

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Vice-Chairperson Ward Loyd at 3:30 p.m. on February 5, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Kathe Lloyd - Excused
Representative Michael O'Neal - Excused
Representative Rick Rehorn - Excused
Representative Candy Ruff - Excused

Committee staff present:

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

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation
Judge Sam Bruner, Chairman Guardianship & Conservator Subcommittee, Kansas Judicial Council
Donna Bales, Life Project Foundation
Paul Davis, Kansas Bar Association
Dan Lykins, Attorney, Topeka, Kansas
Kirk Lowry, Topeka Independent Living Resource Center
Jean Krahn, Kansas Guardianship Program

Kyle Smith, Kansas Bureau of Investigation, appeared before the committee with three bill requests: clarify the financial responsibilities of law enforcement agencies when a newly trained officer is hired away from another agency; modify private detective licensing act to make licensing a biannual process; and clean-up legislation in K.S.A. 22-4902(h)(3), change (f) to (h) to incorporate last year's changes, clarify that expunged convictions must be divulged in applications for licensure as a PI, and prohibit expungement of sexual battery and aggravated sexual battery convictions for at least 10 years.

Representative Long made the motion to have the requests introduced as committee bills. Representative Patterson seconded the motion. The motion carried.

Representative Owens requested a bill relating to decay issue of juvenile offenders. Representative Swenson made the motion to have the request introduced as a committee bill. Representative Long seconded the motion. The motion carried.

Representative Dillmore requested three bills: revising the offenders criminal history worksheet; providing court appointed interpreters; and dealing with victim notification of off grid crimes. Representative Long made the motion to have the requests introduced as committee bills. Representative Klein seconded the motion. The motion carried.

Representative DiVita made the motion to clean-up post release supervision for misdemeanors. Representative Klein make the motion to have the request introduced as a committee bill. Representative Patterson seconded the motion. The motion carried.

Hearings on **HB 2469 - The 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 were approved at the Judicial Council meeting on January 4, 2002 and commented on those changes. (Attachment 1)

Donna Bales, Life Project Foundation, believes that the suggested amendments by the Judicial Council creates a stronger and safer place for the wards of the state. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 5, 2002 in Room 313-S of the Capitol.

Written testimony was provided by Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, and the Kansas State Nurses Association, in support of the bill. (Attachments 3 & 4)

Paul Davis, Kansas Bar Association, appeared to express that they still have concerns about the proposed bill and reduced their concerns into amendments. (Attachment 5)

Dan Lykins, Kansas Trial Lawyers Association, suggested an amendment which would allow the courts to freeze monies so conservators couldn't use it and therefore saving unnecessary expenses and providing children with more money when they reach the age of 18. (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 thirteen proposed amendments. (Attachment 7)

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 serves as surety on the bond. The agency stressed that it does not have funds or legal resources to serve as surety. (Attachment 8)

Vice Chairperson Loyd announce that there would be a subcommittee appointed to work the bill and report back to the full committee.

The committee meeting adjourned at 5:10 p.m. The next meeting was scheduled for February 6, 2002.

**Proposed Amendments to 2001 HB 2469
Revised Guardianship and Conservatorship Act**

**Recommended by the Guardianship and
Conservatorship Advisory Committee
Approved by the Judicial Council
January 4, 2002**

HOUSE BILL No. 2469

By Committee on Judiciary

2-9

1-2

9 AN ACT concerning guardians and conservators; amending K.S.A. 17-
10 2263, 17-2264, 17-5828, 17-5829, 38-1505, 39-789, 39-970, 44-513a,
11 58-629, 59-1701, 73-507, 76-12b04 and 77-201 and K.S.A. 2000 Supp.
12 9-1215, 9-1216, 58-24a15, 59-2946, 59-2948, 59-2949, 59-2951, 59-
13 2960, 59-29b46, 59-29b48, 59-29b49, 59-29b51, 59-29b60, 60-304, 61-
14 3004, 65-516, 65-5117 and 76-729 and repealing the existing sections;
15 also repealing K.S.A. 59-3001, 59-3003, 59-3004, 59-3006, 59-3007,
16 59-3008, 59-3011, 59-3012, 59-3015, 59-3016, 59-3017, 59-3018, 59-
17 3019, 59-3020, 59-3021, 59-3022, 59-3023, 59-3024, 59-3025, 59-3027,
18 59-3028, 59-3030, 59-3031, 59-3032, 59-3034, 59-3035, 59-3037 and
19 59-3038 and K.S.A. 2000 Supp. 59-3002, 59-3009, 59-3010, 59-3013,
20 59-3014, 59-3018a and 59-3026, 59-3029, 59-3036, 59-3039 and 60-
21 304a.

22
23 *Be it enacted by the Legislature of the State of Kansas:*

24 New Section 1. The act shall be known and may be cited as the act
25 for obtaining a guardian or a conservator, or both.

