and the extension does not exceed five years; or

3 (9) To make any gift on behalf of the conservatee, except with the approval of the court
4 upon a finding that:

5 (A) the conservatee had either in the past as a habit made similar gifts or declared an
6 intent to make such a gift;

7 (B) sufficient funds and assets will remain in the conservatee's estate after the making of
8 such a gift to meet the expected needs and responsibilities of the conservatee; and

9 (C) any person or entity who would have received the property to be gifted had the
10 conservatee died at the time of the gift, but who is not the person or entity giving the gift, has
11 either consented to or agreed with the giving of the gift, in writing, or has received notice of the
12 proposal to make the gift and been given the opportunity to request a hearing thereon by the
13 court to be held prior to the court's approving the gift.

14 (g) The conservator shall file with the court, within 30 days of the court's issuance of
15 Letters of Conservatorship as provided for in K.S.A. 59-3014a and amendments thereto, an
16 initial inventory of all of the property and assets of the conservatee's estate, including any
17 sources of regular income to the estate.

18 (h) The conservator shall file with the court accountings and other reports concerning the
19 status of the estate and the actions of the conservator as the court shall direct pursuant to K.S.A.
20 59-3026b amendments thereto.

Comment

2 This section replaces current K.S.A. 59-3019 and delineates the
3 conservator's responsibilities with respect to his or her conservatee. Subsection
4 (h)(1) emphasizes that the assets of a minor's estate cannot be used for ordinary
5 household or family expenses by a natural guardian who has been appointed
6 conservator for his or her child. The committee notes this is one of the most
7 difficult issues faced by courts administering a minor conservatorship.

8 Subsection (d) was taken from the Uniform Guardianship and Protective
9 Proceedings Act.

1 *Sec. 30* **59-3019b. Conservatorship plan; contents; effectuation; revision.** (a) At any time,
2 the court may require the conservator, or the conservator may at any time choose, to develop and
3 file with the court a plan for the administration of the conservatee's estate. This plan shall be
4 developed consistent with the provisions of K.S.A. 59-3019a and amendments thereto. This plan
5 may provide for, but need not be limited to providing for:

6 (1) What autonomy the conservatee will have with regard to keeping and utilizing any
7 earning from employment or gifts which the conservatee may have or receive; and

8 (2) What responsibility the conservator shall have with regard to protecting the eligibility
9 of the conservatee for any type of public or other benefit.

10 (b) If required by the court, the court may set a date by which this conservatorship plan
11 shall be filed with the court. Otherwise, the conservator may at any time file a plan with the
12 court. Upon the filing of a plan, the court may require the conservator to give notice thereof to
13 such persons as the court directs. Any interested party may request that the court conduct a
14 hearing concerning any plan filed with the court. The court may require the conservator to
15 amend or withdraw any plan filed.

16 (c) Any conservatorship plan filed with the court shall be effectuated by the conservator
17 to the maximum extent possible consistent with any changing circumstances of the conservatee.
18 Within each accounting submitted to the court as the court directs pursuant to K.S.A. 59-3029
19 and amendments thereto, the conservator shall explain any actions taken in deviance from the
20 plan and the reasons therefor.

21 (d) At any time deemed appropriate by the conservator, the conservator may file a revised

conservatorship plan consistent with the provisions of this section.

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Comment

This is a new section describing the contents of a conservatorship plan including the autonomy to be granted to the conservatee, and the conservator's responsibility to protect the eligibility of the conservatee for benefits. The court may also set a filing date, require certain accountings to be filed with the court, and the conservator may file a revised plan when he or she deems it appropriate.

1 *Sec. 31* **59-3019c. Authority of the conservator or guardian to establish certain trusts;**

2 **petition; contents; notice; hearing; procedure.** (a) At any time the conservator, or the
3 guardian if the guardian has been granted the authority to exercise control or authority over the
4 ward's estate pursuant to K.S.A. 59-3018b(d)(9) and amendments thereto, may file a verified
5 petition requesting that the court grant authority to the conservator or guardian to establish an
6 irrevocable trust which will enable the conservatee or ward to qualify for benefits from any
7 federal, state or local government program, or which will accelerate the conservatee's or ward's
8 qualification for such benefits.

9 (b) The petition shall include:

10 (1) The conservator's or guardian's name and address, and if the conservator is the
11 petitioner and is both the conservator and the guardian, a statement of that fact, or if the guardian
12 is the petitioner, a statement that the court has previously granted to the guardian the authority to
13 exercise control or authority over the ward's estate;

14 (2) the conservatee's or ward's name, age, date of birth, address of permanent residence,
15 and present address or whereabouts, if different from the conservatee's or ward's permanent
16 residence;

17 (3) the name and address of the conservatee's court appointed guardian, if a guardian has
18 been appointed by the court and is different from the conservator;

19 (4) the names and addresses of any spouse, adult children and adult grandchildren of the
20 conservatee or ward, and those of any parents and adult siblings of the conservatee or ward, or if
21 no such names or addresses are known to the petitioner, the name and address of at least one

1 adult who is nearest in kinship to the conservatee, or if none, that fact. If no such names and
2 addresses are known to the petitioner, but the petitioner has reason to believe such persons exist,
3 then the petition shall state that fact and that the petitioner has made diligent inquiry to learn
4 those names and addresses;

5 (5) a statement of whether the Secretary of Social and Rehabilitation Services has an
6 interest in the matter by virtue of the purpose of the trust being to enable the conservatee or ward
7 to qualify for benefits from any program administered by the Secretary;

8 (6) the names and addresses of other persons, if any, whom the petitioner knows to have
9 an interest in the matter, or a statement that the petitioner knows of no other persons having an
10 interest in the matter;

11 (7) a description of the funds or assets of the conservatee or ward which the petitioner
12 proposes to transfer to a trust;

13 (8) the factual basis upon which the petitioner alleges the need for such a trust;

14 (9) the names and addresses of witnesses by whom the truth of this petition may be
15 proved; and

16 (10) a request that the court find that the conservator or guardian should be granted such
17 authority, and that the court grant to the conservator or guardian the authority to establish such a
18 trust.

19 (c) The petition shall be accompanied by a draft of the instrument by which the trust is
20 proposed to be established.

21 (d) Upon the filing of such a petition, the court shall issue an order fixing the date, time

1 and place of a hearing upon the petition, which hearing may be held forthwith and without
2 further notice if those persons named within the petition pursuant to the requirements of
3 subsections (b)(4), (5) and (6) above, as applicable, have entered their appearances, waived
4 notice and agreed to the court's granting to the conservator or guardian the authority to establish
5 the proposed trust. Otherwise, the court shall require the petitioner to give notice of this hearing
6 to such persons and in such manner as the court may direct, including therewith a copy of the
7 proposed trust instrument. This notice shall advise such persons that if they have any objections
8 to this authority being granted to the conservator or guardian, that they must file their written
9 objections with the court prior to the scheduled hearing or that they must appear at the hearing to
10 present those objections. The court may appoint an attorney to represent the conservatee or ward
11 in this matter similarly as provided for in K.S.A. 59-3010(a)(3) and amendments thereto, and in
12 such event, the court shall require the petitioner to also give this notice to that attorney.

13 (e) At the conclusion of the hearing, if the court finds by a preponderance of the evidence
14 that:

15 (1) The establishment of such a trust will enable the conservatee or ward to qualify for
16 benefits from any federal, state or local government program, or will accelerate the qualification
17 of the conservatee or ward for such benefits:

18 (2) the conservatee or ward will be the sole beneficiary of such trust;

19 (3) the term of the trust will not extend beyond the lifetime of the conservatee or ward;

20 (4) the provisions of the trust will provide for the distribution of the trust estate for the
21 benefit of the conservatee or ward for special needs not satisfied from governmental benefits and

1 that distributions will be made in compliance with any requirements of the governmental
2 program from which the conservatee or ward receives such benefits, and further, that
3 distributions will only be made in similar manner and under similar circumstances as the
4 conservatee's or ward's estate would otherwise have been distributed by the conservator or
5 guardian for the benefit of the conservatee or ward had the trust not been established; and

6 (5) the provisions of the trust will provide that, upon termination of the trust, the
7 remaining trust estate will first be expended to reimburse the governmental entities for the
8 benefits which have been provided to the conservatee or ward, if required as a condition for the
9 conservatee's or ward's qualification for such benefits, and shall then be paid over and assigned
10 to:

11 (i) the conservator, should this termination of the trust occur during any time the
12 conservatorship remains open, or the guardian, should this termination of the trust occur during
13 any time the guardianship remains open;

14 (ii) the conservatee or ward, should this termination of the trust occur during any time the
15 conservatorship or guardianship has been terminated and the conservatee or ward restored to
16 capacity; or

17 (iii) the legal representative of the conservatee's or ward's estate, should this termination
18 of the trust occur by virtue of the conservatee's or ward's death,
19 then the court may grant to the conservator or guardian the authority to establish such a trust and
20 to transfer specified property or assets from the conservatee's or ward's estate to the trust. The
21 court shall order the conservator or guardian to report any such transfer within the conservator's

1 or guardian's next accounting as required by K.S.A. 59-3026b and amendments thereto.

2 (f) The court may require as a condition of the court's granting to the conservator or
3 guardian the authority to establish such a trust that the sole trustee of the trust be the court
4 appointed conservator or guardian, and that the conservator or guardian, acting as the trustee,
5 shall be subject to the same requirements and limitations as provided for in this Act concerning
6 conservatorships and shall report and account to the court concerning the trust estate the same as
7 if the trust estate remained within the conservatee's or ward's estate.

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9 Comment

10 This is a new section that provides for the authority of a guardian or
11 conservator to petition the court to establish a trust which will enable the
12 conservatee or ward to qualify for benefits from any federal, state, or local
13 government program. This section was drafted in response to *In re Guardianship*
14 *& Conservatorship of Watkins*, 24 Kan. App. 2d 469, 947 P.2d 45 (1997). Also
15 included in this section are the contents of the petition, any accompanying
16 documents. The procedures for notice, hearings, and procedures to be followed in
17 determining if such petition is to be granted are in this section.
18

Sec. 32

59-3019d. Authority of the conservator to establish an extended distribution plan

for minor's estate; petition; contents; notice; hearing; procedure. (a) At any time after the seventeenth birthday of a minor conservatee who has not been adjudged to be a minor with an impairment in need of a guardian or conservator, or both, but before 30 days prior to the minor's eighteenth birthday, the conservator may file a verified petition requesting that the court grant authority to the conservator to establish a plan for the extended distribution of the minor's estate to the minor after the minor's eighteenth birthday. The petition shall include:

(1) The conservator's name and address, and if the conservator is also the minor's court appointed guardian, that fact;

(2) the minor's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the minor's permanent residence;

(3) the name and address of the minor's court appointed guardian, if a guardian has been appointed by the court and is different from the petitioner;

(4) the names and addresses of any spouse of the minor, and those of any parent and adult siblings of the minor, or if none, that fact. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe that such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;

(5) a description of the funds or assets of the minor's estate which the conservator proposes to distribute to the minor over an extended period following the minor's eighteenth birthday;

1 (6) the factual basis upon which the conservator alleges the need for such an extended
2 distribution plan;

3 (7) a description of the plan proposed by the conservator and how and by what means the
4 distribution will occur if the court grants to the conservator the authority to establish such a plan;

5 (8) the names and addresses of witnesses by whom the truth of this petition may be
6 proved; and

7 (9) a request that the court find that the conservator should be granted such authority, and
8 that the court grant to the conservator the authority to establish such an extended distribution
9 plan.

10 (b) Upon the filing of such a petition, the court shall issue an order fixing the date, time
11 and place of a hearing on the petition, which hearing may be held forthwith and without further
12 notice if the minor and those other persons named within the petition pursuant to the
13 requirements of subsections (a)(4) above, as applicable, have entered their appearance, waived
14 notice, and agreed to the court's granting to the conservator the authority to establish the plan for
15 the extended distribution of the minor's estate as contained within the petition. Otherwise, the
16 court shall require the conservator to give notice of this hearing to the minor and those other
17 persons in such manner as the court may direct. The court shall require that the notice be
18 accompanied by a copy of the petition containing a description of the plan proposed by the
19 conservator. The court shall require that the notice advise the minor and those other persons that
20 if they have any objections to this authority being granted to the conservator, that they must file
21 their written objections with the court prior to the scheduled hearing or that they must appear at

1 the hearing to present those objections. The court may appoint an attorney to represent the minor
2 in this matter similarly as provided for in K.S.A. 59-3010(a)(3) and amendments thereto, and in
3 such event, the court shall require the conservator to also give this notice to that attorney.

4 (c) At the conclusion of the hearing, if the court finds by a preponderance of the evidence
5 that:

6 (1) It is in the best interests of the minor to grant this authority to the conservator;

7 (2) the plan approved by the court will fully distribute all of the funds and assets of the
8 minor's estate to the minor by the minor's twenty-fifth birthday; and

9 (3) the plan approved by the court adequately provides for meeting the expected needs of
10 the minor from the minor's eighteenth birthday until the final distribution of the funds or assets
11 which the court authorizes to be set aside or transferred from the estate are paid over to the
12 minor, including provisions for accelerated distribution in extraordinary circumstances, which
13 may require court approval, then the court may grant to the conservator the authority to establish
14 such a plan and to effectuate it. The court shall order the conservator to report any expenditure
15 or transfer of funds or assets from the minor's estate for the purposes of effectuating this plan
16 within the conservator's next accounting as required by K.S.A. 59-3026b and amendments
17 thereto.

18 (d) The court may require that the conservator continue to administer the plan after the
19 minor becomes 18 years of age. The court may extend the conservatorship with regard to the
20 funds or assets of the minor's estate which are set aside to effectuate the plan and in such case the
21 conservator shall continue to be subject to the same requirements and limitations as provided for

1 in this Act concerning conservatorships and shall report and account to the court concerning the
2 plan's execution, even though other funds or assets of the minor's estate are paid over to the
3 minor upon the minor's becoming 18 years of age.

4 (e) The minor shall be without the power, voluntarily or involuntarily, to sell, mortgage,
5 pledge, hypothecate, assign, alienate, anticipate, transfer or convey any interest in the principal or
6 the income from any funds or assets of the minor's estate set aside or transferred to effectuate a
7 plan for extended distribution as herein provided until such is actually paid to the minor.

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9 Comment

10 This new section provides for the establishment, after the 17th birthday of a
11 minor who has not been found to have an impairment, of a plan to extend the
12 distribution of the minor's estate after the minor's 18th birthday. Also included
13 are the contents of the petition and any accompanying documents. The
14 procedures for notice, hearings, and procedures to be followed in determining if
15 such petition is to be granted are in this section.

2 ~~59-3020. Original assets.~~ A conservator may retain, until maturity, any security or
3 investment which was a part of the trust estate as received by him or her even though such
4 security or investment is not of the class considered as proper for the investment of trust funds,
5 unless circumstances are such to require the conservator to dispose of such security or investment
6 in the performance of his or her duties according to law. A conservator entitled to a distributive
7 share of the assets of an estate or trust shall have the same right as other distributees or
8 beneficiaries to accept or demand distribution in kind, and may retain any security or investment
9 so distributed to the conservator as though it were a part of the original estate received by him or
10 her.

11 Comment

This section was replaced by new K.S.A. 59-3019a(d)(6) and 59-3019a(e).

1 ~~59-3021. Power to lease for three years or less.~~ A conservator may, subject to the

2 approval of the court, lease for three (3) years or less the possession or use of any real estate of

3 his or her conservatee whenever it appears to be for the best interests of the conservatee and his

4 or her estate.

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6 Comment

7 This section was replaced by new K.S.A. 59-3019a(f)(3).

~~59-3022. Sale, lease, mortgage. A conservator may, pursuant to article 23 of chapter 59 of the Kansas Statutes Annotated, sell, lease for more than three (3) years, or for oil and gas or other minerals, or mortgage any real estate of a conservatee subject thereto to provide for the support, maintenance, and education of the conservatee, the conservatee's spouse and children, or whenever the personal property is insufficient to pay his or her debts and other demands against the estate, or whenever it shall be determined by the court that such sale, lease, or mortgage is for the best interests of the conservatee and his or her estate.~~

Comment

This section was replaced by new K.S.A. 59-3019a(f)(4) and 59-3019a(f)(5) which provide that the conservator shall not have the power, absent court approval, to sell, convey or mortgage, any real estate within the conservatee's estate, or to sell, convey, lease or mortgage any oil, gas or other mineral interest within the conservatee's estate.

Note that K.S.A. 59-2303(b) applies by its terms to the sale, lease, or mortgage of conservatorship real estate.

~~59-3024. Extension of mortgage.~~ A conservator may, subject to the approval of the
2 court, make an extension of an existing mortgage, or of a prior extension thereof, for a period of
3 five (5) years or less, if the extension agreement contains the same prepayment privileges and the
4 rate of interest does not exceed the lowest rate in the mortgage extended.

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6 Comment

7 This section was replaced by new K.S.A. 59-3019a(f)(7).

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~~59-3025. No personal liability on mortgage note. No conservator shall be personally liable on any mortgage note or by reason of the covenants in any instrument of conveyance duly executed by the conservator in his or her representative capacity.~~

Comment

This section was replaced by new K.S.A. 59-3019a(d)(2).

~~59-3026. Payment of demands against conservatee's estate; discharge of conservator.~~

2 (a) Any person having a demand, other than tort, against the estate of a conservatee, or against
3 such person's conservator as such, may present such demand to the district court for
4 determination, and upon proof thereof procure an order for its allowance and payment.

5 (b) Upon the death of a conservatee, the conservator upon order of the district court may
6 pay appropriate funeral expenses, the expenses of the conservatee's last illness and any claim for
7 medical assistance paid under subsection (c) of K.S.A. 39-709 and amendments thereto, in such
8 amounts as are reasonably necessary, with due regard to the rights of a surviving spouse, if any,
9 and creditors. If any assets remain in the estate of the deceased conservatee after any such
10 payments, such assets shall be held by the conservator until the court directs the disposition
11 thereof. The conservator shall not be discharged until such funds are transferred as directed
12 according to law by the court. If the funeral and last illness expenses and medical expenses
13 related to claims for medical assistance paid under subsection (c) of K.S.A. 39-709 and
14 amendments thereto and expenses of closing and final accounting will deplete the estate, the
15 conservator shall show such depletion on the hearing for final accounting. If the court finds the
16 final account is correct, the court may discharge the conservator and such conservator's sureties.

17
18 Comment

19 This section was replaced by new K.S.A. 59-3026a and 59-3028a(h).

1 Sec. 33 59-3026a. Claims against the conservatee's estate; petition; contents; notice;

2 hearing; order for payment. (a) Any person having a claim for payment against the
3 conservatee or the conservatee's estate, other than for any tort for which the claimant has not
4 been awarded judgment, or any person having a claim for payment for any goods or services
5 provided to the conservatee or the conservatee's estate by the claimant in reliance upon actions or
6 the authority of the conservator, may file with the court a verified petition requesting payment for
7 such. The petition shall include:

8 (1) The petitioner's name and address;

9 (2) the conservator's name and address;

10 (3) the amount of the claim, and the factual basis upon which the petitioner makes this
11 claim;

12 (4) a statement that demand for payment of the claim has been made upon the
13 conservator, but that the conservator refuses or has failed to pay the claim; and

14 (5) a request that the court determine that the claim is owed to the petitioner, and for an
15 order of the court directing the conservator to pay the claim.

16 (b) Upon the filing of such a petition, the court shall issue an order fixing the date, time
17 and place of a hearing on the petition. The court shall require the petitioner to give notice of this
18 hearing to the conservator and to such other persons as the court may direct. The court may
19 appoint an attorney to represent the conservatee in this matter similarly as provided for in K.S.A.
20 59-3010(a)(3) and amendments thereto.

21 (c) At the completion of the hearing, if the court finds, by a preponderance of the

1 evidence, that the petitioner is owed the claim, or some part thereof, the court shall issue an order
2 to the conservator to pay the same from the conservatee's estate, or to pay so much of the claim
3 as the court allows, and to include such in the conservator's next report and accounting.
4 Otherwise, the court shall deny the petitioner's request. The court may assess against the
5 claimant the costs and expenses, including reasonable attorney's fees, incurred by the
6 conservator in defending against the claim if the court denies the petition.

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8 Comment

9 This section, along with new section K.S.A. 59-3028a(h), replaces current
10 K.S.A. 59-3026. In addition, this section sets forth procedures similar to those
11 used in decedents estates with respect to petition, contents, notice, hearing and
12 order for payment of claims. Moreover, this section clearly establishes that, in
13 instances where the claim is denied by the court, costs and expenses including
attorney's fees may be assessed against the petitioner.