26 New Sec. 2. When used in the act for obtaining a guardian or a con-
27 servator, or both:

28 (a) "Adult with an impairment in need of a guardian or a conservator,
29 or both" means a person 18 years of age or older, or a minor who is
30 considered to be of the age of majority pursuant to K.S.A. 38-101, and
31 amendments thereto, or upon whom the rights of majority have been
32 conferred pursuant to K.S.A. 38-108, and amendments thereto, whose
33 ability to receive and evaluate relevant information, or to effectively com-
34 municate decisions, or both, even with the use of assistive technologies
35 or other supports, is impaired such that the person lacks the capacity to
36 manage such person's estate, or to meet essential needs for physical
37 health, safety or welfare, and who is in need of a guardian or a conservator,
38 or both.

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

40 (c) "Conservator" means an individual or a corporation who is ap-
41 pointed by the court to act on behalf of a conservatee and who is possessed
42 of some or all of the powers and duties set out in section 29, and amend-
43 ments thereto.

No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be an adult with an impairment in need of a guardian under this act for that reason alone, nor considered to lack the capacity to meet essential needs for physical health, safety or welfare because of such person's reliance upon such treatment.

(b) "Appropriate alternative" means any program or service, or the use of an legal device or representative, which enables a person with an impairment to adequately meet essential needs for physical health, safety or welfare, or to reasonably manage such person's estate. Appropriate alternatives may include, but are not limited to, a power of attorney, a durable power of attorney, a power of attorney for health care decisions, a living will, a trust, a joint tenancy or a representative payee.

or which
or which

[reletter all subsequent subsections]

1 (d) "Guardian" means an individual, ~~a corporation or a nonprofit cor-~~
 2 ~~poration certified in accordance with section 21, and amendments~~ is
 3 thereto, who or which ~~has been~~ appointed by a court to act on behalf of
 4 a ward, and who or which is possessed of some or all of the powers and
 5 duties set out in section 26, amendments thereto. "Guardian" does not
 6 mean a "natural guardian" unless specified.

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

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

13 (g) "Manage such person's estate" means making those determina-
 14 tions and taking those actions which are reasonably necessary in order for
 15 a person to receive and account for personal or business income, benefits
 16 and property, whether real, personal or intangible, and except for reasons
 17 of indigency, to purchase or otherwise obtain necessary goods or services,
 18 to pay debts and expenses, to sell, exchange or otherwise dispose of prop-
 19 erty, and to plan for future accumulation, conservation, utilization, in-
 20 vestment, and other disposition of financial resources.

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

26 (i) "Minor" means any person defined by K.S.A. 38-101, and amend-
 27 ments thereto, as being within the period of minority.

28 (j) "Minor with an impairment in need of a guardian or a conservator,
 29 or both" means a person under 18 years of age who otherwise meets the
 30 definition of an "adult with an impairment in need of a guardian or con-
 31 servator, or both" and whose impairment is expected to continue beyond
 32 the age of 18.

33 (k) "Natural guardian" means both the biological or adoptive mother
 34 and father of a minor if neither parent has been found to be an adult with
 35 an impairment in need of a guardian or has had parental rights terminated
 36 by a court of competent jurisdiction. If either parent of a minor is de-
 37 ceased, or has been found to be an adult with an impairment in need of
 38 a guardian or has had parental rights terminated by a court of competent
 39 jurisdiction, then the other parent shall be the natural guardian, unless
 40 also deceased, or found to be an adult with an impairment in need of a
 41 guardian, or has had parental rights terminated by a court of competent
 42 jurisdiction, in which case no person shall qualify as the natural guardian.

3 (l) "Person who has been previously adjudged as impaired in another

1 state" means a person who has been duly adjudged by a court of com-
2 petent jurisdiction of any other state to be unable to meet essential needs
3 for physical health, safety or welfare or to manage such person's estate
4 and for whom a guardian or a conservator, or other similarly empowered
5 fiduciary, has been appointed by that court, but who now resides within
6 Kansas or for whom plans have been made by such person's guardian or
7 other fiduciary to relocate the person to Kansas.

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

13 (n) "Proposed ward" means a person for whom a petition for the
14 appointment of a guardian pursuant to section 9, 10, 11 or 12, and amend-
15 ments thereto, has been filed.

16 (o) "Proposed conservatee" means a person for whom a petition for
17 the appointment of a conservator pursuant to section 9, 10, 11, 12 or 13,
18 and amendments thereto, has been filed.

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

20 (q) The terms defined in K.S.A. 2000 Supp. 59-2946 and 59-29b46,
21 and amendments thereto, have the meanings provided by those statutes.

22 New Sec. 3. In computing the date upon or by which any act must
23 be done or hearing held under provisions of this article, the day on which
24 an act or event occurred and from which a designated period of time is
25 to be calculated shall not be included, but the last day in a designated
26 period of time shall be included unless that day falls on a Saturday, Sunday
27 or legal holiday, in which case the next day which is not a Saturday, Sunday
28 or legal holiday shall be considered to be the last day.

29 New Sec. 4. (a) A natural guardian shall have the right to the custody
30 of the natural guardian's minor child and the right to exercise control over
31 the person of the natural guardian's minor child as provided by law, unless
32 a guardian has been appointed for the minor. The natural guardian of
33 such minor has the right and responsibility to hold in trust and manage
34 such person's estate for such person's benefit all of the personal and real
35 property vested in such minor when the total of such property does not
36 exceed \$10,000 in value, unless a guardian or conservator has been ap-
37 pointed for the minor.

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

41 New Sec. 5. (a) Any natural guardian, by last will, may nominate a
42 conservator of only that portion of the estate of such guardian's minor
43 child, whether born at the time of the execution of the will or afterwards,

, and who has property in Kansas for which a conservator is required.

1 which is devised or bequeathed by such natural guardian to the child.
2 (b) A surviving natural guardian, by last will or by a trust instrument
3 establishing an inter vivos trust, may nominate a guardian or conservator,
4 or both, for any of such guardian's minor children, whether born at the
5 time of the execution of the will or trust instrument or afterwards.

6 (c) The nominated guardian or conservator, if a fit and proper person,
7 shall be strongly considered by the district court to be appointed pursuant
8 to section 19, and amendments thereto, if it is found, during the trial held
9 pursuant to section ~~17~~, and amendments thereto, that a guardian or con-
10 servator, or both, should be appointed for the minor child of the testator
11 or settlor.

18

12 New Sec. 6. (a) Any court having either control over or possession
13 of any amount of money not exceeding \$50,000, the right to which is
14 vested in a minor, shall have the discretion to authorize, without the
15 appointment of a conservator or the giving of bond, and notwithstanding
16 the authority of a natural guardian as provided for in section 4, and
17 amendments thereto, the deposit of the money in a savings account of a
18 bank, credit union or savings and loan association, payable either to a
19 conservator, if one shall be appointed for the minor, or to the minor upon
20 attaining the age of 18 years.

21 (b) Any court having either control over or possession of any amount
22 of money not exceeding \$10,000, the right to which is vested in a minor,
23 shall have the discretion to order the payment of the money to any person,
24 including the natural guardian of the minor, or the minor. If the person
25 is the conservator for the minor, the court may waive or recommend the
26 waiver of the requirement of a bond. If the person is anyone other than
27 the minor, the court shall order that person to hold in trust and manage
28 such person's estate for such person's benefit.

29 (c) Any court having either control over or possession of any amount
30 of money not exceeding \$10,000, the right to which is vested in a person
31 for whom a guardian has been appointed, shall have the discretion to
32 authorize, without the appointment of a conservator or the giving of bond,
33 the deposit of the money in a savings account of a bank, credit union or
34 savings and loan association, payable to the guardian for the benefit of
35 the ward if authorized pursuant to subsection (e)(9) of section 26, and
36 amendments thereto, payable to a conservator, if one shall be appointed
37 for the person, or payable to the ward on restoration to capacity.

38 New Sec. 7. An adult person for whom no guardian or conservator
39 has been appointed, and who is not a proposed ward or a proposed con-
40 servatee may file in the district court of the county of residence of such
41 person a verified petition requesting the appointment of a conservator
42 for the petitioner. The petition shall include:

43 (a) The person's name, age, date of birth, address of permanent res-

1 idence and present address or whereabouts, if different from the person's
2 permanent residence;

3 (b) the factual basis upon which the person alleges the need for the
4 appointment of a conservator;

5 (c) the name, and address, and relationship to the person, if any, of
6 the individual or corporation whom the person requests that the court
7 appoint as the conservator and whether such individual or corporation
8 should be required to file a bond. If the proposed conservator is under
9 contract with the Kansas guardianship program, the petition shall state
10 that fact;

11 (d) a request that the court make a determination that there is a need
12 for the appointment of a conservator and that the court appoint a
13 conservator;

14 (e) the names and addresses of the relatives nearest in kinship to the
15 person;

16 (f) the general character and probable value of the real and personal
17 property, including the amount and sources of income, of the person;

18 (g) the name, address of any existing fiduciary for the person and a
19 description of that fiduciary relationship.

20 New Sec. 8. Upon the filing of a petition as provided for in section
21 7, and amendments thereto, the court shall issue an order fixing the date,
22 time and place of the trial on the petition and order that notice of this
23 trial shall be given to such persons as the court shall direct. The trial may
24 be held forthwith and without notice if the court determines that holding
25 a trial forthwith and without notice is in the best interests of the peti-
26 tioner. Upon completion of the trial, if the court finds that the petitioner
27 has knowingly and voluntarily made this request and that it is in the best
28 interests of the petitioner that a conservator be appointed, the court, upon
29 the filing of an oath and a bond in such an amount as the court may direct
30 pursuant to section 20, and amendments thereto, shall issue letters of
31 conservatorship to the individual or corporation named in the petition, if
32 fit and proper to be so appointed.