1 *Sec. 34* **59-3026b. Guardian's or conservator's reports and accountings; final reports and**

2 **accounting.** (a) The guardian or conservator appointed by the court pursuant to K.S.A. 59-
3 3013 and amendments thereto, shall annually, and at other times as the court may specify, file
4 with the court, in such form as the supreme court may require by rule, or in the absence of such
5 rule or in supplement thereto, as the court may require, reports and accountings concerning the
6 status of the ward or conservatee, the estate of the ward or conservatee, and the actions of the
7 guardian or conservator.

8 (b) The guardian or conservator, or both, shall file a special report or accounting with the
9 court upon the occurrence of any of the following:

10 (1) a change of address of the guardian or conservator;

11 (2) a change of residence or placement of the ward or conservatee;

12 (3) a significant change in the health or impairment of the ward or conservatee;

13 (4) the acquisition by the ward of any real property, or the receipt or accumulation of
14 other property or income by the ward or by the guardian on behalf of the ward, which causes the
15 total value of the ward's estate to equal or exceed \$10,000.00; or

16 (5) the death of the ward or conservatee.

17 (c) Upon the death of the guardian or conservator, or upon the guardian or conservator
18 being adjudged in this state to be an adult with an impairment in need of a guardian or a
19 conservator, or both, or being similarly adjudged in any other state, a representative on behalf of
20 the guardian or conservator, as the court may allow, shall file a final report or accounting on
21 behalf of that guardian or conservator.

2 (d) If the guardian or conservator is under contract with the Kansas guardianship
3 program, the court shall order that the guardian or conservator file with the Kansas guardianship
4 program a copy of each report or accounting filed with the court.

5 (e) At the termination of the guardianship, or upon the resignation, impairment, death or
6 removal of the guardian, the guardian or a representative on behalf of the guardian, as the court
7 may allow, shall file with the court a final report concerning the status of the ward and of the
8 actions and recommendations of the guardian.

9 (f) At the termination of the conservatorship, or upon the resignation, impairment, death
10 or removal of the conservator, the conservator or a representative on behalf of the conservator, as
11 the court may allow, shall file with the court a final report and accounting concerning the status
12 of the conservatee, of the conservatee's estate, and of the actions and recommendations of the
13 conservator. The conservator, the conservator's estate and the conservator's surety shall not be
14 finally discharged until such final report and accounting is filed, and the accounting allowed and
15 settled as provided for in K.S.A. 59-3026e and amendments thereto. The conservator's surety
16 may, in the surety's discretion, file any report or accounting it deems appropriate, or perform the
17 duties of the conservator upon the resignation, death, impairment or removal of the conservator,
18 subject to the authority of the standby conservator, if a standby conservator has been appointed
19 by the court pursuant to K.S.A. 59-3015a and amendments thereto.

20 Comment

21 This section replaces current K.S.A. 59-3029. In addition, this section sets
22 forth five specific changes in circumstances which trigger the need for the filing
of special reports or accountings.

1 *Sec. 35* 59-3026c. Court's review of guardian's reports; hearing; guardian's accounting. (a)

2 Upon the filing of a report by the guardian pursuant to K.S.A. 59-3026b and amendments
3 thereto, the court or a designee of the court shall review the report, the court's prior orders, any
4 guardianship plan which has been filed with the court pursuant to K.S.A. 59-3018c and
5 amendments thereto and which remains in effect, and any reports which the guardian has
6 previously filed, to determine whether:

7 (1) The current report reflects reasonable administration of the guardianship;

8 (2) the guardian is performing assigned duties and responsibilities, or exercising granted
9 powers and authorities, in a manner consistent with the prior orders of the court and with any
10 guardianship plan in effect;

11 (3) additional duties, responsibilities, powers or authorities should be granted to the
12 guardian, or limitations should be made with regard thereto, or other modifications should be
13 made within the guardianship to protect the interests of the ward or the ward's estate; or

14 (4) further proceedings as provided for in this Act may be appropriate.

15 (b) Upon the filing of any report, or based upon other information which comes to the
16 court's attention concerning matters contained within the report or which should be contained
17 within the report, the court may set a hearing upon the matter and may require the guardian to
18 appear before the court. The court may require the guardian to give notice of this hearing to such
19 persons and in such manner as the court may direct. The court may appoint an attorney to
20 represent the ward in this matter similarly as provided for in K.S.A. 59-3010(a)(3) and
21 amendments thereto. The court may require the guardian, and may allow the ward, the

conservator, if a conservator has been appointed, and other interested persons, to present evidence concerning the actions of the guardian or the recommendations of such persons.

(c) At the conclusion of the court's review of the guardian's report, or following any hearing held as provided for in subsection (b), the court shall issue an order either approving or disapproving the guardian's report. The court may approve a reasonable guardian's fee which shall be assessed to the ward's estate. The court within its order may grant to or withdraw from the guardian specified duties, responsibilities, powers or authorities as provided for in K.S.A. 59-3018b and amendments thereto, may specifically order the guardian with regard to the performance of assigned duties, responsibilities, powers or authorities, including requiring the guardian to file an amended report, may require the guardian to develop and file with the court a guardianship plan as provided for in K.S.A. 59-3018c and amendments thereto, or the court may proceed pursuant to K.S.A. 59-3026g and amendments thereto, to remove the guardian and to appoint a successor guardian, or the court may proceed pursuant to K.S.A. 59-3027a or 59-3028a, and amendments thereto, to restore the ward to capacity or terminate the guardianship.

(d) If the court, pursuant to K.S.A. 59-3018b(e)(9) and amendments thereto, has authorized the guardian to exercise any control or authority over the ward's estate, then, in addition to or as a part of each report filed by the guardian pursuant to this section, the guardian shall also account for the ward's estate. In reviewing the guardian's report, the court shall also review the guardian's accounting and at the conclusion thereof, if the court finds that the accounting accurately accounts for the ward's estate and shows appropriate administration on the part of the guardian, the court shall issue an order approving the accounting.

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Comment

This section contains elements of current K.S.A. 59-3029, 59-3030 and 59-3035. It requires accountings from guardians in control of a ward's assets pursuant to new K.S.A. 59-3018b(e)(9). It provides for review hearings at the discretion of the court. Following the court's review of a guardian's report or following a review hearing, the court may *inter alia* require that a guardianship plan be filed pursuant to new K.S.A. 59-3018c. There is no requirement in this section for a "3-year review" as in current K.S.A. 59-3035. Instead, the court will review the entire file upon the filing of a guardian's report pursuant to new K.S.A. 59-3026b.

Sec. 36 59-3026d. Court's review of conservator's reports or accountings; hearing. (a)

2 Upon the filing of a report or accounting by the conservator pursuant to K.S.A. 59-3026b and
3 amendments thereto, the court or a designee of the court shall review the report or accounting,
4 the court's prior orders, any conservatorship plan which has been filed with the court pursuant to
5 K.S.A. 59-3019b and amendments thereto and which remains in effect, and any reports and
6 accountings which the conservator has previously filed, to determine whether:

7 (1) The current report or accounting reflects reasonable administration of the
8 conservatorship;

9 (2) the conservator is performing assigned duties and responsibilities, or exercising
10 granted powers and authorities, in a manner consistent with the prior orders of the court and with
11 any conservatorship plan in effect;

12 (3) additional duties, responsibilities, powers or authorities should be granted to the
13 conservator, or limitations should be made with regard thereto, or other modifications should be
14 made within the conservatorship to protect the interests of the conservatee or the conservatee's
15 estate; or

16 (4) further proceedings as provided for in this Act may be appropriate.

17 (b) Upon the filing of any report or accounting, or based upon other information which
18 comes to the court's attention concerning matters contained within the report or accounting or
19 which should be contained within the report or accounting, the court may set a hearing upon the
20 matter and may require the conservator to appear before the court. The court may require the
21 conservator to give notice of this hearing to such persons and in such manner as the court may

1 direct. The court may appoint an attorney to represent the conservatee in this matter similarly as
2 provided for in K.S.A. 59-3010(a)(3) and amendments thereto. The court may require the
3 conservator, and may allow the conservatee, the guardian, if a guardian has been appointed, and
4 other interested persons, to present evidence concerning the actions of the conservator or the
5 recommendations of such persons.

6 (c) At the conclusion of the court's review of the conservator's report or accounting, or
7 following any hearing held as provided for in subsection (b), the court shall issue an order either
8 approving or disapproving the conservator's report or accepting or rejecting the conservator's
9 accounting. The court within its order may grant to or withdraw from the conservator specified
10 duties, responsibilities, powers or authorities as provided for in K.S.A. 59-3019a and
11 amendments thereto, may specifically order the conservator with regard to the performance of
12 assigned duties, responsibilities, powers or authorities, including requiring the conservator to file
13 an amended report or accounting, may require the conservator to develop and file with the court a
14 conservatorship plan as provided for in K.S.A. 59-3019b and amendments thereto, or the court
15 may proceed pursuant to K.S.A. 59-3026g and amendments thereto, to remove the conservator
16 and to appoint a successor conservator, or the court may proceed pursuant to K.S.A. 59-3027a or
17 59-3028a, and amendments thereto, to restore the conservatee to capacity or terminate the
18 conservatorship.

19 (d) No order issued pursuant to this section shall be construed to have finally allowed or
20 settled any conservator's accounting, except if proceedings have been held in compliance with
21 K.S.A. 59-3026e and amendments thereto.

Comment

2 This section pertains to conservatorships and has provisions similar to the
3 provisions for guardianships in new section K.S.A. 59-3026c. And, as with new
4 section K.S.A. 59-3026c, this section contains elements of current sections K.S.A.
5 59-3029, 59-3030 and 59-3035. It provides that no order issued pursuant to this
6 section results in the conservator's accounting being finally settled or allowed
7 unless proceedings in compliance with new section K.S.A. 59-3026e have been
8 held.

1 *Sec. 37***59-3026e. Allowance and settlement on conservator's accounting; petition;**

2 **contents; notice; hearing; procedure; forfeiture of conservator's bond; final release.** (a) At
3 the time of or at any time after the filing of an accounting by the conservator, the conservator
4 may file with the court a verified petition requesting a hearing on that accounting for the
5 purposes of allowance and settlement. The petition shall include:

6 (1) The conservator's name and address, and if the conservator is also the guardian, that
7 fact;

8 (2) the conservatee's name, age, date of birth, address of permanent residence, and
9 present address or whereabouts, if different from the conservatee's permanent residence;

10 (3) the name and address of the court appointed guardian, if different from the
11 conservator;

12 (4) the names and addresses of any spouse, adult children and adult grandchildren of the
13 conservatee, and those of any parent and adult siblings of the conservatee, or if no such names or
14 addresses are known to the petitioner, the name and address of at least one adult who is nearest in
15 kinship to the conservatee, or if none, that fact. If no such names or addresses are known to the
16 conservator, but the conservator has reason to believe that such persons exist, then the petition
17 shall state that fact and that the conservator has made diligent inquiry to learn those names and
18 addresses;

19 (5) the names and addresses of other persons, if any, whom the conservator knows to
20 have an interest in the matter, or a statement that the petitioner knows of no other persons having
21 an interest in the matter;

(6) designation of the accounting period for which allowance and settlement is sought;

2 and

3 (7) a request that this accounting be accepted and that the court issue an order providing
4 that all matters related thereto are finally allowed and settled.

5 (b) Upon the filing of such a petition, the court shall issue an order fixing the date, time
6 and place of a hearing on the petition, which hearing may be held forthwith and without further
7 notice if those persons named within the petition pursuant to the requirement of subsections
8 (a)(3), (4) and (5) above, as applicable, have entered their appearances, waived notice, and agreed
9 to the court's accepting the accounting and issuing an order of final allowance and settlement.

10 Otherwise, the court shall require the conservator to give notice of this hearing to such persons in
11 such manner as the court may specify, including therewith a copy of the conservator's petition
12 and a copy or copies of the accounting or accountings for which the conservator requests an
13 order of final allowance and settlement. This notice shall advise such persons that if they have
14 any objections to the accounting or accountings for which final allowance and settlement is
15 sought that they must file their written objections with the court prior to the scheduled hearing or
16 that they must appear at the hearing to present those objections. The court may appoint an
17 attorney to represent the conservatee in this matter similarly as provided for in K.S.A. 59-
18 3010(a)(3) and amendments thereto, and in such event, the court shall require the conservator to
19 also give this notice to that attorney.

20 (c) In the absence of a petition having been filed by the conservator pursuant to this
21 section, the court may set a hearing to determine whether an order of final allowance and

1 settlement should be issued with regard to any accounting which has been previously filed by the
2 conservator, and may require the conservator or some other person to give notice thereof as
3 provided for herein.

4 (d) The hearing shall be conducted in as informal a manner as may be consistent with
5 orderly procedure. The court shall have the authority to receive all relevant and material
6 evidence which may be offered, including the testimony or written report, findings or
7 recommendations of any professional or other person who has familiarity with the conservatee or
8 the conservatee's estate. The court may review the court's prior orders, any conservatorship plan
9 which has been filed pursuant to K.S.A. 59-3019b and amendments thereto, and any reports and
10 accountings which have been filed by the guardian or conservator, or both, even if previously
11 approved or allowed, to determine whether the current accounting seems reasonable in light of
12 the past reports or accountings, and to determine whether any further proceedings under this Act
13 may be appropriate. The court shall give to the conservator, to the conservatee, and to other
14 interested persons, the opportunity to present evidence to the court concerning the actions of the
15 conservator, the conservatee's estate and the recommendations of such persons.

16 (e) At the conclusion of the hearing, if the court finds, by a preponderance of the
17 evidence, that the accounting accurately accounts for the conservatee's estate, shows appropriate
18 administration on the part of the conservator, that any fees of the conservator are reasonable, and
19 that due notice and an opportunity to be heard has been provided to any interested parties, the
20 court shall approve the accounting and order that it is allowed and settled. Such allowance and
21 settlement shall relieve the conservator and the conservator's sureties from liability for all acts

1 and omissions which are fully and accurately described in the accounting, including the
2 investments of the assets of the conservatee's estate.

3 (f) If the court finds by a preponderance of the evidence that the conservator has
4 innocently misused any funds or assets of the conservatee's estate, the court shall order the
5 conservator to repay such funds or return such assets to the conservatee's estate. If the court
6 finds that the conservator has embezzled or converted for his or her own personal use any funds
7 or assets of the conservatee's estate, the court shall find the conservator liable for double the
8 value of those funds or assets, as provided for in K.S.A. 59-1704 and amendments thereto. The
9 court may order the forfeiture of the conservator's bond, or such portion thereof as equals the
10 value of such funds or assets, including any lost earnings and the costs of recovering those funds
11 or assets, including reasonable attorney's fees, as the court may allow, and may require of the
12 surety satisfaction thereof. Neither the conservator, nor the conservator's estate or surety, shall
13 be finally released from such bond until the satisfaction thereof.

14 (g) At no time shall the conservator, or the conservator's estate or surety, be finally
15 released from the bond required by the court pursuant to K.S.A. 59-3014a and amendments
16 thereto until a final accounting has been filed, allowed and settled as provided for herein.

17 (h) Upon the filing of a final accounting, delivery of any remaining funds and assets of
18 the conservatee's estate to the person entitled thereto, and presentation to the court of a receipt
19 for such, the court may issue a final order of allowance and settlement as provided for herein,
20 and only thereby shall finally release the conservator, the conservator's estate and the
21 conservator's surety.

Comment

1
2 This section permits the conservator to file a verified petition requesting a
3 hearing for the purposes of allowance and settlement of an accounting. The
4 required contents of the verified petition are set forth with considerable
5 specificity. Upon the filing of such verified petition the notice requirements and
6 the hearing procedure are similar to current K.S.A. 59-3030 and 59-3031. This
7 section also provides that the court can require such a hearing on its own motion.
8 It differentiates between "innocently misused funds or assets" and embezzled or
9 converted funds or assets, with the "double-the-value" penalty of current K.S.A.
10 59-1704 applying only to the funds or assets which have been embezzled or
11 converted to the conservator's personal use. The section also clearly establishes
12 that any bond forfeiture declared by the court as a result of such conduct by the
13 conservator may include lost earnings and costs of recovery of funds or assets
14 including attorney fees; and, that the surety may be held responsible for the
15 satisfaction thereof.

Sec. 38

59-3026f. Change in authority of co-guardians or co-conservators; petition;

2 **contents; hearing; procedure; forfeiture of co-conservator's bond.** (a) A verified petition
3 requesting the court to modify its prior order appointing co-guardians or co-conservators, or
4 both, by either changing the authority of the co-guardians or co-conservators, or both, to act
5 independently, to act only in concert, or to act only in concert with regard to certain matters, or to
6 remove one or both of the co-guardians or co-conservators, or both, and to appoint only a single
7 guardian or a single conservator, or both, shall include:

8 (1) The petitioner's name and address, and if the petitioner is one of the ward's or
9 conservatee's court appointed co-guardians or co-conservators, that fact;

10 (2) the ward's or conservatee's name, age, date of birth, address of permanent residence,
11 and present address or whereabouts, if different from the ward's or conservatee's permanent
12 residence;

13 (3) the names and addresses of each of the court appointed co-guardians or co-
14 conservators, or both, who are not the petitioner;

15 (4) the factual basis upon which the petitioner alleges the need for the court to modify its
16 prior order of appointment, and whether the petitioner requests that the court require the co-
17 guardians or co-conservators, or both, to act independently, to act only in concert, or to act only
18 in concert with regard to certain matters, or whether the petitioner requests that the court remove
19 one of the co-guardians or co-conservators, or both, and appoint only a single guardian or a
20 single conservator, or both;

21 (5) the names and addresses of witnesses by whom the truth of the petition may be

1 proved:

2 (6) if the petitioner is requesting the appointment of a single guardian or a single
3 conservator, or both, to replace the co-guardians or co-conservators, or both, the name, address,
4 and relationship to the ward or conservatee, if any, of the individual or corporation whom the
5 petitioner suggests that the court appoint as the single guardian or single conservator, or both,
6 and if the suggested single guardian or single conservator is under contract with the Kansas
7 guardianship program, that fact; and

8 (7) a request that the court make a determination that the co-guardians or co-conservators,
9 or both, should each have the authority to act independently, should be required to act only in
10 concert or only in concert with regard to certain matters, or that the co-guardians or co-
11 conservators, or both, should be replaced with a single guardian or a single conservator, or both.

12 (b) Upon the filing of such a petition, the court shall issue an order fixing the date, time
13 and place of a hearing on the petition, which hearing may be held forthwith and without further
14 notice if each of the co-guardians or co-conservators, as applicable, and, if in the opinion of the
15 court, all other persons necessary to the matter, have entered their appearance, waived notice, and
16 agreed to the court granting petitioner's request. Otherwise, the court shall require the petitioner
17 to give notice of this hearing to such persons and in such manner as the court may specify,
18 including therewith a copy of the petition. The court shall require the petitioner to give this
19 notice to any co-guardians or co-conservators, or both. The court may appoint an attorney to
20 represent the ward or conservatee in this matter, similarly as provided for in K.S.A. 59-
21 3010(a)(3) and amendments thereto, and in such event, the court shall require the petitioner to

also give this notice to that attorney.

2 (c) In the absence of a petition having been filed pursuant to this section, but whenever
3 the court believes that it may be in the best interests of the ward or conservatee to consider
4 modification of the court's prior order appointing co-guardians or co-conservators, or both, the
5 court may set a hearing thereon, and may require one of the co-guardians or co-conservators to
6 give notice thereof as provided for herein.

7 (d) The hearing shall be conducted in as informal a manner as may be consistent with
8 orderly procedure. The court shall have the authority to receive all relevant and material
9 evidence which may be offered, including the testimony or written report, findings or
10 recommendations of any professional or other person who has familiarity with the ward or
11 conservatee or the conservatee's estate. The court may review the court's prior orders, any
12 guardianship plan or conservatorship plan which has been filed pursuant to K.S.A. 59-3018c or
13 59-3019b, and amendments thereto, and any reports or accountings which have been filed by the
14 co-guardians or co-conservators, or both, even if previously approved or allowed. The court
15 shall give to the co-guardians or co-conservators, or both, to the ward or conservatee, and to
16 other interested persons, the opportunity to present information to the court concerning the
17 actions of the co-guardians or co-conservators, or both, and of the recommendations of such
18 persons.