33 New Sec. 9. (a) (1) Any person may file in the district court of the
34 county of residence of the proposed ward or proposed conservatee or of
35 any county wherein the proposed ward or proposed conservatee may be
36 found, a verified petition requesting the appointment of a guardian or a
37 conservator, or both, for an adult with an impairment in need of a guard-
38 ian or conservator, or both. If the proposed conservatee is not a resident
39 of or present within the state of Kansas, such petition may be filed in the
40 district court of any county in which any property of the proposed con-
41 servatee is situated.

42 (2) If a petition is filed in the district court of a county other than the
43 county of residence of the proposed ward or proposed conservatee, the

1 court may consider whether it is in the best interests of the proposed
2 ward or proposed conservatee or in the interests of justice for the pro-
3 ceedings to take place in that county.

4 (3) If the court finds it is not in the best interests of the proposed
5 ward or proposed conservatee or in the interests of justice that the pro-
6 ceedings take place in that county and the proposed ward or proposed
7 conservatee is a nonresident of the state of Kansas, the court may dismiss
8 the matter immediately, or may continue the matter for a specific period
9 of time not to exceed 60 days to allow for the filing of proceedings in the
10 state of residence. After the expiration of that period of time, or upon the
11 filing of proceedings in the state of residence, the court shall dismiss the
12 petition without prejudice.

13 (4) If the court finds it is not in the best interests of the proposed
14 ward or proposed conservatee or in the interests of justice that the pro-
15 ceedings take place in that county and the proposed ward or proposed
16 conservatee is a resident of a different county in Kansas, the court may
17 dismiss the matter immediately, or may transfer venue to the county of
18 residence, or may continue the matter for a specific period of time not
19 to exceed 60 days to allow for the filing of proceedings in the county of
20 residence. After the expiration of that period of time, or upon the filing
21 of proceedings in the county of residence, the court shall dismiss the
22 petition without prejudice.

23 (b) The petition shall include:

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

25 (2) the proposed ward's or proposed conservatee's name, age, date
26 of birth, address of permanent residence, and present address or where-
27 abouts, if different from the proposed ward's or proposed conservatee's
28 permanent residence;

29 (3) if the proposed ward or proposed conservatee is a nonresident of
30 the county in which the petition is filed, a statement of why it is in the
31 best interests of the proposed ward or proposed conservatee or in the
32 interests of justice for the proceedings to take place in that county;

33 (4) if the proposed ward or proposed conservatee is under the age of
34 18 years, the factual circumstances under which the petitioner alleges
35 that the minor should be considered to be of the age of majority pursuant
36 to the provisions of K.S.A. 38-101, and amendments thereto, or concern-
37 ing when and where the rights of majority were conferred upon the minor
38 pursuant to the provisions of K.S.A. 38-108, and amendments thereto;

39 (5) a statement that it is the petitioner's belief that the proposed ward
40 or proposed conservatee is an adult with an impairment in need of a
41 guardian or a conservator, or both;

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

43 (7) the names and addresses of any spouse, adult children and adult

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

10 (8) the name and address of any person or agency having custody of
11 the proposed ward or proposed conservatee, or any other person or
12 agency who has assumed responsibility for the proposed ward or proposed
13 conservatee, and the circumstances under which the proposed ward or
14 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
16 nominated to act on behalf of the proposed ward or proposed conservatee
17 pursuant to any power of attorney, trust or other fiduciary relationship
18 established by any court order, and a description of that authority or
19 relationship. If not known, the petition shall state that the petitioner has
20 made diligent inquiry to learn this information;

21 (10) a list and description of all court proceedings in which the pro-
22 posed ward or conservatee is a party, or is the subject of, or may be a
23 beneficiary of, or in which any rights of the proposed ward or proposed
24 conservatee may be determined or affected, and the name and address
25 of any attorney who represents the proposed ward or proposed conser-
26 vatee in such matter. If not known, the petition shall state that the peti-
27 tioner has made diligent inquiry to learn this information;

28 (11) in general terms, the location, type, and value of any real or
29 personal property of the proposed ward or proposed conservatee, includ-
30 ing the amount and sources of any income of the proposed ward or pro-
31 posed conservatee. If not known, the petition shall state that the peti-
32 tioner has made diligent inquiry to learn this information;

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

35 (13) the name, address, and relationship to the proposed ward or
36 proposed conservatee, if any, of the individual or corporation whom the
37 petitioner suggests that the court appoint as the guardian or as the con-
38 servator, or both, and if the suggested guardian or conservator is under
39 contract with the Kansas guardianship program, that fact;

40 (14) if the petitioner suggests the appointment of co-guardians or co-
41 conservators, or both, a statement of the reasons why such appointment
42 is sought and whether the petitioner suggests that the co-guardians or co-
43 conservators, if appointed, should be able to act independently or whether

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

3 (15) a request that the court make a determination that the proposed
4 ward or proposed conservatee is an adult with an impairment in need of
5 a guardian or a conservator, or both, that the court enter one or more of
6 the orders provided for in sections 14, 15 and 16, and amendments
7 thereto, and that the court appoint a guardian or a conservator, or both,
8 for the proposed ward or proposed conservatee.

9 (c) Any such petition may be accompanied by, or the court may re-
10 quire that such petition be accompanied by, a report of an examination
11 and evaluation which meets the requirements of section 15, and amend-
12 ments thereto. In such case, the petition may include a request that the
13 court accept this report in lieu of ordering any additional examination and
14 evaluation pursuant to section 15, and amendments thereto.

15 (d) Any such petition may be accompanied by, or the court may re-
16 quire that such petition be accompanied by, a proposed guardianship plan
17 as provided for in section 27, and amendments thereto, or a proposed
18 conservatorship plan as provided for in section 30, and amendments
19 thereto, or both.

20 New Sec. 10. (a) (1) Any person may file in the district court of the
21 county of residence of the proposed ward or proposed conservatee or of
22 any county wherein the proposed ward or proposed conservatee may be
23 found, a verified petition requesting the appointment of a guardian or a
24 conservator, or both, for a minor in need of a guardian or conservator, or
25 both. If the proposed conservatee is not a resident of or present within
26 the state of Kansas, such petition may be filed in the district court of any
27 county in which any property of the proposed conservatee is situated.

28 (2) If a petition is filed in the district court of a county other than the
29 county of residence of the minor, the court may consider whether it is in
30 the best interests of the minor or in the interests of justice for the pro-
31 ceedings to take place in that county.

32 (3) If the court finds it is not in the best interests of the minor or in
33 the interests of justice that the proceedings take place in that county and
34 the minor is a nonresident of the state of Kansas, the court may dismiss
35 the matter immediately, or may continue the matter for a specific period
36 of time not to exceed 60 days to allow for the filing of proceedings in the
37 state of residence. After the expiration of that period of time, or upon the
38 filing of proceedings in the state of residence, the court shall dismiss the
39 petition without prejudice.

40 (4) If the court finds it is not in the best interests of the minor or in
41 the interests of justice that the proceedings take place in that county and
42 the minor is a resident of a different county in Kansas, the court may
43 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
2 to exceed 60 days to allow for the filing of proceedings in the county of
3 residence. After the expiration of that period of time, or upon the filing
4 of proceedings in the county of residence, the court shall dismiss the
5 petition without prejudice.

6 (b) The petition shall include:

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

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

11 (3) if the minor is a nonresident of the county in which the petition
12 is filed, a statement of why it is in the best interests of the minor or in
13 the interests of justice for the proceedings to take place in that county;

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

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

18 (6) the names and addresses of any spouse of the minor, any natural
19 guardian, any grandparent, any person nominated by a natural guardian
20 to be the guardian or conservator, or both, any child or children of the
21 minor, any permanent guardian appointed for the minor pursuant to
22 K.S.A. 38-1584, and amendments thereto, any fiduciary appointed for the
23 minor by any court order, and any other person or agency having or
24 claiming a right to legal or physical custody of or visitation with the minor
25 or who has assumed responsibility for or care of the minor, and the cir-
26 cumstances under which the minor came into such person's or agency's
27 care or control. If no such names or addresses are known to the petitioner,
28 but the petitioner has reason to believe such persons exist, then the pe-
29 tition shall state that fact and that the petitioner has made diligent inquiry
30 to learn those names and addresses;

31 (7) a list and description of all court proceedings in which the minor
32 is or has recently been a party, or is or has recently been the subject of,
33 or was or may be a beneficiary of, or in which any rights of the minor
34 were or may be determined or affected, including any proceedings con-
35 cerning the custody of or visitation with the minor, any domestic relations
36 matters, juvenile proceedings or adoptions, and the name and address of
37 any attorney who represents or has represented the minor in any such
38 matter. If not known, the petition shall state that the petitioner has made
39 diligent inquiry to learn this information;

40 (8) in general terms, the location, type, and value of any real or per-
41 sonal property of the minor, including the amount and sources of any
42 income of the minor. If not known, the petition shall state that the peti-
43 tioner has made diligent inquiry to learn this information;

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

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

6 (11) if the petitioner suggests the appointment of co-guardians or co-
7 conservators, or both, a statement of the reasons why such appointment
8 is sought and whether the petitioner suggests that the co-guardians or co-
9 conservators, if appointed, should be able to act independently or whether
10 they should be required to act only in concert or only in concert with
11 regard to specified matters; and

12 (12) a request that the court make a determination that the proposed
13 ward or proposed conservatee is a minor in need of a guardian or a con-
14 servator, or both, that the court enter one or more of the orders provided
15 for in sections 14 and 16, and amendments thereto, and that the court
16 appoint a guardian or a conservator, or both, for the minor.

17 (c) Any such petition may be accompanied by, or the court may require
18 that such petition be accompanied by, a proposed guardianship plan as
19 provided for in section 27, and amendments thereto, or a proposed con-
20 servatorship plan as provided for in section 30, and amendments thereto,
21 or both.