19 (e) At the conclusion of the hearing, if the court finds that it is in the best interests of the
20 ward or conservatee to do so, the court may modify its prior orders to provide that the co-
21 guardians or co-conservators, or both, shall have the authority to act independently, to act only in

1 concert, in certain circumstances or with regard to certain matters to act independently and in
2 certain other circumstances or with regard to certain other matters to act only in concert, or the
3 court may remove the co-guardians or co-conservators, or both, and appoint a single guardian or
4 a single conservator, or both. In making any such appointments, the court shall act in accordance
5 with K.S.A. 59-3014 and 59-3014a, and amendments thereto.

6 (f) If the court finds by a preponderance of the evidence that a co-conservator has
7 innocently misused any funds or assets of the conservatee's estate, the court shall order the co-
8 conservator to repay such funds or return such assets to the conservator's estate. If the court
9 finds that a co-conservator has embezzled or converted for his or her personal use any funds or
10 assets of the conservatee's estate, the court shall find the co-conservator liable for double the
11 value of those funds or assets, as provided for in K.S.A. 59-1704 and amendments thereto. The
12 court may order the forfeiture of the co-conservator's bond, or such portion thereof as equals the
13 value of such funds or assets, including any lost earnings and the costs of recovering those funds
14 or assets, including reasonable attorney's fees, as the court may allow, and may require of the
15 surety satisfaction thereof. Neither the conservator, nor the conservator's estate or surety, shall
16 be finally released from such bond until the satisfaction thereof.

17 (g) No co-conservator, nor the co-conservator's estate or surety, shall be finally released
18 from their bond until a final accounting has been filed, allowed and settled as provided for in
19 K.S.A. 59-3026e and amendments thereto.

Comment

2 This new section provides the petition requirements, the notice
3 requirements and the hearing procedure with respect to modification of authority
4 of co-fiduciaries as originally specified by the court pursuant to new sections
5 K.S.A. 59-3013(e)(1), (2) and (3). The section also states that the court can
6 require such a hearing on its own motion. The section also provides similarly to
7 new section K.S.A. 59-3026e regarding funds that are "innocently misused" or are
8 embezzled or converted for the co-conservator's personal use.
9

1 *Sec. 39* 59-3026g. Resignation or removal of guardian or conservator; petition; contents;
2 notice; hearing; procedure; appointment of a successor guardian or conservator; forfeiture
3 of conservator's bond. (a) A verified petition may be filed requesting the court to accept the
4 resignation of the guardian or the conservator, or both, to remove the guardian or conservator, or
5 both, or to appoint a successor guardian or conservator, or both, and shall include:

6 (1) The petitioner's name and address, and if the petitioner is the ward's or conservatee's
7 court appointed guardian or conservator, that fact;

8 (2) the ward's or conservatee's name, age, date of birth, address of permanent residence,
9 and present address or whereabouts, if different from the ward's or conservatee's permanent
10 residence;

11 (3) the name and address of the court appointed guardian or conservator, or both, if
12 different from the petitioner;

13 (4) the factual basis upon which the petitioner alleges the need for the removal of the
14 guardian or conservator, or both, or the appointment of a successor guardian or conservator, or
15 both. If the current guardian or conservator is requesting the court to accept the guardian's or
16 conservator's resignation, the petition shall include a statement to that effect and state the
17 reasons why the guardian or conservator, or both, desires to resign;

18 (5) the names and addresses of witnesses by whom the truth of this petition may be
19 proved;

20 (6) the name, address, and relationship to the ward or conservatee, if any, of the
21 individual or corporation whom the petitioner suggests that the court appoint as the successor

1 guardian or conservator, and if the suggested successor guardian or conservator is under contract
2 with the Kansas guardianship program, that fact; and

3 (7) a request that the court make a determination that the guardian or conservator should
4 be allowed to resign or should be removed, or that a successor guardian or conservator, or both,
5 should be appointed.

6 (b) Upon the filing of such a petition, the court shall issue an order fixing the date, time
7 and place of a hearing on the petition, which hearing may be held forthwith and without further
8 notice if, in the opinion of the court, all persons necessary to the matter have entered their
9 appearances, waived notice, and agreed to the court's entering the order requested. Otherwise,
10 the court shall require the petitioner to give notice of this hearing to such persons and in such
11 manner as the court may direct, including therewith a copy of the petition. This notice shall
12 advise such persons that if they have any objections to the petition that they must file their
13 written objections with the court prior to the scheduled hearing or that they must appear at the
14 hearing to present those objections. If the petitioner is not the guardian or conservator, the court
15 shall require the petitioner to give this notice to the guardian or conservator, or both. The court
16 may appoint an attorney to represent the ward or conservatee in this matter, similarly as provided
17 for in K.S.A. 59-3010(a)(3) and amendments thereto, and in such event, the court shall require
18 the petitioner to also give this notice to that attorney.

19 (c) In the absence of a petition having been filed, but at any time when the court has
20 reason to believe that removal of the guardian or conservator, or both, may be necessary, the
21 court may set a hearing thereon, and may require the guardian, conservator or some other person

1 to give notice thereof as provided for herein. Nothing herein shall be construed such that the
2 court does not have the authority to immediately suspend the powers and authorities of a
3 guardian or conservator, or both, whenever the court determines that it is in the best interests of
4 the ward or conservatee to do so.

5 (d) The hearing shall be conducted in as informal a manner as may be consistent with
6 orderly procedure. The court shall have the authority to receive all relevant and material
7 evidence which may be offered, including the testimony or written report, findings or
8 recommendations of any professional or other person who has familiarity with the ward or
9 conservatee or the conservatee's estate. The court may review the courts prior orders, any
10 guardianship plan or conservatorship plan filed pursuant to K.S.A. 59-3018c or 59-3019b, and
11 amendments thereto, which is in effect, and any reports or accountings which have been filed by
12 the guardian or conservator, or both, even if previously approved or allowed. The court shall
13 give to the guardian or conservator, or both, to the ward or conservatee, and to other interested
14 persons, the opportunity to present evidence to the court concerning the actions of the guardian
15 or conservator, or both, and of the recommendations of such persons.

16 (e) At the conclusion of the hearing, if the court finds, by a preponderance of the
17 evidence, that the guardian or conservator, or both, should be permitted to resign, or should be
18 removed for failure to fulfill the duties or responsibilities of being a guardian or conservator, or
19 for the manner in which the guardian or conservator has exercised the powers or authorities
20 granted to the guardian or conservator, the court may so order and in such case shall revoke the
21 letters of guardianship or conservatorship, or both, previously issued pursuant to K.S.A. 59-

3014a and amendments thereto. The court may appoint a successor guardian or conservator, or both. In making any such appointments, the court shall act in accordance with K.S.A. 59-3014 and 59-3014a, and amendments thereto.

(f) If the court finds that the conservator has innocently misused any funds or assets of the conservatee's estate, the court shall order the conservator to repay such funds or return such assets to the conservatee's estate. If the court finds that the conservator has embezzled or converted for his or her personal use any funds or assets of the conservatee's estate, the court shall find the conservator liable for double the value of those funds or assets, as provided for in K.S.A. 59-1704 and amendments thereto. The court may order the forfeiture of the conservator's bond, or such portion thereof as equals the value of such funds or assets, including any lost earnings and the costs of recovering those funds or assets, including reasonable attorney's fees, as the court may allow, and may require of the surety satisfaction thereof. Neither the conservator, nor the conservator's estate or surety, shall be finally released from such bond until the satisfaction thereof.

Comment

This new section provides the petition requirements and contents for resignation or removal of a fiduciary. It also states that the court can require a hearing to consider removal without any such petition being filed. In either event, the notice requirements and hearing procedure are essentially the same. This section also provides similarly to new section K.S.A. 59-3026e and 59-3026f regarding funds that are "innocently misused" or embezzled or converted for the conservator's own use.

1 *Sec. 40***59-3026h. Order to show cause for failure to fulfill duties of guardian or**

2 **conservator; removal; forfeiture of conservator's bond; bench warrant.** (a) At any time the
3 court has reason to believe that the guardian or conservator, or both, has failed to faithfully or
4 diligently carry out his or her duties or responsibilities or to properly exercise his or her powers
5 or authorities in a manner consistent with the provisions of K.S.A. 59-3018b or 59-3019a, and
6 amendments thereto, or with any prior order of the court, the court may issue to the guardian or
7 conservator, or both, an order to appear before the court at a specified date, time and place to
8 show just cause why the court should not find that he or she has failed to faithfully or diligently
9 carry out his or her duties or responsibilities or to properly exercise his or her powers or
10 authorities.

11 (b) At such hearing, the court shall give to the guardian or conservator, or both, the
12 opportunity to present evidence concerning their actions. The court shall also have the authority
13 to receive all relevant and material evidence which may be offered by other interested parties,
14 including the testimony or written report, findings or recommendations of any professional or
15 other person who has familiarity with the ward or conservatee, or the conservatee's estate. The
16 court may review the court's prior orders, any guardianship plan or conservatorship plan filed
17 pursuant to K.S.A. 59-3018c or 59-3019b, and amendments thereto, which is in effect, and any
18 reports or accountings which have been filed by the guardian or conservator, or both, even if
19 previously approved or allowed.

20 (c) At the conclusion of the hearing, if the court finds, by a preponderance of the
21 evidence, that the guardian or conservator, or both, has failed to faithfully or diligently carry out

1 his or her duties or responsibilities or to properly exercise his or her powers or authorities, the
2 court may remove the guardian or conservator, or both, and in such case, the court shall revoke
3 the letters of guardianship or conservatorship, or both, previously issued pursuant to K.S.A. 59-
4 3014a and amendments thereto. Otherwise, the court may issue appropriate orders further
5 directing the guardian or conservator, or both, with regard to the performance of his or her duties
6 or responsibilities or the exercise of his or her powers or authorities, or the court may dismiss the
7 proceedings.

8 (d) If the court finds that the guardian or conservator has innocently misused any funds or
9 assets of the ward's or conservatee's estate, the court shall order the guardian or conservator to
10 repay such funds or return such assets to the ward's or conservatee's estate. If the court finds
11 that the guardian or conservator has embezzled or converted for their personal use any funds or
12 assets of the ward's or conservatee's estate, the court shall find the guardian or conservator liable
13 for double the value of those funds or assets, as provided for in K.S.A. 59-1704 and amendments
14 thereto, and in such case, neither the guardian or conservator, or the guardian's or conservator's
15 estate, shall be finally released until the satisfaction thereof. The court may order the forfeiture
16 of the conservator's bond, or such portion thereof as equals the value of such funds or assets,
17 including any lost earnings and the costs of recovering those funds or assets, including
18 reasonable attorney's fees, as the court may allow, and may require of the surety satisfaction
19 thereof, and in such case the court shall not finally release the conservator's surety until such
20 order has been satisfied.

21 (e) If the guardian or conservator, or both, fail or refuse to appear as ordered, the court

1 may proceed as provided for in Article 12 of Chapter 20 of the Kansas Statutes Annotated or
2 K.S.A. 59-2217a. and amendments thereto.

3
4 Comment

5 This new section clearly confirms the power of the court, acting on
6 "reason to believe" to issue to the fiduciary an order to appear and show cause
7 why the court should not find failure to faithfully or diligently carry out duties or
8 responsibilities or properly exercise powers or authorities. The section sets forth
9 the procedure for the hearing on the matter, at the close of which the court shall
10 revoke the letters or further instruct the fiduciary as the evidence warrants. The
11 section also provides similarly to new sections K.S.A. 59-3026e, 3026f and 3026g
12 regarding funds that are "innocently misused" or embezzled or converted for the
13 personal use of the guardian or conservator. If the fiduciary fails or refuses to
14 appear as ordered, the court may issue a bench warrant as provided in current
15 K.S.A. 59-2217a.

~~59-3027. Restoration to capacity; procedure.~~ Any ward or conservatee who has been found to be a disabled person or any person on such ward's or conservatee's behalf may file a verified petition for restoration to capacity in the district court which has venue of the guardianship or conservatorship. The petition shall state:

- ~~(a) The name of the ward or conservatee;~~
- ~~(b) the name and address of the nearest relatives of the ward or conservatee;~~
- ~~(c) the name and address of the guardian or of the conservator; and~~
- ~~(d) a request for restoration to capacity.~~

~~The court may refuse to hear the petition for six months from either the date of the original adjudication finding the ward or conservatee to be a disabled person, or for six months from the date of any subsequent hearing on a petition for restoration.~~

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

~~Upon the completion of the hearing, if the court finds by clear and convincing evidence that such ward or conservatee continues to be a disabled person, the court shall deny the petition for restoration to capacity. If the court finds that it has not been shown by clear and convincing evidence that such ward or conservatee continues to be a disabled person, the court shall order such ward or conservatee restored to capacity.~~

Comment

This section was replaced by new section 59-3027a.

1 *Sec. 41* 59-3027a. Restoration to capacity; petition; contents; hearing; procedure. (a) The
2 ward or conservatee may at any time file a verified petition with the court requesting that the
3 court find that the ward or conservatee is no longer impaired, and requesting that the court restore
4 the ward or conservatee to capacity.

5 (b) The petition shall include:

6 (1) The ward's or conservatee's name, age, date of birth, address of permanent residence,
7 and present address or whereabouts, if different from the ward's or conservatee's permanent
8 residence:

9 (2) the name and address of the ward's or conservatee's court appointed guardian or
10 conservator, or both;

11 (3) the factual basis upon which the ward or conservatee alleges that they are no longer
12 impaired;

13 (4) the names and addresses of the witnesses by whom the truth of the petition may be
14 proved: and

15 (5) a request that the court find that the ward or conservatee in no longer impaired, and
16 therefore entitled to be restored to capacity.

17 (c) Upon the filing of such a petition, the court shall review the petition to determine
18 whether probable cause exists to warrant further proceedings. If the court finds probable cause to
19 warrant further proceedings, the court shall issue an order fixing the date, time and place of a
20 hearing on the petition, which hearing shall be held not later than 30 days following the filing of
21 the petition. If the court does not find within the petition facts sufficient to constitute probable

2 cause to warrant further proceedings, the court may nonetheless issue an order for an
3 examination and evaluation of the ward or conservatee to determine if there is sufficient cause
4 for further proceedings. The court may order the ward or conservatee to submit to such an
5 examination and evaluation to be conducted through a general hospital, psychiatric hospital,
6 community mental health center, community developmental disability organization, or by a
7 private physician, psychiatrist, psychologist or other person appointed by the court who is
8 qualified to examine and evaluate the ward or conservatee. The costs of this examination and
9 evaluation shall be assessed as provided for in K.S.A. 59-3032 and amendments thereto.

10 If the court does not find probable cause to warrant further proceedings and the court does
11 not issue an order for an examination and evaluation, or if the court has within the past 6 months
12 conducted either the trial upon the original petition provided for in K.S.A. 59-3013 and
13 amendments thereto, or a hearing on a previous petition for restoration, the court may decline to
14 set a hearing on the petition and may dismiss the petition without further proceedings.

15 (d) If the court orders an examination and evaluation, and the report of that examination
16 and evaluation contains information upon which the court finds probable cause to warrant further
17 proceedings, the court shall issue an order fixing the date, time and place of a hearing on the
18 petition, which hearing shall be held not later than 30 days following receipt of the report of the
19 examination and evaluation. Otherwise, the court may dismiss the petition without further
20 proceedings.

21 (e) The court may at any time on its own motion issue an order fixing the date, time and
place of a hearing on whether the ward or conservatee should be restored to capacity.

1 (f) If the court issues an order setting the petition for a hearing, or issues an order on its
2 own motion, the court may issue the following:

3 (1) An order appointing an attorney to represent the ward or conservatee in this matter,
4 similarly as provided for in K.S.A. 59-3010(a)(3) and amendments thereto;

5 (2) an order requiring that the ward or conservatee appear at the time and place of the
6 hearing on the petition. If an order to appear is entered, but is later rescinded, the court shall
7 enter in the record of the proceedings the facts upon which the court found subsequent to the
8 issuance of the order that the presence of the ward or conservatee should be excused;

9 (3) a notice of the hearing to the guardian or conservator, or both, and to other interested
10 parties. The court may order the attorney for the ward or conservatee, or another appropriate
11 person, to serve this notice as the court may direct;

12 (4) an order of referral for hearing to the district court of the county of residence of the
13 ward or conservatee, or of the county wherein the ward or conservatee may be found, except that
14 no order of referral for hearing shall be issued if objected to by the ward or conservatee. The
15 district court to which an order of referral for hearing is made shall proceed in the case as if the
16 petition for restoration had been filed therein, except that upon completion of the hearing the
17 court shall transmit the findings of the court, along with any statement of the costs incurred, and
18 a certified copy of all pleadings filed and orders entered during the course of the referral, to the
19 original court having venue. Thereafter, the original court shall proceed as provided for under
20 this Act;

21 (5) for good cause shown, an order of continuance of the hearing;

(6) for good cause shown, an order of advancement of the hearing;

(7) for good cause shown, an order changing the place of the hearing.

(g) The hearing upon the petition, or the court's own motion, shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall have the authority to receive all relevant and material evidence which may be offered, including the testimony or written report, findings or recommendations of any professional or other person who has familiarity with the ward or conservatee.

(h) At the conclusion of the hearing, if the court does not find, by clear and convincing evidence, that the ward or conservatee is impaired, the court shall order that the ward or conservatee is restored to capacity and shall proceed to terminate the guardianship or conservatorship, or both, as provided for in K.S.A. 59-3028a(i) or (j), and amendments thereto. Otherwise, the court shall make such further orders in the guardianship or conservatorship, or both, as may be appropriate under this Act.

Comment

This section is a revision of current K.S.A. 59-3027. It provides a procedure for the ward or conservatee to file a petition to be restored to capacity, alleging they are no longer impaired. If the court finds probable cause to warrant further hearing, then a hearing should be held within 30 days of the filing of the petition.

The hearing can be held in the county of residence of the ward or conservatee or in the county where the ward or conservatee may be found. This provision contemplates hearings may be held in counties where medical facilities, nursing homes, or other similar facilities are located.

1 ~~59-3028. Termination of guardianship or conservatorship, when.~~ The guardianship
2 of a ward or the conservatorship of a conservatee shall terminate upon any of the following
3 conditions:

4 ~~(a) When the ward or conservatee is a disabled person:~~

5 ~~(1) Upon an order of the court after a finding that there is no further need of the~~
6 ~~guardianship or conservatorship;~~

7 ~~(2) upon the death of the ward or conservatee; or~~

8 ~~(3) upon the restoration to capacity of the ward or conservatee;~~

9 ~~(b) when the ward or conservatee is a minor:~~

10 ~~(1) Upon an order of the court after a finding that there is no further need of the~~
11 ~~guardianship or conservatorship;~~

12 ~~(2) upon the death of the ward or conservatee;~~

13 ~~(3) upon the attainment of legal age of the ward or conservatee; or~~

14 ~~(4) upon the marriage of the ward or conservatee, except that the conservatorship shall~~
15 ~~not be terminated unless by such marriage the rights of majority are thereby conferred upon such~~
16 ~~conservatee;~~

17 ~~(c) when the conservator was appointed pursuant to K.S.A. 59-3008 and amendments~~
18 ~~thereto:~~

19 ~~(1) Upon an order of the court after a finding that there is no further need of the~~
20 ~~conservatorship;~~

21 ~~(2) upon the death of the conservatee;~~

1 ~~_____ (3) upon the finding that the conservatee is an adjudged disabled person; or~~

2 ~~_____ (4) upon the filing of a verified petition by the conservatee that the conservatee no longer~~
3 ~~desires to have the conservatorship continue.~~

4
5 Comment

6 This section was replaced by new K.S.A. 59-3028a.

1 *Sec. 42* **59-3028a. Termination of guardianship or conservatorship; petition; contents;**

2 **hearing; procedure; final discharge.** (a) At any time following the appointment of a guardian
3 or a conservator, any person, including the ward or conservatee, may file a verified petition with
4 the court requesting that the court find that the ward or conservatee is no longer in need of a
5 guardian or a conservator, or both, and requesting that the court terminate the guardianship or
6 conservatorship, or both.