22 New Sec. 11 (a) (1) Any person may file in the district court of the
23 county of residence of the proposed ward or proposed conservatee or of
24 any county wherein the proposed ward or proposed conservatee may be
25 found, a verified petition requesting the appointment of a guardian or a
26 conservator, or both, for a minor with an impairment in need of a guardian
27 or conservator, or both. If the proposed conservatee is not a resident of
28 or present within the state of Kansas, such petition may be filed in the
29 district court of any county in which any property of the proposed con-
30 servatee is situated. If a petition is filed in the district court of a county
31 other than the county of residence of the minor, the court may consider
32 whether it is in the best interests of the minor or in the interests of justice
33 for the proceedings to take place in that county.

34 (2) If the court finds it is not in the best interests of the minor or in
35 the interests of justice that the proceedings take place in that county and
36 the minor is a nonresident of the state of Kansas, the court may dismiss
37 the matter immediately, or may continue the matter for a specific period
38 of time not to exceed 60 days to allow for the filing of proceedings in the
39 state of residence. After the expiration of that period of time, or upon the
40 filing of proceedings in the state of residence, the court shall dismiss the
41 petition without prejudice.

42 (3) If the court finds it is not in the best interests of the minor or in
43 the interests of justice that the proceedings take place in that county and

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

8 (b) The petition shall include:

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

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

13 (3) if the minor is a nonresident of the county in which the petition
14 is filed, a statement of why it is in the best interests of the minor or in
15 the interests of justice for the proceedings to take place in that county;

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

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

20 (6) the names and addresses of any spouse of the minor, any natural
21 guardian, any grandparent, any person nominated by a natural guardian
22 to be the guardian or conservator, or both, any child or children of the
23 minor, any permanent guardian appointed for the minor pursuant to
24 K.S.A. 38-1584, and amendments thereto, any fiduciary appointed for the
25 minor by any court order, and any other person or agency having or
26 claiming a right to legal or physical custody of or visitation with the minor
27 or who has assumed responsibility for or care of the minor, and the cir-
28 cumstances under which the minor came into such person's or agency's
29 care or control. If no such names or addresses are known to the petitioner,
30 but the petitioner has reason to believe such persons exist, then the pe-
31 tition shall state that fact and that the petitioner has made diligent inquiry
32 to learn those names and addresses;

33 (7) a list and description of all court proceedings in which the minor
34 is or has recently been a party, or is or has recently been the subject of,
35 or was or may be a beneficiary of, or in which any rights of the minor
36 were or may be determined or affected, including any proceeding con-
37 cerning the custody of or visitation with the minor, any domestic relations
38 matters, juvenile proceedings or adoptions, and the name and address of
39 any attorney who represents or has represented the minor in any such
40 matter. If not known, the petition shall state that the petitioner has made
41 diligent inquiry to learn this information;

42 (8) in general terms, the location, type, and value of any real or per-
43 sonal property of the minor, including the amount and sources of any

1 income of the minor. If known, the petition shall state that the peti-
2 tioner has made diligent inquiry to learn this information;

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

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

8 (11) if the petitioner suggests the appointment of co-guardians or co-
9 conservators, or both, a statement of the reasons why such appointment
10 is sought and whether the petitioner suggests that the co-guardians or co-
11 conservators, if appointed, should be able to act independently or whether
12 they should be required to act only in concert or only in concert with
13 regard to specified matters; and

14 (12) a request that the court make a determination that the proposed
15 ward or proposed conservatee is a minor with an impairment in need of
16 a guardian or conservator, or both, that the court enter one or more of
17 the orders provided for in sections 14, 15 and 16, and amendments
18 thereto, that the court appoint a guardian or a conservator, or both, for
19 the minor and that the court order that this appointment shall extend
20 beyond the minor's 18th birthday.

21 (c) Any such petition may be accompanied by, or the court may re-
22 quire that such petition be accompanied by, a report of an examination
23 and evaluation which meets the requirements of section 15, and amend-
24 ments thereto. In such case, the petition may include a request that the
25 court accept this report in lieu of ordering any additional examination and
26 evaluation pursuant to section 15, and amendments thereto.

27 (d) Any such petition may be accompanied by, or the court may re-
28 quire that such petition be accompanied by, a proposed guardianship plan
29 as provided for in section 27, and amendments thereto, or a proposed
30 conservatorship plan as provided for in section 30, and amendments
31 thereto, or both.

32 New Sec. 12. (a) The guardian, conservator or other similarly em-
33 powered fiduciary appointed in any other state for a person who has been
34 previously adjudged as impaired in another state may file in the district
35 court of the county wherein the proposed ward or proposed conservatee
36 may be found or wherein the petitioner plans to relocate the proposed
37 ward or proposed conservatee, a verified petition requesting that the
38 court give full faith and credit to the prior adjudication and appoint a
39 guardian or a conservator, or both, in Kansas. The petition shall also
40 declare that immediately upon such appointment, the petitioner will take
41 the necessary action to terminate the proceedings in the other state.