7 (b) The petition shall include:

8 (1) The petitioner's name and address, and if the petitioner is the ward's or conservatee's
9 court appointed guardian or conservator, or both, that fact;

10 (2) the ward's or conservatee's name, age, date of birth, address of permanent residence,
11 and present address or whereabouts, if different from the ward's or conservatee's permanent
12 residence;

13 (3) the name and address of the ward's or conservatee's court appointed guardian or
14 conservator, or both, if different from the petitioner;

15 (4) the factual basis upon which the petitioner alleges that the ward or conservatee is no
16 longer in need of a guardian or conservator, or both;

17 (5) the names and addresses of the witnesses by whom the truth of the petition may be
18 proved; and

19 (6) a request that the court find that the ward or conservatee is no longer in need of a
20 guardian or conservator, or both, and that the court terminate the guardianship or
21 conservatorship, or both.

(c) Upon the filing of such a petition, the court shall review the petition to determine whether probable cause exists to warrant further proceedings. If the court finds probable cause to warrant further proceedings, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing shall be held not later than 30 days following the filing of the petition. If the court does not find within the petition facts sufficient to constitute probable cause to warrant further proceedings, the court may nonetheless issue an order for an investigation and report concerning the circumstances of the ward or conservatee. The court may appoint any qualified person to conduct this investigation. The costs of this investigation shall be assessed as provided for in K.S.A. 59-3032 and amendments thereto.

If the court does not find probable cause to warrant further proceedings and the court does not issue an order for an investigation and report, or if the court has within the past 6 months conducted either the trial upon the original petition provided for in K.S.A. 59-3013 and amendments thereto, or a hearing on a previous petition for termination, the court may decline to set a hearing on the petition and may dismiss the petition without further proceedings.

(d) If the court orders an investigation, and the report of that investigation contains information upon which the court finds probable cause to warrant further proceedings, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing shall be held not later than 30 days following receipt of the report of the investigation.

Otherwise, the court may dismiss the petition without further proceedings.

(e) The court may at any time on its own motion issue an order fixing the date, time and place of a hearing on whether the guardianship or conservatorship, or both, should be terminated.

1 (f) If the court issues an order setting the petition for a hearing, or issues an order on its
2 own motion, the court may issue the following:

3 (1) An order appointing an attorney to represent the ward or conservatee in this matter,
4 similarly as provided for in K.S.A. 59-3010(a)(3) and amendments thereto;

5 (2) a notice of the hearing to the guardian or conservator, or both, and to other interested
6 parties. The court may order the petitioner, or another appropriate person, to serve this notice as
7 the court may direct;

8 (3) for good cause shown, an order of continuance of the hearing;

9 (4) for good cause shown, an order of advancement of the hearing;

10 (5) for good cause shown, an order changing the place of the hearing.

11 (g) The hearing upon the petition, or the court's own motion, shall be conducted in as
12 informal a manner as may be consistent with orderly procedure. The court shall have the
13 authority to receive all relevant and material evidence which may be offered, including the
14 testimony or written report, findings or recommendations of any professional or other person
15 who has familiarity with the ward or conservatee or the conservatee's estate.

16 (h) At the conclusion of the hearing, if the court does not find, by clear and convincing
17 evidence, that the ward or conservatee is in need of a guardian or conservator, or both, the court
18 shall order that the guardianship or conservatorship, or both, be terminated as provided for
19 herein. The court may assign to the guardian or conservator additional responsibilities, duties,
20 powers or authorities as the court determines appropriate to facilitate the closure of the
21 guardianship or conservatorship, or both, including, if the ward or conservatee is deceased,

1 authority to the guardian or conservator to pay from the ward's or conservatee's estate any
2 reasonable funeral expenses, any medical expenses from the ward's or conservatee's last illness,
3 and any claim for medical assistance paid for pursuant to K.S.A. 39-709 and amendments
4 thereto, with due regard to the rights of a surviving spouse, if any, and creditors.

5 (i) Upon the court ordering that the guardianship be terminated, the guardian shall give
6 any necessary notices with regard to the termination of the guardian's authority, shall assist the
7 ward to establish an independent residence, if applicable, and shall file a final report with the
8 court concerning the actions of the guardian. The court shall review the report and if the court
9 finds matters in order, the court shall approve this final report and shall finally discharge the
10 guardian.

11 (j) Upon the court ordering that the conservatorship be terminated, the conservator shall
12 take any necessary action to close the conservator's administration of the conservatee's estate,
13 and to deliver the property and assets of the conservatee's estate to the conservatee or otherwise
14 as the court may direct. If the conservatee is deceased, and the funeral and last illness expenses,
15 payment of any claim for medical expenses paid for pursuant to K.S.A. 39-709 and amendments
16 there, payment of the fees of the conservator as the court may allow, and payment of the costs of
17 the final accounting and closing of the conservatee's estate, will deplete the estate, the
18 conservator shall show such depletion on the final accounting. If the court approves, allows and
19 settles this final accounting pursuant to the provisions of K.S.A. 59-3026e and amendments
20 thereto, the court shall finally discharge the conservator and the conservator's surety. If such
21 expenses will not deplete the estate, the remaining property and assets of the conservatee's estate

1 shall be delivered by the conservator to the appropriate person or agency as determined by the
2 court, and the conservator shall report such fact to the court in a final accounting. Upon the
3 filing of a final accounting, and presentation to the court of a receipt for such property and assets,
4 if the court approves, allows and settles this final accounting pursuant to the provisions of K.S.A.
5 59-3026e and amendments thereto, the court shall finally discharge the conservator and the
6 conservator's surety. Neither the conservator, nor the conservator's estate or surety, shall be
7 finally discharged until all of the property and assets of the conservatee's estate have been
8 dispersed as directed by the court.

9
10 Comment

11 This section is a revision of current K.S.A. 59-3028 and provides that any
12 person, including the ward or conservatee may file the petition. If the court finds
13 probable cause to warrant further proceedings, the hearing should be held within
14 30 days of the filing of the petition. In cases where the conservatee is deceased
15 this section provides for the orderly payment of the conservatee's final bill.

~~59-3029. Annual and final reports and accounts.~~ (a) Except when expressly waived by the court, every guardian shall file annually with the court, on a form prescribed for this purpose by rule of the supreme court, a report on the condition of the guardian's ward and of the estate which has been subject to the possession and control of the guardian. The supreme court may require by rule that other matters relating to guardianship be contained in the report. At the termination of the guardianship or upon the guardian's removal or resignation, the guardian or the guardian's personal representative, in the event of the guardian's death or incapacity, shall file with the court a final report the contents of which shall be prescribed by rule of the supreme court on a form prescribed for this purpose by rule of the supreme court.

~~(b) Every conservator shall annually present on a form prescribed for this purpose by rule of the supreme court a verified account covering the period from the date of appointment or the last account. Every conservator who is providing advocacy services to a conservatee under contract with the Kansas guardianship program and for whom the secretary of social and rehabilitation services has been appointed by the court to act as surety on such conservator's bond, shall also file with the secretary a copy of the annual report required by this subsection. The supreme court may require by rule that other matters relating to conservatorship be contained in the report. At the termination of the conservatorship or upon the conservator's removal or resignation, the conservator or the conservator's personal representative, in the event of the conservator's death or incapacity, shall present a verified final account with a petition for the settlement and allowance thereof. The contents of the final account shall be prescribed by rule of the supreme court on a form prescribed for this purpose by rule of the supreme court. The~~

1 ~~conservator or the conservator's estate shall not be discharged from liability until such account is~~
2 ~~presented, settled and allowed. A conservator's surety, in such surety's discretion, may perform~~
3 ~~the duties required of a conservator pursuant to this section in the event the conservator or the~~
4 ~~conservator's personal representative fails to perform such duties.~~

5
6 Comment

7 This section was replaced by new K.S.A. 59-3026b.

~~59-3030. Hearing on accounting of conservator; persons represented; notice.~~ The
2 court may on its own motion and shall upon the petition of the conservator or any person
3 interested in the conservatee or the conservatee's estate fix the time and place for the hearing of
4 any account, notice of which shall be given to such persons and in such manner as the court shall
5 direct. Any person having a beneficial interest in the conservatee's estate who is under legal
6 disability or any unascertained person having an interest in the conservatee's estate may be
7 represented by living competent members of the class to which they do or would belong, or by a
8 guardian ad litem. Whenever any funds have been received from the veterans' administration,
9 notice by mail shall be given to the regional office having charge thereof.

10
11 Comment

This section was replaced by new K.S.A. 59-3026e.

1 ~~59-3031. Same; procedure.~~ On the hearing, unless otherwise ordered, the conservator
2 shall, and other persons may, be examined. The conservator shall produce for examination by the
3 court or a duly authorized clerk or other appointee thereof, evidence of balances on deposit and
4 investments reported in the accounting which shall be described in such account in sufficient
5 detail so that they may be identified. If the account is correct, it shall be settled, and allowed. The
6 settlement and allowance by the court of a conservator's account, after due notice or
7 representation as provided in article 30 of chapter 59 of the Kansas Statutes Annotated, and
8 amendments thereto, shall relieve the conservator and the conservator's sureties from liability for
9 all acts and omissions which are fully and accurately described in the accounting, including the
10 then investments of the conservatorship. The order of settlement and allowance shall show the
11 amount of the personal property remaining. Upon settlement of the final account, and upon
12 delivery of the property on hand to the person entitled thereto, the court shall discharge the
13 conservator and the conservator's sureties.

14
15 Comment

16 This section was replaced by new K.S.A. 59-3026e.

Sec. 43 **59-3031a. Confidentiality of medical records and other reports.** (a) The court may at

2 any time, upon the request of any party or upon the court's own motion, issue a written order
3 directing that any medical or treatment records, evaluations or investigative reports filed with the
4 court, attached to any pleading, produced in response to any order issued by the court, or
5 introduced in evidence, shall be separately maintained in a confidential manner, to be disclosed
6 only:

7 (1) upon the written consent or request of the proposed ward or proposed conservatee, if
8 no guardian or conservator is appointed by the court;

9 (2) upon the written consent of the guardian or conservator;

10 (3) upon the written consent of the former ward or former conservatee, if restored to
11 capacity pursuant to K.S.A. 59-3027a and amendments thereto;

12 (4) upon the order of any court of record after a determination has been made by the court
13 that such records or reports are necessary for the conduct of proceedings before the court and are
14 otherwise admissible as evidence;

15 (5) to any state or national accreditation agency or for a scholarly study, but the court
16 shall require, before such disclosure is made, a pledge from that state or national accreditation
17 agency or scholarly investigator that such agency or investigator will not disclose the name of
18 any patient or former patient to any person not otherwise authorized by law to receive such
19 information; or

20 (6) in proceedings under this act, upon the written request of any attorney representing
21 any party.

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(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, or K.S.A. 59-2979 or K.S.A. 59-29b79, and amendments thereto, are applicable to medical or treatment records of any patient or former patient who may be the subject of proceedings under this act, the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, or K.S.A. 59-2979 or K.S.A. 59-29b79, and amendments thereto, as applicable, shall control the disposition of information contained in such records. Willful violation of this section is a class C misdemeanor.

Comment

This section allows for the protection of confidential medical and other records that are utilized in proceedings under this act and that would otherwise be open records unless the court closes the records.

Sec. 44 59-3032. Costs of proceedings; payment. (a) In each proceeding the court shall allow

2 and order paid to any individual or institution as a part of the costs thereof a reasonable fee and
3 expenses for any professional services ordered performed by the court pursuant to this act other
4 than those performed by any individual or institution under the jurisdiction of the department of
5 social and rehabilitation services, but including the fee of counsel for the proposed ward or
6 proposed conservatee or ward or conservatee when counsel is appointed by the court. The court
7 may allow and order paid the fee of counsel for the petitioner. Other costs and fees ~~shall~~ may be
8 allowed and paid as are allowed by law for similar services in other cases. The costs shall be
9 taxed to the estate of the proposed ward or proposed conservatee or ward or conservatee, to those
10 bound by law to support the proposed ward or proposed conservatee or ward or conservatee, to
11 other parties whenever it would be just and equitable to do so, or to the county of the residence of
12 the proposed ward or proposed conservatee or ward or conservatee or to the petitioner as the
13 court having venue shall direct.

14 (b) In any contested proceeding or matter the court may, in its discretion, require one or
15 more parties to give security for the costs thereof, or in lieu thereof to file a poverty affidavit as
16 provided for in the code of civil procedure.

17 (c) Any district court receiving a statement of costs from another district court shall
18 approve the same for payment out of the general fund of its county except that it may refuse to
19 approve the same for payment only on the grounds that the proposed ward or proposed
20 conservatee or ward or conservatee is not a resident of its that county. In such case it shall
21 transmit the statement of costs to the ~~department~~ secretary of social and rehabilitation services

1 ~~which~~ who shall determine the question of residence and certify ~~its~~ those findings to each district
2 court. If the claim for costs is not paid within 30 days after such certification, an action may be
3 maintained thereon by the claimant county in the district court of the claimant county against the
4 debtor county. The findings made by the ~~department~~ secretary of social and rehabilitation
5 services as to the residence of the proposed ward or proposed conservatee or ward or conservatee
6 shall be applicable only to the assessment of costs. Any county of residence which pays from its
7 general fund court costs to the district court of another county may recover the same in any court
8 of competent jurisdiction from the estate of the proposed ward or proposed conservatee or ward
9 or conservatee or from those bound by law to support the proposed ward or proposed conservatee
10 or ward or conservatee, unless the court finds that the proceedings in which such costs were
11 incurred were instituted without probable cause and not in good faith.

12
13 Comment

14 This section gives the court authority to order the payment of fees and
15 expenses. Similar authority can be found in K.S.A. 59-2214.
16

11-3-00

59-3033. Repealed.

2

3

4

1 *Sec. 45***59-3033a. Effect of 2001 amendments.** (a) Any person who has been adjudged a

2 disabled person prior to the effective date of this act and who has not been restored to capacity
3 shall, for the purposes of this act, be considered to be either (1) an adult with an impairment in
4 need of a guardian or conservator, or both, (2) a minor in need of a guardian or conservator, or
5 both, (3) a minor with an impairment in need of a guardian or conservator, or both, (4) a person
6 previously adjudged as impaired in another state, or (5) a person in need of an ancillary
7 conservator.

8 (b) Within one year from the effective date of this act, any person with an interest in the
9 matter may file a verified petition requesting that the court determine whether the ward or
10 conservatee meets the definition of impaired as contained within this act, or meets the
11 requirements of being in need of a guardian or conservator. Thereafter, all proceedings shall be
12 as provided for in this act.

13 (c) No act of a guardian or conservator performed prior to the effective date of this act,
14 which was performed in compliance with any provision of the act for obtaining a guardian or
15 conservator, or both, in effect prior to the effective date of this act, shall be deemed unlawful
16 because of any provision of this act.

17 (d) Upon and after the effective date of this act, all acts of any guardian or conservator
18 appointed by any court prior to the effective date of this act shall comply with the provisions of
19 this act.

Comment

This section is required to make the transition from current law.

2

1 ~~59-3034. Invalidity of part.~~ If any provision of this act or the application thereof to any
2 person or circumstances is held invalid, the invalidity shall not affect other provisions or
3 applications of the act which can be given effect without the invalid provision or application, and
4 to this end the provisions of this act are severable.

5
6 Comment

7 This section was moved to 59-3039a.

~~59-3035. Periodic review of conservatorship or guardianship; procedure; orders. (a)~~

2 Within three years from the date of appointment of a conservator or guardian, or both, and each
3 three years thereafter, the court shall conduct a review of the conservatorship or guardianship, or
4 both. The court may order a more frequent review upon its own motion, upon the request of the
5 guardian or conservator or upon the request of the ward or conservatee. The review shall be
6 conducted to determine:

7 ~~(1) Whether the guardian or conservator, or both, is serving the needs of the ward or~~
8 ~~conservatee;~~

9 ~~(2) whether the guardian or conservator, or both, is performing functions in a manner~~
10 ~~consistent with the letters of guardianship or the letters of conservatorship;~~

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

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

15 ~~(5) whether the guardian or conservator, or both, should be replaced; and~~

16 ~~(6) whether the guardianship or conservatorship, or both, should be terminated.~~

17 ~~(b) In conducting a review under subsection (a), the court may review the reports filed~~
18 ~~under K.S.A. 59-3029 and amendments thereto and may request written or oral comments, or~~
19 ~~both written and oral comments, or such reports from the guardian or conservator, or both, from~~
20 ~~the ward or conservatee and from other persons as the court may order. In addition, in conducting~~
21 ~~a review under subsection (a), the court may order a full evidentiary hearing. The hearing shall~~

1 ~~be conducted in the same manner and with the same powers as if a petition pursuant to K.S.A.~~
2 ~~59-3009 and amendments thereto had been filed in the court except that the court need not issue~~
3 ~~the orders provided for in K.S.A. 59-3010 and amendments thereto.~~

4 ~~—— (c) Upon the completion of the review under this section, the court may issue such orders~~
5 ~~as it deems appropriate.~~

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

8 ~~—— (e) This section shall be part of and supplemental to the act for obtaining a guardian or~~
9 ~~conservator, or both.~~

10
11 Comment

12 This section was replaced by new K.S.A. 59-3026c and 59-3026d.
13

~~59-3036. Emergency appointment of guardian; emergency removal of guardian;~~

2 ~~appointment of guardian to serve on standby basis.~~ (a) (1) If during the pendency of a
3 proceeding initiated under K.S.A. 59-3009 and amendments thereto, it appears that there is an
4 imminent danger that the physical health or safety of the proposed ward will be seriously
5 impaired or financial resources will be depleted unless immediate action is taken, the proposed
6 ward, or any adult interested in the welfare of the proposed ward, may petition the court in which
7 the proceeding is pending for the emergency appointment of a guardian or conservator.

8 ~~(2) The petition shall state:~~

9 ~~(A) The names and addresses of the individuals and entities entitled to notice; and~~

10 ~~(B) the relief requested and the facts and reasons supporting that request.~~

11 ~~(3) A hearing shall be held no more than 48 hours after a petition for an emergency
appointment has been filed. Notice shall be given in the manner directed by the court.~~

13 ~~(4) If the court determines that there is an imminent danger that the physical health or
14 safety of the proposed ward will be seriously impaired or financial resources will be depleted
15 unless immediate action is taken, the court shall appoint a guardian or conservator in the manner
16 prescribed in K.S.A. 59-3014 and amendments thereto. The court shall assign to an emergency
17 appointee only those duties and powers necessary to protect against the imminent danger shown.~~

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

20 ~~(b) If at any time the court has probable cause to believe that a guardian or conservator is
21 not effectively performing such person's duties and powers, and that there is an imminent danger
22 that the physical health or safety of the ward will be seriously impaired or financial resources
23 will be depleted unless immediate action is taken, the court shall:~~

1 ~~—— (1) Suspend and temporarily replace the guardian with a guardian or conservator meeting~~
2 ~~the qualifications set forth in K.S.A. 59-3014 and amendments thereto;~~

3 ~~—— (2) reassign the duties and powers of the suspended guardian or conservator to the~~
4 ~~emergency appointee; and~~

5 ~~—— (3) direct the temporary appointee to file a petition under K.S.A. 59-3029 and~~
6 ~~amendments thereto within five days if such petition is not already pending, and submit such~~
7 ~~reports as may be necessary.~~

8 ~~—— (c) The court may designate another eligible person selected in accordance with K.S.A.~~
9 ~~59-3014 and amendments thereto to assume the duties and powers assigned to the guardian or~~
10 ~~conservator upon the resignation, disability, temporary absence or death of the guardian or~~
11 ~~conservator. The individual so designated, other than an individual designated because of the~~
12 ~~temporary absence of a guardian or conservator, shall submit a report pursuant to K.S.A. 59-3029~~
13 ~~and amendments thereto within 10 days after an individual appointed on a standby basis assumes~~
14 ~~the duties of a guardian or conservator. A guardian or conservator serving on a standby basis may~~
15 ~~exercise all of the duties and powers assigned to the predecessor as a guardian or conservator~~
16 ~~until the conclusion of the proceedings under K.S.A. 59-3029 and amendments thereto or, in case~~
17 ~~of the temporary absence of the predecessor guardian or conservator, until the predecessor~~
18 ~~guardian or conservator returns, unless otherwise ordered by the court.~~

19 ~~—— (d) This section shall be part of and supplemental to the act for obtaining a guardian or~~
20 ~~conservator, or both.~~

21 Comment

22 This section was replaced by new K.S.A. 59-3017b and 59-3017c.

59-3037. Appointment of corporation as guardian; qualifications; procedure. (a) A

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

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

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

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

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

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

20 ——— (c) Application for certification under this section shall be made to the secretary of social
21 and rehabilitation services on forms supplied by the secretary. The secretary of social and

1 ~~rehabilitation services may suspend or revoke certification of a private, nonprofit corporation~~
2 ~~under this section, after notice and hearing, upon a finding that such corporation has failed to~~
3 ~~comply with the criteria established by rules and regulations under subsection (b). Such~~
4 ~~corporation shall not be appointed as a guardian during the period of time the certificate is~~
5 ~~suspended or revoked.~~

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

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

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

15
16 Comment

17 This section was moved to 59-3014b and amended.

~~59-3038. Effect of 1983 amendments.~~ (a) Any person adjudged an incapacitated person prior to the effective date of this act who has not been restored to capacity prior to that date shall be considered a disabled person for the purposes of this act. No act of a guardian or conservator, or both, lawfully performed under the act for obtaining a guardian or conservator, or both, prior to the effective date of this act shall be deemed unlawful because of any of the provisions of this act.

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

Comment

1 ~~59-3039. (a) A conservator, upon the order of the district court, may make gifts of a~~
2 ~~conservatee's property if the court finds:~~

3 ~~(1) The conservatee is a disabled person and is unlikely to cease to be a disabled person~~
4 ~~in the reasonably foreseeable future;~~

5 ~~(2) The conservatee's remaining property after such gift or gifts is likely to be sufficient~~
6 ~~to provide for the conservatee's needs;~~

7 ~~(3) The conservatee, had the conservatee not been a disabled person, under the~~
8 ~~circumstances existing at the time of such gift or gifts would have made such gift or gifts to such~~
9 ~~person or entity; and~~

10 ~~(4) With respect to a gift to such entity exempt from federal income tax pursuant to~~
11 ~~section 501(e)(3) of federal internal revenue code of 1986, as in effect on the effective date of this~~
12 ~~act, such gift is consistent with the practice of the conservatee prior to the time such conservatee~~
13 ~~was a disabled person.~~

14 ~~(b) In the event the person or entity who received, or which would receive any such gift~~
15 ~~or gifts of the conservatee's property, is not the same person or entity who would or which would~~
16 ~~have received such property had the conservatee died at the time of such gift or gifts, notice shall~~
17 ~~be given to any and all adversely affected parties.~~

18
19 Comment

20 The provisions of this section were incorporated into new K.S.A. 59-
21 3019a.
22

Sec. 77

59-3039a. Invalidity of part. If any provision of this act for obtaining a guardian or a

2 conservator, or both, or the application thereof to any person or circumstances is held invalid, the
3 invalidity shall not affect other provisions or applications of ~~the~~ this act which can be given
4 effect without the invalid provision or application, and to this end the provisions of this act are
5 severable.

7 Comment

8 This section was brought over from 59-3034. Even though it will be a new section (all
9 underscored), it is shown in strike-type and underscoring to show the changes the committee
10 made in current law.

TRAILER

Sec. 52

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38-1505. Right to counsel. (a) *Appointment of guardian ad litem; duties.* Upon the filing of a petition the court shall appoint a person who is an attorney to serve as guardian *ad litem* for a child who is the subject of proceedings under this code. The guardian *ad litem* shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the child.

(b) *Attorney for parent or custodian.* A parent or custodian of a child alleged or adjudged to be a child in need of care may be represented by an attorney, other than the guardian *ad litem* appointed for the child, in connection with all proceedings under this code. If at any stage of the proceedings a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the parent. It shall not be necessary to appoint an attorney to represent a parent who fails or refuses to attend the hearing after having been properly served with process in accordance with K.S.A. 38-1534 and amendments thereto. A parent or custodian who is not a minor, a mentally ill person as defined in K.S.A. 59-2946 and amendments thereto or a disabled person as defined in K.S.A. ~~59-3002~~ 77-201 and amendments thereto may waive counsel either in writing or on the record.

(c) *Attorney for parent who is a minor, mentally ill or disabled.* The court shall appoint an attorney for a parent who is a minor, a mentally ill person as defined in K.S.A. 59-2902 and amendments thereto or a disabled person as defined in K.S.A. ~~59-3002~~ 77-201 and amendments thereto, unless the court determines that there is an attorney retained who will appear and represent the interests of the person in the proceedings under this code.

1 (d) *Continuation of representation.* A guardian *ad litem* appointed for a child or an
2 attorney appointed for a parent or custodian shall continue to represent the client at all
3 subsequent hearings in proceedings under this code, including any appellate proceedings,
4 unless relieved by the court upon a showing of good cause or upon transfer of venue.

5 (e) *Fees for counsel.* A guardian *ad litem* or attorney appointed for parties to
6 proceedings under this section shall be allowed a reasonable fee for their services, which
7 may be assessed as an expense in the proceedings as provided in K.S.A. 38-1511 and
8 amendments thereto.

Sec. 54

9 **39-970. Operation of adult care home precluded, when; access of secretary**
10 **of health and environment to certain records; background check of employees, civil**
11 **liability, fee for information request; licensed or registered professional service**
12 **providers, volunteers and certain employees exempt; certain persons in custody of**
13 **secretary of corrections exempt.** (a) (1) On and after July 1, 1998, no person shall
14 knowingly operate an adult care home if, in the adult care home, there works any person
15 who has been convicted of or has been adjudicated a juvenile offender because of having
16 committed an act which if done by an adult would constitute the commission of capital
17 murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder,
18 pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to
19 subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter,
20 pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pursuant to
21 K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to
22 K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and

1 amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and
2 amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-
3 3504, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto,
4 indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto,
5 indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto,
6 sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto,
7 sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual
8 battery, pursuant to K.S.A. 21-3518 and amendments thereto, or similar statutes of other
9 states or the federal government.

10 (2) On and after July 1, 1998, a person operating an adult care home may employ an
11 applicant who has been convicted on any of the following if five or more years have
12 elapsed since the applicant satisfied the sentence imposed or was discharged from
13 probation, a community correctional services program, parole, postrelease supervision,
14 conditional release or a suspended sentence; or if five or more years have elapsed since
15 the applicant has been finally discharged from the custody of the commissioner of
16 juvenile justice or from probation or has been adjudicated a juvenile offender, whichever
17 is longer: A felony conviction for a crime which is described in: (A) article 34 of chapter
18 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed
19 in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated
20 and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-
21 3605 and amendments thereto; (C) a conviction of an attempt under K.S.A.21-3301 and
22 amendments thereto to commit any act listed in this subsection or subsection (a)(1); or

1 (D) similar statutes of other states or the federal government.

2 (b) No person shall operate an adult care home if such person has been found to be a
3 ~~disabled person~~ in need of a guardian or conservator, or both, as provided for in article 30
4 of chapter 59 of the Kansas Statutes Annotated and amendments thereto.

5 (c) The secretary of health and environment shall have access to any criminal history
6 record information in the possession of the Kansas bureau of investigation concerning
7 persons working in an adult care home. The secretary shall have access to these records
8 for the purposes of determining whether or not the adult care home meets the requirements
9 of this section. The Kansas bureau of investigation may charge to the department of
10 health and environment a reasonable fee for providing criminal history record information
11 under this subsection.

12 (d) For the purpose of complying with this section, the operator of an adult care home
13 shall request from the department of health and environment information obtained by the
14 secretary of health and environment which relates to a person who works in the adult care
15 home, or is being considered for employment by the adult care home, for the purpose of
16 determining whether such person is subject to the provisions of this section. For the
17 purpose of complying with this section, the operator of an adult care home shall receive
18 from any employment agency which provides employees to work in the adult care home
19 written certification that such employees are not prohibited from working in the adult care
20 home under this section. For the purpose of complying with this section, information
21 relating to convictions and adjudications by the federal government or to convictions and
22 adjudications in states other than Kansas shall not be required until such time as the

1 secretary of health and environment determines the search for such information could
2 reasonably be performed and the information obtained within a two-week period. For the
3 purpose of complying with this section, a person who operates an adult care home may
4 hire an applicant for employment on a conditional basis pending the results from the
5 department of health and environment of a request for information under this section. No
6 adult care home, the operator or employees of an adult care home or an employment
7 agency, or the operator or employees of an employment agency, shall be liable for civil
8 damages resulting from any decision to employ, to refuse to employ or to discharge from
9 employment any person based on such adult care home's compliance with the provisions
10 of this section if such adult care home or employment agency acts in good faith to comply
11 with this section.

12 (e) The secretary of health and environment shall charge each person requesting
13 information under this section a fee equal to cost, not to exceed \$10, for each name about
14 which an information request has been submitted to the department under this section.

15 (f) No person who works for an adult care home and who is currently licensed or
16 registered by an agency of this state to provide professional services in the state and who
17 provides such services as part of the work which such person performs for the adult care
18 home shall be subject to the provisions of this section.

19 (g) A person who volunteers in an adult care home shall not be subject to the
20 provisions of this section because of such volunteer activity.

21 (h) No person who has been employed by the same adult care home for five
22 consecutive years immediately prior to the effective date of this act shall be subject to the

1 provisions of this section while employed by such adult care home.

2 (i) The operator of an adult care home shall not be required under this section to
3 conduct a background check on an applicant for employment with the adult care home if
4 the applicant has been the subject of a background check under this act within one year
5 prior to the application for employment with the adult care home. The operator of an
6 adult care home where the applicant was the subject of such background check may
7 release a copy of such background check to the operator of an adult care home where the
8 applicant is currently applying.

9 (j) No person who is in the custody of the secretary of corrections and who provides
10 services, under the direct supervision in nonpatient areas, on the grounds or other areas
11 designated by the superintendent of the Kansas soldiers' home or the Kansas veterans'
12 home shall be subject to the provisions of this section while providing such services.

13 ~~(k) This section shall be part of and supplemental to the adult care home licensure~~
14 ~~act.~~

Sec. 61 15 **59-2949. Voluntary admission to treatment facility; application; written**
16 **information to be given voluntary patient.** (a) A mentally ill person may be admitted
17 to a treatment facility as a voluntary patient when there are available accommodations and
18 the head of the treatment facility determines such person is in need of treatment therein,
19 and that the person has the capacity to consent to treatment, except that no such person
20 shall be admitted to a state psychiatric hospital without a written statement from a
21 qualified mental health professional authorizing such admission.

22 (b) Admission shall be made upon written application:

1 (1) If such person is 18 years of age or older the person may make such application for
2 themselves; or

3 (2) (A) If if such person is less than 18 years of age, a parent may make such
4 application for their child; or

5 (B) if such person is less than 18 years of age, but 14 years of age or older, the person
6 may make such written application on their own behalf without the consent or written
7 application of their parent, legal guardian or any other person. Whenever a person who is
8 14 years of age or older makes written application on their own behalf and is admitted as a
9 voluntary patient, the head of the treatment facility shall promptly notify the child's
10 parent, legal guardian or other person known to the head of the treatment facility to be
11 interested in the care and welfare of the minor of the admittance of that child; or

12 (3) if such person has a legal guardian, the legal guardian may make such application
13 ~~only after obtaining,~~ provided that if the legal guardian is required to obtain authority to
14 do so pursuant to K.S.A. ~~59-3018a~~ 59-3018d and amendments thereto, then only in
15 accordance with the provisions thereof. If the legal guardian is seeking admission of their
16 ward upon an order giving the guardian continuing authority to admit the ward to ~~an~~
17 ~~appropriate psychiatric~~ a treatment facility, as defined in K.S.A. 59-3018d and
18 amendments thereto, the head of the treatment facility may require a statement from the
19 patient's attending physician or from the local health officer of the area in which the
20 patient resides confirming that the patient is in need of psychiatric treatment in a treatment
21 facility before accepting the ward for admission, and shall divert any such person to a less
22 restrictive treatment alternative, as may be appropriate.

1 (c) No person shall be admitted as a voluntary patient under the provisions of this act
2 to any treatment facility unless the head of the treatment facility has informed such person
3 or such person's parent, legal guardian, or other person known to the head of the treatment
4 facility to be interested in the care and welfare of a minor, in writing, of the following:

5 (1) The rules and procedures of the treatment facility relating to the discharge of
6 voluntary patients;

7 (2) the legal rights of a voluntary patient receiving treatment from a treatment facility
8 as provided for in K.S.A. ~~1998~~ 1999 Supp. 59-2978 and amendments thereto; and

9 (3) in general terms, the types of treatment which are available or would not be
10 available to a voluntary patient from that treatment facility.

11 (d) Nothing in this act shall be construed as to prohibit a proposed or involuntary
12 patient with capacity to do so from making an application for admission as a voluntary
13 patient to a treatment facility. Any proposed or involuntary patient desiring to do so shall
14 be afforded an opportunity to consult with their attorney prior to making any such
15 application. If the head of the treatment facility accepts the application and admits the
16 patient as a voluntary patient, then the head of the treatment facility shall notify, in
17 writing, the patient's attorney, the patient's legal guardian, if the patient has a legal
18 guardian, and the district court which has jurisdiction over the patient of the patient's
19 voluntary status. When a notice of voluntary admission is received, the court shall file the
20 same which shall terminate the proceedings.

21 **59-2948. Civil rights of persons subject to the provisions of this act.** (a) The
22 fact that a person may have voluntarily accepted any form of psychiatric treatment, or

1 become subject to a court order entered under the authority of this act, shall not be
2 construed to mean that such person shall have lost any civil right they otherwise would
3 have as a resident or citizen, any property right or their legal capacity, except as may be
4 specified within any court order or as otherwise limited by the provisions of this act or the
5 reasonable rules and regulations which the head of a treatment facility may for good cause
6 find necessary to make for the orderly operations of that facility. No person held in
7 custody under the provisions of this act shall be denied the right to apply for a writ of
8 habeas corpus.

9 (b) There shall be no implication or presumption that a patient within the terms of
10 this act is for that reason alone a ~~disabled person~~ in need of a guardian or a conservator as
11 provided for in article 30 of chapter 59 of the Kansas Statutes Annotated as defined in
12 K.S.A. 59-3002 and amendments thereto.

Sec. 46b 13 **59-29b49. Voluntary admission to treatment facility; application; written**
14 **information to be given voluntary patient.** (a) A person with an alcohol or substance
15 abuse problem may be admitted to a treatment facility as a voluntary patient when there
16 are available accommodations and the head of the treatment facility determines such
17 person is in need of treatment therein, and that the person has the capacity to consent to
18 treatment.

19 (b) Admission shall be made upon written application:

20 (1) If such person is 18 years of age or older, the person may make such application
21 for themselves; or

22 (2)(A) ~~If~~ if such person is less than 18 years of age, a parent may make such

1 application for their child; or

2 (B) if such person is less than 18 years of age, but 14 years of age or older, the person
3 may make such written application on their own behalf without the consent or written
4 application of their parent, legal guardian or any other person. Whenever a person who is
5 14 years of age or older makes written application on their own behalf and is admitted as a
6 voluntary patient, the head of the treatment facility shall promptly notify the child's
7 parent, legal guardian or other person known to the head of the treatment facility to be
8 interested in the care and welfare of the minor of the admittance of that child; or

9 (3) if such person has a legal guardian, the legal guardian may make such application
10 ~~only after obtaining,~~ provided that if the legal guardian is required to obtain authority to
11 do so pursuant to K.S.A. ~~59-3018a~~ 59-3018d and amendments thereto, then only in
12 accordance with the provisions thereof. If the legal guardian is seeking admission of their
13 ward upon an order giving the guardian continuing authority to admit the ward to an
14 appropriate a treatment facility as defined in K.S.A. 59-3018d and amendments thereto,
15 the head of the treatment facility may require a statement from the patient's attending
16 physician or from the local health officer of the area in which the patient resides
17 confirming that the patient is in need of treatment for an alcohol or substance abuse
18 problem in a treatment facility before accepting the ward for admission, and shall divert
19 any such person to a less restrictive treatment alternative as may be appropriate.

20 (c) No person shall be admitted as a voluntary patient under the provisions of this act
21 to any treatment facility unless the head of the treatment facility has informed such person
22 or such person's parent, legal guardian, or other person known to the head of the

1 treatment facility to be interested in the care and welfare of a minor, in writing, of the
2 following:

3 (1) The rules and procedures of the treatment facility relating to the discharge of
4 voluntary patients;

5 (2) the legal rights of a voluntary patient receiving treatment from a treatment
6 facility as provided for in K.S.A. ~~1998~~ 1999 Supp.59-29b78 and amendments thereto; and

7 (3) in general terms, the types of treatment which are available or would not be
8 available to a voluntary patient from that treatment facility.

9 (d) Nothing in this act shall be construed as to prohibit a proposed or involuntary
10 patient with capacity to do so from making an application for admission as a voluntary
11 patient to a treatment facility. Any proposed or involuntary patient desiring to do so shall
12 be afforded an opportunity to consult with their attorney prior to making any such
13 application. If the head of the treatment facility accepts the application and admits the
14 patient as a voluntary patient, then the head of the treatment facility shall notify, in writing,
15 the patient's attorney, the patient's legal guardian, if the patient has a legal guardian, and
16 the district court which has jurisdiction over the patient of the patient's voluntary status.
17 When a notice of voluntary admission is received, the court shall file the same which shall
18 terminate the proceedings.

Sec. 65

19 **59-29b48. Civil rights of persons subject to the provisions of this act.** (a) The
20 fact that a person may have voluntarily accepted any form of treatment for an alcohol or
21 substance abuse problem, or become subject to a court order entered under authority of
22 this act, shall not be construed to mean that such person shall have lost any civil right they

1 otherwise would have as a resident or citizen, any property right or their legal capacity,
2 except as may be specified within any court order or as otherwise limited by the
3 provisions of this act or the reasonable rules and regulations which the head of a treatment
4 facility may for good cause find necessary to make for the orderly operations of that
5 facility. No person held in custody under the provisions of this act shall be denied the
6 right to apply for a writ of habeas corpus.

7 (b) There shall be no implication or presumption that a patient within the terms of
8 this act is for that reason alone a ~~disabled person~~ in need of a guardian or a conservator,
9 or both, as provided for in article 30 of chapter 59 of the Kansas Statutes Annotated as
10 defined in K.S.A. 59-3002 and amendments thereto.

Sec. 69 11 **60-304. Service of process, on whom made.** As used in this section, "serving"
12 means making service by any of the methods described in K.S.A. 60-303, and
13 amendments thereto, unless a specific method of making service is prescribed in this
14 section. Except for service by publication under K.S.A. 60-307, and amendments
15 thereto, service of process under this article shall be made as follows:

16 (a) *Individual.* Upon an individual other than a minor or a disabled person, by
17 serving the individual or by serving an agent authorized by appointment or by law to
18 receive service of process, but if the agent is one designated by statute to receive service,
19 such further notice as the statute requires shall be given. Service by certified mail shall
20 be addressed to an individual at the individual's dwelling house or usual place of abode
21 and to an authorized agent at the agent's usual or designated address. If service by
22 certified mail to the individual's dwelling house or usual place of abode is refused or

1 unclaimed, the sheriff, party or party's attorney seeking service may complete service by
2 certified mail, restricted delivery, by serving the individual at a business address after
3 filing a return on service stating the certified mailing to the individual at such individual's
4 dwelling house or usual place of abode has been refused or unclaimed and a business
5 address is known for such individual.

6 (b) *Minor.* Upon a minor, by serving the minor and also either the minor's
7 guardian or conservator if the minor has one within the state or the minor's father or
8 mother or other person having the minor's care or control or with whom such minor
9 resides, or if service cannot be made upon any of them, then as provided by order of the
10 judge. Service by certified mail shall be addressed to an individual at the individual's
11 dwelling house or usual place of abode and to a corporate guardian or conservator at such
12 guardian's or conservator's usual place of business.

13 (c) *Disabled person.* Upon a disabled person, as defined in K.S.A. ~~59-3002~~, 77-
14 201 and amendments thereto, by serving (1) such person's guardian, conservator or a
15 competent adult member of such person's family with whom the person resides, or if
16 such person is living in an institution, then the director or chief executive officer of the
17 institution or, if service cannot be made upon any of them, then as provided by order of
18 the judge, and (2) unless the judge otherwise orders, the disabled person. Service by
19 certified mail shall be addressed to a director or chief executive officer of an institution
20 at the institution, to any other individual at the individual's dwelling house or usual
21 place of abode, and to a corporate guardian or conservator at such guardian's or
22 conservator's usual place of business.