42 (b) The petition shall include:

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

1 (2) the proposed ward's or proposed conservatee's name, age, date
2 of birth, address of permanent residence, and present address or where-
3 abouts, if different from the proposed ward's or proposed conservatee's
4 permanent residence;

5 (3) if the proposed ward or proposed conservatee is not already pres-
6 ent within Kansas, the address and nature of the place located within
7 Kansas to which the petitioner plans to relocate the proposed ward or
8 proposed conservatee if the court does appoint a guardian or conservator,
9 or both, in Kansas;

10 (4) the place where and the date upon which the petitioner was ap-
11 pointed as the guardian, conservator or other similarly empowered fidu-
12 ciary for the proposed ward or proposed conservatee and a statement that
13 this appointment remains in full force and effect;

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

16 (6) the names and addresses of any spouse, adult children and adult
17 grandchildren of the proposed ward or proposed conservatee, and those
18 of any parent and adult siblings of the proposed ward or proposed con-
19 servatee, or if no such names or addresses are known to the petitioner,
20 the name and address of at least one adult who is nearest in kinship to
21 the proposed ward or proposed conservatee, or if none, that fact. If no
22 such names or addresses are known to the petitioner, but the petitioner
23 has reason to believe such persons exist, then the petition shall state that
24 fact and that the petitioner has made diligent inquiry to learn those names
25 and addresses;

26 (7) the name and address of any person or corporation acting for or
27 nominated to act on behalf of the proposed ward or proposed conservatee
28 pursuant to any power of attorney, trust or other fiduciary relationship
29 established by any court order, other than the appointment in the other
30 state of the petitioner as the guardian, conservator or other similarly em-
31 powered fiduciary for the proposed ward or proposed conservatee, and a
32 description of that authority or relationship. If not known, the petition
33 shall state that the petitioner has made diligent inquiry to learn this
34 information;

35 (8) a list and description of all court proceedings in which the pro-
36 posed ward or conservatee is a party, or is the subject of, or may be a
37 beneficiary of, or in which any rights of the proposed ward or proposed
38 conservatee may be determined or affected, and the name and address
39 of any attorney who represents the proposed ward or proposed conser-
40 vatee in such matter. If not known, the petition shall state that the peti-
41 tioner has made diligent inquiry to learn this information;

42 (9) in general terms, the location, type and value of any real or per-
43 sonal property of the proposed ward or proposed conservatee, including

1 the amount and sources of any income of the proposed ward or proposed
2 conservatee. If not known, the petition shall state that the petitioner has
3 made diligent inquiry to learn this information;

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

6 (11) the name, address, and relationship to the proposed ward or
7 proposed conservatee, if any, of the individual or corporation whom the
8 petitioner suggests that the court appoint as the guardian or as the con-
9 servator, or both, and if the suggested guardian or conservator is under
10 contract with the Kansas guardianship program, that fact;

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

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

20 (14) a request that the court make a determination that the proposed
21 ward or proposed conservatee is a person who has been previously ad-
22 judged as impaired in another state, that the court enter one or more of
23 the orders provided for in sections 14 and 16, and amendments thereto,
24 and that the court appoint a guardian or conservator, or both, for the
25 proposed ward or proposed conservatee in Kansas.

26 (c) Any such petition shall be accompanied by a duly authenticated
27 copy of the order of adjudication and appointment and documents show-
28 ing the continuing authority of the petitioner in the other state.

29 (d) Any such petition may be accompanied by, or the court may re-
30 quire that such petition be accompanied by, a proposed guardianship plan
31 as provided for in section 27, and amendments thereto, or a proposed
32 conservatorship plan as provided for in section 30, and amendments
33 thereto, or both.

34 New Sec. 13. (a) The conservator or other similarly empowered fi-
35 duciary appointed in any other state for a person in need of an ancillary
36 conservator may file in the district court of any county in which any prop-
37 erty of the proposed conservatee is situated a verified petition requesting
38 the appointment of an ancillary conservator in Kansas.

39 (b) The petition shall include:

40 (1) The petitioner's name and address, and a statement that the pe-
41 titioner is the conservator or other similarly empowered fiduciary ap-
42 pointed in another state, and that this appointment remains in full force
43 and effect;