1 (d) *Governmental bodies.* (1) Upon a county, by serving one of the county
2 commissioners or the county clerk or the county treasurer; (2) upon a township, by
3 serving the clerk or the trustee; (3) upon a city, by serving the clerk or the mayor; (4)
4 upon any other public corporation, body politic, district or authority, by serving the clerk
5 or secretary or, if not to be found, to any officer, director or manager thereof; (5) upon
6 the state or any governmental agency of the state, when subject to suit, by serving the
7 attorney general or an assistant attorney general. Service by certified mail shall be
8 addressed to the appropriate official at the official's governmental office. Income
9 withholding orders for support and orders of garnishment of earnings of state officers
10 and employees shall be served upon the state or governmental agency of the state in the
11 manner provided by K.S.A. 60-723 and amendments thereto.

12 (e) *Corporations and partnerships.* Upon a domestic or foreign corporation or
13 upon a partnership or other unincorporated association, when by law it may be sued as
14 such, (1) by serving an officer, partner or a resident, managing or general agent, or (2) by
15 leaving a copy of the summons and petition at any business office of the defendant with
16 the person having charge thereof, or (3) by serving any agent authorized by appointment
17 or required by law to receive service of process, and if the agent is one authorized by law
18 to receive service and the law so requires, by also mailing a copy to the defendant.
19 Service by certified mail on an officer, partner or agent shall be addressed to such person
20 at the person's usual place of business.

21 (f) *Foreign corporation or foreign limited partnership resident agent.* Service
22 of process or service of any notice or demand required or permitted by law to be served

1 on a foreign corporation or foreign limited partnership may also be made on the
2 corporation or limited partnership by service thereof on the resident agent of the
3 corporation or limited partnership. Whenever any foreign corporation or foreign limited
4 partnership authorized to transact business or transacting business without authority in
5 this state fails to appoint or maintain in this state a resident agent upon whom service of
6 legal process or service of any such notice or demand may be had, whenever the resident
7 agent of such corporation or limited partnership cannot with reasonable diligence be
8 found at the registered office in this state or whenever the certificate of authority of any
9 foreign corporation or foreign limited partnership is forfeited, the secretary of state shall
10 be irrevocably authorized as the agent and representative of the foreign corporation or
11 foreign limited partnership to accept service of any process or service of any notice or
12 demand required or permitted by law to be served upon the corporation or limited
13 partnership. Service on the secretary of state of any process, notice or demand against
14 the foreign corporation or foreign limited partnership shall be made by delivering to and
15 leaving with the secretary of state, or with any clerk having charge of the corporation
16 department of the secretary of state's office, the original and two copies of the process
17 and two copies of the petition, notice or demand, or the clerk of the court may send the
18 original process and two copies of both the process and the petition, notice or demand
19 directly to the secretary of state by restricted mail. In the event that any process, notice
20 or demand is served on the secretary of state, the secretary shall immediately cause a
21 copy thereof to be forwarded by restricted mail, addressed to the corporation or limited
22 partnership at its principal office as it appears in the records of the secretary of state, or

1 to the registered or principal office of the corporation or limited partnership in the state
2 of its incorporation or formation. The secretary of state shall keep a record of all
3 processes, notices and demands served upon the secretary under this subsection, and
4 shall record in the record the time of the service and the action of the secretary with
5 reference to it. A fee of \$30 shall be paid to the secretary of state by the party requesting
6 the service of process, to cover the cost thereof. That fee shall not be included with or
7 paid from any deposit as security for any costs or docket fee required by K.S.A. 60-2001
8 or 61-2501, and amendments thereto.

9 (g) *Insurance companies or associations.* Service of summons or other process
10 may also be made on any insurance company or association, organized under the laws of
11 the state of Kansas by service on the commissioner of insurance in the same manner as
12 that provided for service on foreign insurance companies. All the requirements of law
13 relating to service on foreign insurance companies so far as applicable shall also apply to
14 domestic insurance companies.

15 (h) *Service upon an employee.* If the plaintiff or the plaintiff's agent or attorney
16 files an affidavit that to the best of the affiant's knowledge and belief the defendant is a
17 nonresident who is employed in this state, or that the place of residence of the defendant
18 is unknown, the affiant may direct that the service of summons or other process be made
19 by the sheriff or other duly authorized person by directing an officer, partner, managing
20 or general agent, or the person having charge of the office or place of employment at
21 which the defendant is employed, to make the defendant available for the purpose of
22 permitting the sheriff or other duly authorized person to serve the summons or other

1 process.

2 **65-516. Restrictions on persons maintaining or residing, working or**
3 **volunteering at child care facility or family day care home.** (a) No person shall
4 knowingly maintain a child care facility or maintain a family day care home if, in the
5 child care facility or family day care home, there resides, works or regularly volunteers
6 any person who:

7 (1) (A) Has a felony conviction for a crime against persons, (B) has a felony
8 conviction under the uniform controlled substances act, (C) has a conviction of any act
9 which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
10 Annotated, and ~~acts amendatory thereof or supplemental~~ amendments thereto, or a
11 conviction of an attempt under K.S.A. 21-3301 and amendments thereto to commit any
12 such act, or (D) has been convicted of any act which is described in K.S.A. 21-4301 or
13 21-4301a, and
14 amendments thereto, or similar statutes of other states or the federal government.

15 (2) has been adjudicated a juvenile offender because of having committed an act
16 which if done by an adult would constitute the commission of a felony and which is a
17 crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the
18 Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental~~ amendments
19 thereto, or is any act described in K.S.A. 21-4301 or 21-4301a, and amendments thereto,
20 or similar statutes of other states or the federal government;

21 (3) has committed an act of physical, mental or emotional abuse or neglect or sexual
22 abuse as validated by the department of social and rehabilitation services pursuant to

1 K.S.A. 38-1523 and amendments thereto and (A) the person has failed to successfully
2 complete a corrective action plan which had been deemed appropriate and approved by the
3 department of social and rehabilitation services, or (B) the record has not been expunged
4 pursuant to rules and regulations adopted by the secretary of social and rehabilitation
5 services;

6 (4) has had a child declared in a court order in this or any other state to be deprived or
7 a child in need of care based on an allegation of physical, mental or emotional abuse or
8 neglect or sexual abuse;

9 (5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A.
10 38-1581 through 38-1584, and amendments thereto, or a similar statute of other states;

11 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et seq.*, and
12 amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 38-
13 1635 and amendments thereto involving a charge of child abuse or a sexual offense; or

14 (7) has an infectious or contagious disease.

15 (b) No person shall maintain a child care facility or a family day care home if such
16 person has been found to be ~~a disabled~~ person in need of a guardian or a conservator, or
17 both, as provided for in article 30 of chapter 59 of the Kansas Statutes Annotated, and
18 amendments thereto.

19 (c) Any person who resides in a child care facility or family day care home and who
20 has been found to be ~~a disabled person~~ in need of a guardian or a conservator, or both,
21 shall be counted in the total number of children allowed in care.

22 (d) In accordance with the provisions of this subsection (d), the secretary shall have

1 access to any court records or adjudications of any court of record, any records of such
2 orders or adjudications, criminal history record information in the possession of the
3 Kansas bureau of investigation and any report of investigations authorized by subsection
4 (e) of K.S.A. 38-1523 and amendments thereto in the possession of the department of
5 social and rehabilitation services or court of this state concerning persons working,
6 regularly volunteering or residing in a child care facility or a family day care home. The
7 secretary shall have access to these records for the purpose of determining whether or not
8 the home meets the requirements of K.S.A. 65-516 and 65-519, and amendments thereto.

9 (e) No child care facility or family day care home or the employees thereof, shall be
10 liable for civil damages to any person refused employment or discharged from
11 employment by reason of such facility's or home's compliance with the provisions of this
12 section if such home acts in good faith to comply with this section.

13 (f) For the purpose of subsection (a)(3), an act of abuse or neglect shall not be
14 considered to have been validated by the department of social and rehabilitation services
15 unless the alleged perpetrator has: (1) Had an opportunity to be interviewed and present
16 information during the investigation of the alleged act of abuse or neglect; and (2) been
17 given notice of the agency decision and an opportunity to appeal such decision to the
18 secretary and to the courts pursuant to the act for judicial review and civil enforcement of
19 agency actions.

Sec. 72 20 **65-5117. Operation of home health agency precluded, when; access of secretary**
21 **of health and environment to certain record; background check of employees, civil**
22 **liability, fee for information request; licensed or registered professional service**

1 **providers, volunteers and certain employees exempt.** (a) (1) On and after July 1, 1998,
2 no person shall knowingly operate a home health agency if, for the home health agency,
3 there works any person who has been convicted of or has been adjudicated a juvenile
4 offender because of having committed an act which if done by an adult would constitute
5 the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto,
6 first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree
7 murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary
8 manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide,
9 pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult,
10 pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502
11 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and
12 amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-
13 3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506
14 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and
15 amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-
16 3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516
17 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments
18 thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments
19 thereto, or similar statutes of other states or the federal government.

20 (2) On and after July 1, 1998, a person operating a home health agency may employ
21 an applicant who has been convicted of any of the following if five or more years have
22 elapsed since the applicant satisfied the sentence imposed or was discharged from

1 probation, a community correctional services program, parole, postrelease supervision,
2 conditional release or a suspended sentence; or if five or more years have elapsed since the
3 applicant has been finally discharged from the custody of the commissioner of juvenile
4 justice or from probation or has been adjudicated a juvenile offender, whichever time is
5 longer: A felony conviction for a crime which is designated in: (A) article 34 of the
6 Kansas Statutes Annotated and amendments thereto, except those crimes listed in
7 subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and
8 amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605
9 and amendments thereto; (C) a conviction of an attempt under K.S.A. 21-3301 and
10 amendments thereto to commit any act listed in this subsection or subsection (a)(1); or (D)
11 similar statutes of other states or the federal government.

12 (b) No person shall operate a home health agency if such person has been found to
13 be a ~~disabled~~ person in need of a guardian or a conservator, or both, as provided for in
14 article 30 of chapter 59 of the Kansas Statutes Annotated and amendments thereto.

15 (c) The secretary of health and environment shall have access to any criminal
16 history record information in the possession of the Kansas bureau of investigation
17 concerning persons working for a home health agency. The secretary shall have access
18 to these records for the purpose of determining whether or not the home health agency
19 meets the requirements of this section. The Kansas bureau of investigation may charge
20 to the department of health and environment a reasonable fee for providing criminal
21 history record information under this subsection.

22 (d) For the purpose of complying with this section, the operator of a home health 10

1 agency shall request from the department of health and environment information obtained
2 by the secretary of health and environment which relates to a person who works for the
3 home health agency or is being considered for employment by the home health agency, for
4 the purpose of determining whether such person is subject to the provisions of this
5 section. For the purpose of complying with this section, information relating to
6 convictions and adjudications by the federal government or to convictions and
7 adjudications in states other than Kansas shall not be required until such time as the
8 secretary of health and environment determines the search for such information could
9 reasonably be performed and the information obtained within a two-week period. For the
10 purpose of complying with this section, a person who operates a home health agency may
11 hire an applicant for employment on a conditional basis pending the results from the
12 department of health and environment of a request for information under this subsection.
13 No home health agency, the operator or employees of a home health agency or an
14 employment agency, or the operator or employees of an employment agency, which
15 provides employees to work for the home health agency shall be liable for civil damages
16 resulting from any decision to employ, to refuse to employ or to discharge from
17 employment any person based on such home health agency's compliance with the
18 provisions of this section if such home health agency or employment agency acts in good
19 faith to comply with this section.

20 (e) The secretary of health and environment shall charge each person requesting
21 information under this section a fee equal to cost, not to exceed \$10, for each name about
22 which an information request has been submitted under this section.

1 (f) No person who works for a home health agency and who is currently licensed or
2 registered by an agency of this state to provide professional services in this state and who
3 provides such services as part of the work which such person performs for the home
4 health agency shall be subject to the provisions of this section.

5 (g) A person who volunteers to assist a home health agency shall not be subject to the
6 provisions of this section because of such volunteer activity.

7 (h) No person who has been employed by the same home health agency for five
8 consecutive years immediately prior to the effective date of this act shall be subject to the
9 requirements of this section while employed by such home health agency.

10 (i) The operator of a home health agency shall not be required under this section to
11 conduct a background check on an applicant for employment with the home health agency
12 if the applicant has been the subject of a background check under this act within one year
13 prior to the application for employment with the home health agency. The operator of a
14 home health agency where the applicant was the subject of such background check may
15 release a copy of such background check to the operator of a home health agency where
16 the applicant is currently applying.

17 ~~(j) This section shall be part of and supplemental to the provisions of article 51 of~~
18 ~~chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental~~
19 ~~thereto.~~

20 **77-201. Rules of construction.** In the construction of the statutes of this state the
21 following rules shall be observed, unless the construction would be inconsistent with the
22 manifest intent of the legislature or repugnant to the context of the statute:

1 *First.* The repeal of a statute does not revive a statute previously repealed, nor does
2 the repeal affect any right which accrued, any duty imposed, any penalty incurred or any
3 proceeding commenced, under or by virtue of the statute repealed. The provisions of any
4 statute, so far as they are the same as those of any prior statute, shall be construed as a
5 continuation of the prior provisions and not as a new enactment.

6 *Second.* Words and phrases shall be construed according to the context and the
7 approved usage of the language, but technical words and phrases, and other words and
8 phrases that have acquired a peculiar and appropriate meaning in law, shall be construed
9 according to their peculiar and appropriate meanings.

10 *Third.* Words importing the singular number only may be extended to several
11 persons or things, and words importing the plural number only may be applied to one
12 person or thing. Words importing the masculine gender only may be extended to females.

13 *Fourth.* Words giving a joint authority to three or more public officers or other
14 persons shall be construed as given that authority to a majority of them, unless it is
15 otherwise expressed in the act giving the authority.

16 *Fifth.* "Highway" and "road" include public bridges and may be construed to be
17 equivalent to "county way," "county road," "common road," "state road" and "territorial
18 road."

19 *Sixth.* "Incompetent person" includes disabled persons and incapacitated persons
20 person as defined herein ~~in K.S.A. 59-3002 and amendments thereto.~~

21 *Seventh.* "Issue," as applied to the descent of estates, includes all the lawful lineal
22 descendants of the ancestor.

1 *Eighth.* "Land," "real estate" and "real property" include lands, tenements and
2 hereditaments, and all rights to them and interest in them, equitable as well as legal.

3 *Ninth.* "Personal property" includes money, goods, chattels, evidences of debt and
4 things in action.

5 *Tenth.* "Property" includes personal and real property.

6 *Eleventh.* "Month" means a calendar month, unless otherwise expressed. "Year"
7 alone, and also the abbreviation "A.D.," is equivalent to the expression "year of our
8 Lord."

9 *Twelfth.* "Oath" includes an affirmation in all cases where an affirmation may be
10 substituted for an oath and in similar cases "swear" includes affirm.

11 *Thirteenth.* "Person" may be extended to bodies politic and corporate.

12 *Fourteenth.* If the seal of a court or public office or officer is required by law to
13 be affixed to any paper, "seal" includes an impression of the seal upon the paper alone,
14 as well as upon wax or a wafer affixed to the paper. "Seal" also includes both a rubber
15 stamp seal used with permanent ink and word "seal" printed on court document
16 produced by computer systems, so that the seal may be legibly reproduced by
17 photographic process.

18 *Fifteenth.* "State," when applied to the different parts of the United States,
19 includes the District of Columbia and the territories. "United States" may include that
20 district and those territories.

21 *Sixteenth.* "Town" may mean a civil township, unless a different meaning is
22 plainly intended.

1 *Seventeenth.* “Will” includes codicils.

2 *Eighteenth.* “Written” and “in writing” may include printing, engraving,
3 lithography and any other mode of representing words and letters, excepting those cases
4 where the written signature or the mark of any person is required by law.

5 *Nineteenth.* “Sheriff” may be extended to any person performing the duties of the
6 sheriff, either generally or in special cases.

7 *Twentieth.* “Deed” is applied to an instrument conveying lands but does not
8 imply a sealed instrument. “Bond” and “indenture” do not necessarily imply a seal but in
9 other respects mean the same kind of instruments as above. “Undertaking” means a
10 promise or security in any form where required by law.

11 *Twenty-first.* “Executor” includes an administrator where the subject-matter
12 applies to an administrator.

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

15 *Twenty-third.* “Residence” means the place which is adopted by a person as the
16 person’s place of habitation and to which, whenever the person is absent, the person has
17 the intention of returning. When a person eats at one place and sleeps at another, the
18 place where the person sleeps shall be considered the person’s residence.

19 *Twenty-fourth.* “Usual place of residence” and “usual place of abode,” when
20 applied to the service of any process or notice, means the place usually occupied by a
21 person. If a person has no family, or does not have family with the person, the person’s
22 office or place of business, the room or place where the person usually sleeps shall be

1 construed to be the person's place of residence or abode.

2 *Twenty-fifth.* "Householder" means a person who is 18 or more years of age and
3 who owns or occupies a house as a place of residence and not as a boarder or lodger.

4 *Twenty-sixth.* "General election" refers to the election required to be held on the
5 Tuesday following the first Monday in November of each even-numbered year.

6 *Twenty-seventh.* "Under legal disability" includes persons who are within the
7 period of minority, or who are incapacitated, incompetent or imprisoned.

8 *Twenty-eighth.* When a person is required to be disinterested or indifferent in
9 acting on any question or matter affecting other parties, relationship within the degree of
10 second cousin, inclusive, shall disqualify the person from acting, except by consent of
11 parties.

12 *Twenty-ninth.* "Head of a family" shall include any person who has charge of
13 children, relatives or others living with the person.

14 *Thirtieth.* "Mentally ill person" means a mentally ill person as defined in
15 K.S.A. ~~1997~~ 1999 Supp. 59-2946 and amendments thereto.

16 *Thirty-first.* "Incapacitated person" means ~~disabled person~~ an individual whose
17 ability to receive and evaluate relevant information, or to effectively communicate
18 decisions, or both, even with the use of assistive technologies or other supports, is
19 impaired to the degree that the person lacks the capacity to manage their estate, or to
20 meet essential needs for their physical health, safety or welfare, as defined in K.S.A. 59-
21 3002 and amendments thereto, whether or not a guardian or a conservator has been
22 appointed for that person.

1 *Thirty-second.* “Guardian” means an individual or a nonprofit corporation
2 certified in accordance with K.S.A. ~~59-3037~~ 59-3014b and amendments thereto which
3 has been appointed by a court to act on behalf of a ward and possessed of some or all of
4 the powers and duties set out in K.S.A. ~~59-3018~~ 59-3018b and amendments thereto.
5 “Guardian” does not mean natural guardian unless specified.

6 *Thirty-third.* “Natural guardian” means both the biological or adoptive mother
7 and father ~~and mother~~ of a minor if neither parent has been found to be ~~a disabled person~~
8 an adult with an impairment in need of a guardian or has had parental rights terminated
9 by a court of competent jurisdiction. If either parent of a minor ~~dies is deceased, or has~~
10 been is found to be a disabled person an adult with an impairment in need of a guardian,
11 as provided for in article 30 of chapter 59 of the Kansas Statutes Annotate, and
12 amendments thereto, or has had parental rights terminated by a court of competent
13 jurisdiction, then the other parent shall be the natural guardian, unless also deceased, or
14 found to be an adult with an impairment in need of a guardian, or has had parental rights
15 terminated by a court of competent jurisdiction, in which case no person shall qualify as
16 the natural guardian.

17 *Thirty-fourth.* “Conservator” means an individual or corporation appointed by
18 the court to act on behalf of a conservatee and possessed of some or all of the powers
19 and duties set out in K.S.A. ~~59-3019~~ 59-3019a and amendments thereto.

20 *Thirty-fifth.* “Minor” means any person defined by K.S.A. 38-101 and
21 amendments thereto as being within the period of minority.

22 *Thirty-sixth.* “Proposed ward” means a person for whom ~~an application~~ a petition

1 for the appointment of a guardian pursuant to K.S.A. ~~59-3006~~ 59-3009a, 59-3009b, 59-
2 3009c or 59-3009d, and amendments thereto, has been filed.

3 *Thirty-seventh.* “Proposed conservatee” means a person for whom a petition for
4 the appointment of a conservator pursuant to K.S.A. ~~59-3006~~ 59-3009a, 59-3009b, 59-
5 3009c, 59-3009d or 59-3009e, and amendments thereto, has been filed.

6 *Thirty-eighth.* “Ward” means a person who has a guardian.

7 *Thirty-ninth.* “Conservatee” means a person who has a conservator.

8 *Fortieth.* “Manufactured home” means a structure which:

9 (1) Is transportable in one or more sections which, in the traveling mode, is 8
10 body feet or more in width or 40 body feet or more in length, or, when erected on site, is
11 320 or more square feet, and which is built on a permanent chassis and designed to be
12 used as a dwelling, with or without permanent foundation, when connected to the
13 required utilities, and includes the plumbing, heating, air conditioning and electrical
14 systems contained therein; and

15 (2) is subject to the federal manufactured home construction and safety
16 standards established pursuant to 42 U.S.C. 5403.

17 *Forty-first.* “Mobile home” means a structure which:

18 (1) Is transportable in one or more sections which, in the traveling mode, is 8
19 body feet or more in width and 36 body feet or more in length and is built on a
20 permanent chassis and designed to be used as a dwelling, with or without a permanent
21 foundation, when connected to the required utilities, and includes the plumbing, heating,
22 air conditioning and electrical systems contain therein; and

1 (2) is not subject to the federal manufactured home construction and safety
2 standards established pursuant to 42 U.S.C. 5403.

3 Forty-second. "Disabled person" includes incapacitated persons and
4 incompetent persons as defined herein.



Kansas Council on Developmental Disabilities

BILL GRAVES, Governor
DAVE HEDERSTEDT, Chairperson
JANE RHYS, Ph. D., Executive Director

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"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

HOUSE JUDICIARY COMMITTEE

February 28, 2001

Testimony in Regard to House Bill 2469. An act concerning guardians and conservators.

Mr. Chairman, Members of the Committee, I am appearing today on behalf of the Kansas Council on Developmental Disabilities regarding H.B. 2469, regarding guardians and conservators. The Kansas Council is a federally mandated, federally funded council composed of individuals who are appointed by the Governor, include representatives of the major agencies who provide services for individuals with developmental disabilities, and at least half of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices in life about where they wish to live, work, what leisure activities they wish to do, and so forth.

For the past two and a half years I have served on the Kansas Judicial Task Force on Guardianship. I would like to thank the Judicial Council for that opportunity and for their inclusion of individuals from the programmatic side of the issue as opposed to strictly the legal nature. This Task Force met the first Friday of each month and spent long hours carefully deliberating each aspect of this Act. I think you will find that an attempt was made to provide clarification and changes to improve the ease of use and understanding of this process.

This bill has many good qualities that we, as advocates believe will greatly improve the guardianship and conservatorship in Kansas.

- First is the change in language from "Disabled person" to "Adult with an impairment" and a clarification in language requiring a two-prong question involved whenever guardianship is considered: (1) are the person's abilities impaired? and (2) is there a need for judicial involvement in the person's affairs?.
- Second are the new requirements for an examination and evaluation to be conducted by a professional appointed by the court who is qualified to evaluate the proposed ward's alleged

House Judiciary
2-28-01
Attachment 5

impairment. Such evaluation shall include the proposed ward's cognitive and functional abilities and limitations, including adaptive behaviors and social skills, and, as appropriate, educational and developmental potential; a prognosis for any improvement and, as appropriate, any recommendation for treatment or rehabilitation; and developmental potential; and several other requirements that will greatly enable the court to make a determination as to the need for guardianship.

- Issues related to guardians and or conservators in other states have also been given consideration.
- Clarification of timelines so as to provide for a quick resolution of proceedings.
- The value of an estate not requiring judicial intervention is increased from \$5,000 to \$10,000 to reflect both the two-prong nature of the act and inflation.

I could list our many other excellent additions to this Act, however, I will spare you a catalogue. There is only one deletion that I oppose. That is the elimination of limited guardianship. Limited conservatorship issues can be dealt with using power of attorney. However, I firmly believe that persons who may need a guardianship may not always need a full guardianship. In many cases, these individuals can make some decisions regarding their lives and would support there being a mechanism that would legally permit them to do so.

As always, we greatly appreciate the opportunity of appearing before you and would be happy to answer any questions you may have.

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Chairperson To: The House Judiciary Committee, Representative Mike O'Neal, Chairperson
Judge Frank J. Yeoman, Jr.
Topeka From: Jean Krahn, Executive Director

Vice Chairperson Date: February 28, 2001
Sen. Janis K. Lee
Kensington Re: HB 2469: Bond Surety for Conservators contracting with the KGP

Jack E. Dalton
Dodge City

Overall View of KGP/SRS Relationships on Conservatorship

Tim Emert
Independence
Barbara Lawrence
Wichita

Eloise Lynch
Salina

James Maag
Topeka

An SRS adult protective services worker makes the determination that an adult is in need of guardianship and/or conservatorship and is without family or others appropriate or willing to serve in this capacity. A request is sent to the Kansas Guardianship Program to identify a volunteer willing to serve if appointed. SRS legal petitions the court for the hearing to determine the need for a guardian/conservator. If the court so decides and names the KGP volunteer conservator, SRS becomes the surety on the conservator's bond.

Executive Director
M. Jean Krahn

Historical Perspective

1

When the KGP was created in 1979, the program included in its budget the funds to provide for the yearly purchase of individual bonds to cover each conservatorship. The bonds were purchased through private bonding agencies.

Initially the cost of a minimum bond was set at \$20, but by 1986 that amount had risen to \$50. Even at that amount it was difficult to find bonding agents willing to deal with minimum bonds.

The House Sub-Committee on Appropriations assigned to deal with the KGP and SRS budgets in 1986 recommended that the State serve as surety on the bonds for persons served in the program. In making such a change, the State would save General Funds automatically expended each year. Since the persons served by the program generally had few resources, the risk to the State would be minimal. Eventually legislation was passed amending the Act for Guardianship and Conservatorship providing that, "...the secretary of social and rehabilitation services in the secretary's official capacity, shall be appointed by the court to act as surety on the bond of any conservator providing advocacy services to a conservatee under contract with the Kansas guardianship program."

Page Two

Problem

The final draft of the proposed revisions to the Act for obtaining a guardian or conservator as prepared by the Judicial Council guardianship and conservatorship advisory committee contains a recommendation made by SRS to remove SRS as surety on the bond for KGP volunteers by changing the law to make the KGP itself serve as surety on the bond.

The KGP opposes such a change. The agency has no funds or legal resources to allow it to serve as surety. A preliminary investigation into the cost of purchasing a blanket surety bond could cost well in excess of \$100,000 a year. A bonding company quoted an estimated \$100 annual premium per conservatorship to cover a \$20,000 minimum bond. Currently there are 1300 conservatorships under the KGP at any given time. The bonding company would require copies of the agency's screening documents before approving each conservator. It also would require a signed statement from the volunteers stating they and their estate would cover any and all costs related to restitution. Many people who might otherwise be willing to volunteer may be discouraged by the thought of such an intrusion into their family's personal and financial privacy.

We urge your support for maintaining the law as it currently stands.

Respectfully Submitted,



M. Jean Krahn

cc KGP Board of Directors
Division of the Budget
Legislative Research



Offices located in
the Historic Crawford Building

Topeka Independent Living Resource Center

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501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

February 28, 2001

The Honorable Michael O'Neal
Chairman House Judiciary Committee
Statehouse
Topeka, Kansas 66612

Re: HB 2469

Mr. Chairman and Members of the Committee:

Just because a person has impairment does not mean they need a guardian or conservator. The state should never impose a guardianship on a person because of their physical disability alone. Guardianship should be used only for cognitive impairment. There is an inherent and recurring conflict in guardianship law between state paternalism and the civil liberties of people with disabilities. Just because someone may need help with making decisions does not mean they need a guardian or conservator. Imposition of a guardianship or conservatorship on a person with a disability is a serious infringement of fundamental rights of liberty, privacy, and due process.

The Topeka Independent Living Resource Center is a private, not-for-profit, civil and human rights organization whose mission is to advocate for justice, equality, and essential services for a fully integrated and accessible society for people with disabilities. With that mission in mind, we have reviewed the proposed guardianship law. This first major change in the code since 1965 presents an excellent opportunity to make guardianships and conservatorships available when needed, but only used when absolutely necessary. Guardianships are costly to the state and costly to people's civil rights. The definition of incapacity or impairment should be restricted. Pleading requirements should be expanded. Guardian and conservator powers should be limited. Finally, a ward should have easy access to court to request restoration to capacity.

House Judiciary
2-28-01
Attachment 7

Advocacy and services provided by and for people with disabilities.

Proposed changes:

1. Add a definition of “Appropriate Alternative Means.”

Add the definition of “appropriate alternative means” to New Section 2, page 1, line 39, as new subsection (c): “Appropriate alternative means” means any program, service, legal tool or personal representative that would enable a person with an impairment to function adequately or reasonably care for their estate under their direction and control. “Appropriate alternative means” includes but is not limited to: power of attorney, durable power of attorney, power of attorney for health care decisions, living will, trust, joint tenancy with rights of survivorship, representative payee, home and community based services, or voluntary limited guardianship. (re-letter the rest of the subsections.)

2. Add a Definition of “Impairment” to the Definitional Section.

Insert New Section 2(g) on page 2, line 7: “Impairment” means a mental or physical condition that directly results in extensive, permanent, functional limitations over time in instrumental activities of daily living that are likely to cause substantial harm to the person. (Re-letter the rest of the definitions.)

3. Add Pleading Requirements in the Petition.

Add new pleading requirements to New Section 9(b) on page 8 at line 8. New Section 9(b)(16) a description of the functional limitations over time;

(b)(17) current physical and mental condition of proposed ward;

(b)(18) steps taken to find less restrictive alternatives to guardianship or conservatorship;

(b)(19) guardianship powers being requested;

(b)(20) if an unlimited guardianship is requested, why a limited guardianship is not appropriate;

(b)(21) qualifications of the proposed guardian or conservator; and

(b)(22) why the guardianship is needed.

(Model Code Section 304.)

4. Additional Requirements in Examination Reports.

Add this sentence to subsection (a) in New Section 15 on page 18 at line 36: The proposed ward shall be presumed to have capacity until proven otherwise by clear and convincing evidence. The proposed ward shall have the right for counsel to be present at all examinations and hearings.

Insert in New Section 15, page 19, line 29 new subsection (b)(9): a description of all functional limitations directly caused by the impairment; (b)(10) the effect of the limitations on the person's instrumental activities of daily living; (b)(11) the person's use of auxiliary aids, services, personal attendants or other mitigating measures to function with impairment.

5. Final Orders of the Court after Trial : Limited Guardianship Preference and Notice of Right to Petition for Termination, Restoration, or Modification.

The State should strongly and clearly prefer a limited guardianship. Therefore, in New Section 18, on page 26, line 26, should be added, "The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence. Within 14 days after appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition, a copy of the order of appointment, together with a notice of the right to request termination, restoration to capacity, or modification."

(Model Code Section 311.)

There should be a new subsection (g) inserted into New Section 18 on page 27, line 26, to read:

(g) Who May be a Guardian: Priorities.

- (1) Subject to subsection (3), the court, in appointing a guardian, shall consider persons otherwise qualified in the following order of priority:
 - (a) a guardian, other than a temporary or emergency guardian, currently acting for the proposed ward in this State or elsewhere;
 - (b) a person nominated as guardian by the proposed ward, including the proposed ward's most recent nomination made in a durable power of attorney, if at the time of the nomination the proposed ward had sufficient capacity to express a preference;
 - (c) an agent appointed by the proposed ward under a durable power of attorney for health care decisions;
 - (d) the spouse of the proposed ward or a person nominated by will or other signed writing of a deceased spouse;
 - (e) an adult child of the proposed ward;
 - (f) a parent of the proposed ward, or an individual nominated by will or other signed writing of a deceased parent; and
 - (g) an adult with whom the proposed ward has resided for more than six months before the filing of the petition.
- (2) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the proposed ward, may decline to appoint a person having priority, and appoint a person having a lower priority or no priority, for good cause.
- (3) An owner, operator, or employee of a long-term-care institution at which the proposed ward is receiving care may not be appointed as guardian unless related to the proposed ward by blood, marriage, or adoption.

(Model Code Section 310.)

6. Additional Guardianship Duties and Limitations

Insert in New Section 26, page 38, line 15, new subsection (a)(3): A guardian shall never substitute its judgment or choices for that of its ward, unless the judgment or choice of the ward will place the ward in a clear and present danger to himself or herself or others.

(a)(4) The ward should be afforded the right to all legal personal lifestyle choices and the right to make mistakes, as long as the choice or judgment will not place the ward in a clear and present danger.

Insert new subsection (e)(10) on page 42, line 4, (e)(10) to restrict with whom the ward desires to associate.

7. Guardianship Plan

New Section 27 contains provisions for the guardianship plan. The ward should be placed in the least restrictive environment appropriate to the ward's needs. Insert on page 42, line 14, "The ward shall be placed in the least restrictive setting appropriate to the needs of the ward with all appropriate supplemental aids and services including home and community based services."

Strike New Section 27(a)(3) on page 42, line 21. This section gives the guardian the ability to restrict association of the ward. With regard to a person with a disability, this is never appropriate. The First Amendment to the Constitution guarantees the right of freedom of association.

8. Involuntary Commitment to a Treatment Facility

Insert in New Section 28 on page 43, line 38 new subsection (a)(7): A description of the functional limitations over time;

(a)(8) Current physical and mental condition of the proposed ward;

(a)(9) Steps taken to find treatment in the least restrictive environment and why it is not possible;

(a)(10) That without admission to a treatment facility there is a clear and present danger of substantial harm to self or others.

9. Constitutionality of Extended Authority from Ages 18-25.

New Section 32 on page 53, line 34 gives a conservator extended powers after the ward reaches majority. While this section is desirable as a parent planning for a child, it is not a constitutional limitation as imposed by a state. Once a person turns eighteen, he or she is an adult, and the interest of the state to protect minors is gone.

10. Expand the Availability of Restoration to Capacity

New Section 41 on page 68, line 11 allows for a ward to petition the court for restoration to capacity. Restoration to capacity should be expanded and made easy for a ward to apply for. Delete current subsection (a) and

replace it to read: (a) At the request of the ward or conservatee, a guardian or conservator shall file a verified petition requesting the court restore the ward or conservatee to capacity. A ward or conservatee may file a request in writing, in any form, requesting restoration to capacity.

There is no current definition of "impaired" or "impairment" in the statute. The real issue is a person's need for a guardian or conservator. Therefore, in New Section 41, page 68, line 22, at current (b)(3) strike "impaired" and substitute "... no longer in need of a guardian or conservator;" at (b)(5) strike "impaired" and substitute "... no longer in need of a guardian conservator;" and at (h) strike "impaired" from line 11 and insert, "... is in need of a guardian or conservator."

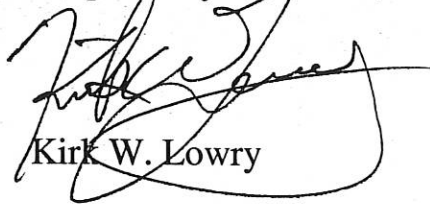
11. Existing Guardianships and Conservatorships

New Section 45. Strike "impaired" from line 3, page 75 and insert, "an adult with an impairment in need of a guardian or conservator or both."

12. Mediation

Mediation has been utilized successfully in other states in the area of guardianship. Often there are family issues that get played out in a guardianship fight through attorneys. The court should have clear authority to order mediation.

Respectfully submitted,



Kirk W. Lowry



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February 28, 2001

To: House Judiciary Committee
From: James L. Germer, Executive Director
Kansas Advocacy and Protective Services, Inc.
Re: House Bill 2469 regarding guardianship and conservatorship

Kansas Advocacy and Protective Services, Inc., is a federally funded, private, non-profit corporation that is federally mandated to use legal, administrative and other appropriate remedies in advocating for protection of rights of individuals with disabilities.

What is contained in this testimony is my initial analysis of the proposed guardianship law. I believe that the proposed law significantly enhances what is in the present law, which has not been reviewed now in many years. However, I believe that we are remiss if all stakeholders - judges, lawyers, consumers with disabilities, consumer advocates, service providers, guardians, guardianship programs - do not take this opportunity to collaborate to see how we can make it even better.

I have reviewed the testimony of Kirk Lowry, attorney with the Topeka Independent Living Center, and strongly support his suggestions.

Some General Comments:

We are pleased that "person first" language is being used to emphasize the rights and dignity of the persons whose lives the code is intended to assist; and the concept of "preserving to the ward or conservatee the greatest degree of personal independence possible..."

The review provisions of the new law look promising, and we believe they will better assure that review will actually take place. In some instances currently, guardianship files have not have been reviewed for many years.

There were obviously some clarifications and technical improvements to the Act that I will not touch upon; e.g., time computations, clarification of type of proceeding, etc.

Statute by statute impressions - cites are to HB 2084 and statutory cite in parentheses.

New Section 2(a); [3002(a)] - the requirement that assistive technology (AT) and other supports be considered is excellent. We had a case once where a lady with unmet AT needs had earlier been

found not competent. After she received AT, not only was she not “incompetent”, but she readily understood the distinction between the attorney’s role when acting in a client’s “best interests” as contrasted with acting in a client’s “expressed interests”. She was restored to capacity.

New Section 2(e) and (f); [3002(e) and (f)]. We have some concern about “the lack of appropriate alternatives for meeting essential needs” language. The Judicial Council Guardianship and Conservatorship Advisory Council noted (see the 2nd page of the Council’s General Comment, see also the Council’s Comment to proposed section 3002) that judicial involvement only happens where there is serious impairment **and** a lack of some other non-judicial means of meeting the needs. On the one hand, this is probably meant to state that before looking to a guardian, we should look toward lesser restrictive alternatives such as payeeship, friendship, advocacy, case management, etc., and this is good. However, to the extent that a lack of community based services which the state has a duty to provide is the problem, then I am troubled by guardianship becoming a substitute for actually getting services. We used to call this the “dumping on the guardian”, or “appropriate services are not being provided, so let’s get a guardian” approach. I believe that it would be helpful to clarify that the “lack of appropriate alternatives” cannot be because of the failure of the state or a service provider to provide necessary services and supports.

New Section 2(g); 3002(g). The language (“making those determinations and taking those actions which are **reasonably** necessary in order...to receive and account for...income”) clarifies, a little, that needing assistance does not mean that you need a conservator, as long as you generally understand the nature of finances and are able to direct someone else in managing your finances. In one instance in which we were involved, the court clarified that:

1. “...Actions necessary to obtain, administer and dispose of real and personal property...” may include seeking assistance to do those activities.
2. “An isolated instance of overdrawing one’s checking account is not conclusive evidence of inability to manage financial resources”.
- 3.”The respondent understands the concepts of conservatorship and voluntary conservatorship; furthermore, she is capable of making up her own mind regarding contesting ...(the) petition, and indicating to the court that she wishes to have assistance with the handling of her finances.”

New Section 9(b)(14); 3009a(b)(14). Re: co-guardians/conservators. This is a good addition. There has been a lot of trouble with co-guardians not knowing their roles.

New Section 9(c); 3009a(c). The provision that the petition may be accompanied by the evaluation report is troubling if it is construed to mean that no meeting with the proposed ward/conservatee’s attorney is necessary before the report is done. Having the evaluation done before the proposed ward/conservatee has a chance to meet with their attorney may violate **New Section 14(a)(4); [3010(a)(4)]**, but this requirement that their must first be a meeting with the attorney is not made

clear in **New Section 9(c); [3009a(c)]**.

New Section 14(a)(3); [3010(a)(3)]. The proposed law finally spells out that the appointment for the attorney who is representing the ward will automatically be terminated upon a final determination of the petition. We have experienced countless numbers of complaints about attorneys who have always automatically assumed this and we have always argued that the attorney is on the hook for the duration of the guardianship/conservatorship unless expressly relieved by the court. This proposed language would essentially codify the present understanding. While we are glad that the issue was clarified, however, the concomitant requirement in the proposed law that the ward/conservatee would have to later request appointment of an attorney **in writing** is burdensome, and that it should be sufficient if the ward/conservatee makes his/her wishes known to the court "by any reasonable means."

New Section 15(b)(3); [3010a(b)(3)]. It is good that this paragraph requires more evidence than just a mental evaluation, but should also include assistive technology (AT) services and supports considerations as contemplated by proposed section 3002(a) **New Section 2(a)**.

The Judicial Council Advisory Committee's Comments to 59-3014a (New section 18), states that a major change in the proposed law is the deletion of the use of the term "limited guardianships" (or "conservatorships") in subsection (d) of the original 59-3014 and substituting "guardianship/conservatorship plans", the requirements of which are set out in the new proposed **59 - 3018c** for guardians and **3019b** for conservators. The problem is that while present law (59 - 3013, 5th, - or 2nd to last - paragraph) requires the court to make findings as to the extent the guardianship should be limited ("the court 'shall' make a finding"); the proposed new law makes it permissive (e.g., in proposed 3018c(a): court "may" require the guardian..., guardian "may" choose...) Attorneys for proposed wards in particular and advocates in general will need to push these plans.

(New Section 26(a); [3018b(a)]. Contains great language, e.g., "guardian must...remain personally acquainted with the ward...shall exercise authority only as necessitated by the ward's limitations...encourage the ward to participate in making decisions...encourage the ward to act on the ward's own behalf..." However, we have questions regarding why this language precedes section (b) that specifically spells out what the guardian's general duties and responsibilities will be.

New Section 27; [3019c]. Nice that special needs trusts are acknowledged.

(New Section 28(a)(4) and (f); [3018d(a)(4) and (f)], regarding guardian's continuing authority to admit the ward for care and treatment at a treatment facility. We have maintained that a guardian's continuing authority to commit a ward to in-patient treatment for up to 2 years has significant constitutional problems. The new proposed statute does not change this guardian's power.

New Section 28(h); [3019d(h)]. Definition of "Treatment Facility". Through a somewhat complex meandering through present guardianship law, we have maintained the opinion that any move of a ward to a more restrictive setting requires a hearing, including to a group home from an independent

setting. Our reading of the proposed statute seems to clarify that this is the intent of this proposed section. For example, after defining "treatment facility" (to include KNI, LSH, OSH, PSH, RMHF, ICFs/MR, and any psych hospital), the statute goes on to state that included in the definition of "treatment facility" are any other facilities for persons with mental illness or mental retardation licensed pursuant to KSA 75 - 3307b, which is one of the statutes that SRS works under the authority of in licensing Community Developmental Disability Organizations (CDDO's) and Community Mental Health Centers (CMHC's). Therefore CDDO and CMHC placements would qualify as "treatment facilities", if, pursuant to the last 2 lines of the proposed statute, the "ward is to be admitted as an inpatient or resident of that facility." I believe that an individual is not a "resident" of a facility if the person is only receiving services and supports from that facility/CDDO/CMHC, but that once a person resides in a home run by that entity, then that constitutes "residency." If that is the case, I think it is positive. Therefore, before a ward could be placed in even a group home if living in an independent setting, there would need to be a hearing.

Two other concerns with 3019d(h): 1) the term "treatment facility" is not a term which lends itself to anything but psychiatric placements; I do not believe that the term appropriately applies to DD residence providers.

2) Notably, Nursing Facilities for Mental Health (NFMHs) are not included in the statute; is this because they are not considered to be "treatment facilities" or because it is well known that a guardian does not have the power to commit a ward to an NFMH? We have always been concerned about "back door" commitments to NFMH's as a condition of release from a state MH hospital.

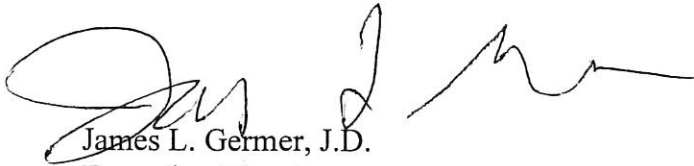
(New Section 41); [3027a]. Restoration to capacity. Some concerns. The requirements of the petition for restoration are more complex than under present law; may place a greater burden on pro se petitioners (essentially, a "factual basis" provision was added; my recollection is that the ABA Uniform Guardianship Act would again only require that the ward/conservatee makes their wishes known by any reasonable means to the court that they wish to be restored to capacity).

Secondly, the "probable cause provision" weakens the rights of persons to regain capacity if the judge simply refuses to hear it; additionally the same barriers would be present as exist in current law, i.e., have to wait 6 months after adjudication). I'm not sure how "probable cause" is defined in this context. I would generally define "probable cause" as preponderance or more likely than not, etc. However, the standard if the case does get to hearing is whether it is proven by clear and convincing evidence that the person still needs a guardian. I think that this "probable cause" finding reverses the present burden of evidence. I think it would be best for this section to be deleted; although I may be wrong, I have never heard that there was ever any rush on state courts by persons wanting to be restored to capacity.

If the standard is "Probable cause has to exist that it will not be found by clear and convincing evidence that the ward lacks capacity", then the harm will not be as great, but I doubt that it will be interpreted that way, and that would be a curious standard in any event.

New Section 42 [3028a(c)]. Same objection to “probable cause” as discussed in 3027a. Also, I have some confusion (same confusion as I have concerning present law) with the fact that it appears that restoration to capacity could be under either the restoration statute or under the termination statute.

Please advise if there are any questions or if anything further is needed.



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**LEGISLATIVE TESTIMONY
HOUSE BILL 2469
HOUSE JUDICIARY COMMITTEE**

FEBRUARY 28, 2001

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE
HOUSE JUDICIARY COMMITTEE

FROM: WHITNEY DAMRON

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present this testimony on House Bill 2469, which is a product of the Kansas Judicial Council. The KBA Legislative Committee and Board of Governors have discussed House Bill 2469 and we have a number of concerns about the bill. Because of its complexity, the lack of time for Kansas practitioners to evaluate all of its various provisions, the lack of an emergent need addressed by the bill and the belief that study of the proposal and exposure of it to conversation among the practicing bar will result in a better product or at least, a better understanding of the major change in probate practice, we recommend to you that the legislature send the bill to an interim committee for further study. Some of the concerns we have are as follows:

1. Examination and Evaluation (guardianship or conservatorship) to be supported or accompanied by a report of an "examination and evaluation" rather than just a "mental evaluation" under the current law. The policy statements are that the "preferred practice under the Act will be for a complete. The Bill calls for any involuntary petition examination and evaluation report to accompany the petition..." Probably 80% to 90% (in our experience) of all involuntary proceedings are resolved by the use of bare bones "mental evaluations" by attending physicians of the proposed wards and conservatees. Frequently, these consist of two or three sentence reports reciting that the declarant is the treating physician with knowledge of the ward's condition, that, because of the ward's illness/condition, the ward is unable to take steps to care for his or her person and property and is in need of assistance in doing so. In most cases, the personal knowledge of the petitioning family members, the concurrence of the attorney appointed to represent the ward and conservatee and the report result in a consensus for the appointment of a guardian and conservator. The new examination and evaluation procedure will require, in our judgment, a lengthy period of hospitalization/observation which will result in a detailed diagnosis of the proposed ward's physical and mental condition,

including a description of the ward's cognitive and functional limitations, adaptive behaviors, social skills, educational and developmental potential, prognosis for improvement and recommendations for treatment. It also requires a disclosure or prior assessments, evaluations and examinations and a certification by the "professional" that the proposed ward is impaired, in need of a guardian, conservator or both and whether it would be injurious to have the ward or conservatee present in the courtroom. In our opinion, this process is going to result in substantial medical and treatment costs, as well as expert fees for the evaluation and report to the Court, probably layering several thousand dollars on top of each one of these cases which are ordinarily disposed of now with minimal, if any, expense for the standard "mental evaluation". We feel that, where there is a bonafide question about a proposed ward's or conservatee's mental status or their need for judicial intervention, the Court, under present standards, will order the necessary evaluation. In short, we see absolutely no need for the delay and expense such a procedure will entail. I am tempted to say the proposal will "Daubertize" guardianship/conservatorship proceedings.

2. Appointment of Temporary Guardians. The proposal provides for the appointment of temporary guardians of a ex parte basis. While this in and of itself may be appealing to deal with questions of imminent danger, either to the proposed ward or property of the proposed ward/conservatee, in fact, we believe that this will result in unnecessary ex parte application. This process will undoubtedly be used by the more aggressive prospective petitioners to try to gain a "leg up" in the process of appointment of guardians or conservators. To make matters worse, a person appointed by this ex parte procedure would also have the authority to then initiate proceedings to institutionalize or hospitalize the prospective ward or conservatee, thereby freezing other pretenders out of the process at an early date. We believe that such a procedure deserves close scrutiny. We ask why the possibility of advancements of hearing prior to the current seven to fourteen day hearing period cannot be entertained in emergency situations or whether other court intervention wouldn't be possible to prohibit "imminent damage or danger".

3. The proposal provides for natural guardians to administer up to \$50,000.00 of a minor's property without resort to a conservatorship. We think that this would be a grave mistake.

4. The proposal provides for extending the period of a conservatorship beyond eighteen years, which we believe is an ad hoc process for delaying some of the liabilities of the age of majority, i.e., the provisions allows assets of the eighteen-year-old to be shielded from involuntary alienation in deprivation of what could be the substantial right of creditors. We ask the question whether a person is of age eighteen or not.

5. The "streamlined" provisions which provide for the conversion of a guardianship to enhanced guardian powers dealing with property blur the distinction between guardian's and conservator's duties and deserves further close scrutiny.

6. The proposal provides for “plans” to be developed by court-appointed guardians and conservators. While this is couched as permissive language, we believe that further consideration should be given as to whether this additional complication in the administration of what are usually perfunctory matters should be complicated without a showing of good cause.

7. The proposal does away with the requirement that the Court give priority to the suggested appointees of certain interested parties and give mere “consideration” to those suggestions. Our opinion is that this is a philosophical issue which ought to be reversed to give competent or directly interested people the right to make intelligent choices of this nature.

8. The changes in K.S.A. 59-3039 would require a past pattern of gifting in order for a conservatee to make gifts. This may be too much of a safeguard. The current statute has safeguards in place that adequately address these situations.

9. We believe that K.S.A. 59-3004(c) should not be changed. Changing from shall to “strongly considered” weakens the right of testators and principals to name their own guardians and conservators for minors and for themselves. The proposed words “strongly considered” are simply too subjective. This would cause needless litigation. The philosophy behind this revision is to give more choices to individuals. This proposed change flies in the face of that.

10. We believe proposed K.S.A. 59-3018b(e)(9)(C)(i) should be deleted. The proposed paragraph blurs the distinction between a guardian and conservator. This could cause needless confusion. If an appointed guardian needs to assume conservatorship type duties, then the guardian should petition the court to be appointed the conservator.

In summary, we simply think that practitioners throughout the state ought to have these provisions brought home to them and have an opportunity to comment before an attempt is made to place these proposals in stone. We believe that an interim study of this issue is merited and would allow for this opportunity. Thank you!

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TO: Members of House Judiciary Committee
FROM: Dan Lykins
RE: Testimony for H.B. 2469
DATE: February 28, 2001

I request that the House Judiciary Committee support the amendment of K.S.A. 59-3015 by adding Sec. C that would state:

1. "Any Court having control over or custody of any amount of money exceeding \$5,000.00, the right which is vested in a minor, shall have the discretion to authorize (without the appointment of a conservatorship or the giving of bond, and notwithstanding the provisions of K.S.A. 59-3001 and amendments thereto) the deposit of the money in a savings account of a bank, credit union, or savings and loan association, through the custody of the guardian of the minor child with the money deposited in said account so the funds cannot be withdrawn, without a court order, until the minor's 18th birthday.

Over the last 10 years, many Judges in the Shawnee County District Court of Kansas have allowed attorneys for minors to settle their personal injury claims without the necessity of a conservatorship or a bond by freezing the money at a bank or savings and loan until the minor's 18th birthday, and the only way the money could be withdrawn is with a Court order. Last month a Shawnee County District Court Judge ruled that he had no legal authority to settle a minor's case in the above manner, and that is why I am requesting that the legislature amend K.S.A. 59-3015 as I have outlined above.

This amendment gives all Kansas Judges the discretion to settle claims involving minors without the appointment of a conservatorship or giving a bond, but it is not mandatory for Judges to do so.

I recently settled a personal injury claim for a 7 year old boy in which he will end up receiving \$33,168.53. If this young man is forced to have a conservatorship and post a bond, then he would have the following expenses to pay over the next 11 years or until he turns 18 years of age:

1. Under Kansas law the conservator would have to purchase a bond in the amount of 125% of his settlement which is \$33,168.53. The bond would have to be approximately \$40,000.00 and since my client is only 7, the bond would have to be purchased for 11 years at the rate of \$137.00 per year or a total bond payment of \$1,507.00.
2. If a conservatorship was opened it would probably have to be filed in Morris County where my client lives. The court costs for the conservatorship would be \$59.50 and the attorney fees would probably run \$300.00.
3. The conservator would have to file an annual accounting over the next 11 years. The attorney fee to prepare the annual accounting and appear at the hearing will run about \$150.00 per year and over 11 years this will come to \$1,650.00.
4. When my client turns 18 years of age his conservatorship will have to be terminated and this will cost approximately \$150.00.

The total cost for the bond, conservatorship, annual accounting and termination of the conservatorship comes to \$3,666.50.

If K.S.A. 59-3015 is amended as I request, then there will be no cost to my 7 year old client over the next 11 years, but instead the money will be earning interest with no expenses deducted.

One of the main reasons my law firm started using "Order to Freeze Funds" over ten years ago was because we saw cases where conservators actually looted children's funds, and in many occasions these conservators were the parent of the minor. If the conservator acts improperly with the children's funds, then a bonding company will have to come in and repay the conservatorship and then sue the conservator which causes a lot of havoc, not only to the minor, but also to the justice system. Over ten years ago I met with the late Judge Vickers of the Shawnee County District Court regarding this

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problem, and he is the one that suggested we use the "Order To Freeze Funds" in order to avoid problems he also saw occurring with children's money being used improperly by parents who were appointed conservators over their children's money.

As I indicated, this amendment is discretionary and thus Judges do not have to follow it. By amending K.S.A. 59-3015 as I have requested, the legislature would be doing the following:

1. Protecting children;
2. Saving unnecessary expenses for children.

For the sake of our children, please support the above amendment.

History: L. 1965, ch. 347, § 14; L. 1983, ch. 191, § 11; L. 1986, ch. 213, § 3; L. 1989, ch. 175, § 2; July 1.

Research and Practice Aids:

Guardian and Ward = 10; Mental Health = 116 to 119.
C.J.S. Guardian and Ward §§ 16 to 19; Insane Persons §§ 42, 43.

Law Review and Bar Journal References:

"Redefining the Mentally Ill: 1986 Amendments to the Treatment Act for Mentally Ill Persons," Raymond L. Spring, 55 J.K.B.A. No. 5, 15, 17 (1986).

CASE ANNOTATIONS

1. Modifies common law rule with respect to order of priority in selection of guardian. In re Johnson, 210 K. 828, 830, 504 P.2d 217.
2. Grandparent with visitation rights under 38-129 not entitled to notice of adoption; court without power to grant right after adoption. Browning v. Tarwater, 215 K. 501, 504, 524 P.2d 1135.
3. Priority considered in selection of guardian and conservator of minor. In re Stremel, 233 K. 136, 139, 142, 660 P.2d 952 (1983).
4. Cited; 59-3004 inherently requires that will be probated before it is effective for appointment for guardianship purposes. In re Guardianship of Slemph, 11 K.A.2d 156, 159, 717 P.2d 519 (1986).
5. Factors in addition to statutory requirements to be considered in appointment of guardian for minor determined. In re Guardianship of T.D.S., 13 K.A.2d 275, 277, 769 P.2d 32 (1989).
6. Noted in holding provisions in 59-3010 mandatory not directory thus requiring compliance for jurisdiction regarding guardianship/conservatorship. In re Guardianship and Conservatorship of Fogle, 17 K.A.2d 357, 361, 837 P.2d 842 (1992).

59-3015. Small estates; investment; bond requirements, exception. (a) Any court having control over or custody of any amount of money not exceeding \$5,000, the right to which is vested in a minor, shall have the discretion to authorize, without the appointment of a conservator or the giving of bond, and notwithstanding the provisions of K.S.A. 59-3003 and amendments thereto: (1) The deposit of the money in a savings account of a bank, credit union or savings and loan association, payable to the conservator when appointed or to the minor upon attaining the age of majority; or (2) the payment of the money to any person, including the natural guardian of the minor or the minor. If paid to a person other than the minor, the person to whom the money is paid shall have the right and duty to manage, invest or otherwise dispose of the moneys for the benefit of the minor. If the minor is a conservatee, the court may authorize the payment of the money to the conservator of the minor without requiring the giving of bond.

(b) Any court having control over or custody of any amount of money not exceeding \$5,000, the right to which is vested in a person who has been adjudged to be a disabled person, shall have the discretion to authorize, without the giving of bond, the deposit of the money in a savings account of a bank, credit union or savings and loan association, payable to the conservator when appointed or to the disabled person on restoration to capacity. If the disabled person is a conservatee, the court may authorize the payment of the money to the conservator of the disabled person with the giving by the conservator of a personal bond.

History: L. 1965, ch. 347, § 15; L. 1983, ch. 191, § 12; L. 1984, ch. 51, § 7; July 1.

Research and Practice Aids:

Guardian and Ward = 53.
C.J.S. Guardian and Ward §§ 88 to 90.

59-3016. Change of place of hearing. After the petition provided for in K.S.A. 59-3009 or 59-3027, and amendments to these sections, is filed, the district court may at any time, on its own motion or upon the written request of any person, change the place of hearing on such petition:

- (a) To the county of the residence of the proposed ward or ward;
- (b) To the county in which the proposed ward or proposed conservatee or ward or conservatee is a patient receiving care or treatment under the authority of a psychiatric hospital;
- (c) To any other county designated by the court, when the proposed ward or proposed conservatee or ward or conservatee has made a request for a change of hearing and the district court finds that the proposed ward or proposed conservatee or ward or conservatee cannot obtain a fair hearing.

If any proposed ward or proposed conservatee, who is alleged to be a disabled person, or any ward or conservatee who was found to be a disabled person, is in a psychiatric hospital the district court of the county in which is located such hospital may not change the hearing under any circumstances unless the proposed ward or proposed conservatee or ward or conservatee has requested such change.

When any order changing the place of hearing is issued, the district court issuing such order shall transmit to the district court in which the hearing is to be held a certified copy of all pleadings and orders in the case.

Any district court changed shall proceed if the petition had been original. Cause notice of the hearing to be given in the manner provided in amendments thereto. The court shall not issue the order pursuant to subsection unless amendments thereto have been issued and the court finds that the suitability of the guardian or conservator is in the best interest of the minor.

Any district court shall transmit a statement of the facts and a certified copy of fact in the case to the district court venue. Upon receipt by the district court having venue, the court shall have given such notice to the guardian or conservator. At such hearing, the court shall deny the request for a change of venue and shall dismiss the petition if the certified copy of the petition is not filed.

History: L. 1984, ch. 242, § 93; L. 1989, ch. 175, § 2.

Research and Practice Aids:
Mechanics' Liens = 1
C.J.S. Mechanics' Liens = 1

CA:
1. Court conducting hearing shall determine the suitability of or appoint or award attorney fees. K.A.2d 640, 644, 648.

59-3017. Any district court venue of any case shall be held after the appointment of the guardian or conservator, when it is in the best interest of the conservatee, or conservatee. The court shall file a petition for the filing of a petition in such ward or conservatee. The time and place of the hearing shall be given to the guardian or conservator as the court may determine. The transfer of venue of the ward or conservatee, or conservatee, at the discretion of the court including the transfer making an original and essential files, not

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February 28, 2001

To: House Committee on Judiciary

Re: HB 2469

We are very grateful that consideration has been given in this bill to accommodating the religious views and practices of those who rely on spiritual means alone for the healing of illness or injury. Several such provisions from existing law have been retained in this bill.

An accommodation that existed in subsection (a) of the definitions in K.S.A. 3002, repealed by this bill, was not retained. That provision, in the definition of "Disabled person," is important to those relying on spiritual treatment in lieu of medical care. It states, "A person shall not be considered to be disabled or to lack capacity to meet the essential requirements for physical health or safety for the sole reason such person relies upon or is being furnished treatment by spiritual means through prayer, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which such person is a member or adherent."

We request that the bill be amended as shown below to correct this omission.

On page 1, add in New Section 2 (a), after line 38:

"A person shall not be considered to be impaired or to lack capacity to meet essential needs for physical health, safety or welfare because such person relies upon or is being furnished treatment by spiritual means through prayer, in lieu of medical treatment, in accordance with the express consent or practices of such person."

The proposed accommodation is worded to comply with court decisions in other jurisdictions that rely more on an individual's beliefs and practices than on the teachings of a particular religious denomination and, therefore, are considered more in harmony with state and national constitutions.

I will be glad to discuss this with you at your convenience.

Thank you for your consideration of this request.



Keith R. Landis
Committee on Publication
for Kansas

House Judiciary
2-28-01
Attachment 11