- 1 (2) the proposed conservatee's name, age, date of birth, address of
- 2 permanent residence, and present address or whereabouts, if different
- 3 from the proposed conservatee's permanent residence;
- 4 (3) a statement that the proposed conservatee is a person in need of
- 5 an ancillary conservator;
- 6 (4) the factual basis upon which the petitioner alleges the need for
- 7 an ancillary conservatorship in this state;
- 8 (5) the names and addresses of any spouse, adult children and adult
- 9 grandchildren of the proposed conservatee, and those of any parent and
- 10 adult siblings of the proposed conservatee, or if no such names or ad-
- 11 dresses are known to the petitioner, the name and address of at least one
- 12 adult who is nearest in kinship to the proposed conservatee. If no such
- 13 names or addresses are known to the petitioner, but the petitioner has
- 14 reason to believe such persons exist, then the petition shall state that fact
- 15 and that the petitioner has made diligent inquiry to learn those names
- 16 and addresses;
- 17 (6) the name and address of any person or corporation acting for or
- 18 nominated to act on behalf of the proposed conservatee in this state pur-
- 19 suant to any power of attorney, trust or other fiduciary relationship es-
- 20 tablished by any court order, and a description of that authority or rela-
- 21 tionship. If not known, the petition shall state that the petitioner has made
- 22 diligent inquiry to learn this information;
- 23 (7) the location and value of the property within Kansas for which an
- 24 ancillary conservatorship is being sought;
- 25 (8) the names and addresses of witnesses by whom the truth of the
- 26 petition may be proved;
- 27 (9) the name, address and relationship to the proposed conservatee,
- 28 if any, of the individual or corporation whom the petitioner suggests that
- 29 the court appoint as the ancillary conservator, and if the suggested ancil-
- 30 lary conservator is under contract with the Kansas guardianship program,
- 31 that fact;
- 32 (10) if the petitioner suggests the appointment of co-ancillary con-
- 33 servators, a statement of the reasons why such appointment is sought and
- 34 whether the petitioner suggests that the co-ancillary conservators, if ap-
- 35 pointed, should be able to act independently or whether they should be
- 36 required to act only in concert or only in concert with regard to specified
- 37 matters; and
- 38 (11) a request that the court make a determination that the proposed
- 39 conservatee is a person in need of an ancillary conservator, that the court
- 40 enter one or more of the orders provided for in sections 14 and 16, and
- 41 amendments thereto, and that the court appoint an ancillary conservator
- 42 for the proposed conservatee in this state.

43 (c) The petition shall be accompanied by a duly authenticated copy

1 of the order of adjudication and appointment and documents showing
2 the continuing authority of the petitioner in the other state.

3 (d) Any such petition may be accompanied by, or the court may re-
4 quire that such petition be accompanied by, a proposed conservatorship
5 plan as provided for in section 30, and amendments thereto.

6 New Sec. 14. (a) Upon the filing of a petition as provided for in
7 section 9, and amendments thereto, alleging that the proposed ward or
8 proposed conservatee is an adult with an impairment in need of a guardian
9 or conservator, or both, or as provided for in section 11, and amendments
10 thereto, alleging that the proposed ward or proposed conservatee is a
11 minor with an impairment in need of a guardian or conservator, or both,
12 the district court shall issue the following:

13 (1) An order fixing the date, time and place of the trial on the petition.
14 Such trial, in the court's discretion, may be conducted in a courtroom, a
15 treatment facility or at some other suitable place. The time fixed in the
16 order shall in no event be earlier than seven days or later than 21 days
17 after the date of the filing of the petition. If a demand for a trial by jury
18 is filed pursuant to subsection (b) of section 18, and amendments thereto,
19 by the proposed ward or proposed conservatee, the court may continue
20 the trial and fix a new time and place of the trial at a time beyond the 21
21 days but within a reasonable time not to exceed 30 days from the date of
22 the filing of the demand.

23 (2) An order requiring that the proposed ward or proposed conser-
24 vatee appear at the time and place of the trial unless the court makes a
25 finding prior to the trial that the presence of the proposed ward or pro-
26 posed conservatee will be injurious to the person's health or welfare, or
27 that the proposed ward's or proposed conservatee's impairment is such
28 that the person could not meaningfully participate in the proceedings, or
29 that the proposed ward or proposed conservatee has filed with the court
30 a written waiver of such person's right to appear in person. In any such
31 case, the court shall enter in the record of the proceedings the facts upon
32 which the court has found that the presence of the proposed ward or
33 proposed conservatee at the trial should be excused. Notwithstanding the
34 foregoing provisions of this subsection, if the proposed ward or proposed
35 conservatee files with the court at least one day prior to the date of the
36 trial a written notice stating the person's desire to be present at the trial,
37 the court shall order that the proposed ward or proposed conservatee
38 must be present at the trial.

39 (3) An order appointing an attorney to represent the proposed ward
40 or proposed conservatee. The court shall give preference, in the appoint-
41 ment of this attorney, to any attorney who has represented the proposed
42 ward or proposed conservatee in other matters if the court has knowledge
43 of that prior representation, or to an attorney whom the proposed ward

1 or proposed conservatee has requested. The proposed ward or proposed
2 conservatee, if an adult, shall have the right to engage an attorney of the
3 proposed ward's or proposed conservatee's own choice and, in such case,
4 the attorney appointed by the court shall be relieved of all duties. Any
5 appointment made by the court shall terminate upon a final determina-
6 tion of the petition and any appeal therefrom, unless the court continues
7 the appointment by further order. Thereafter, an attorney may be ap-
8 pointed by the court if requested, in writing, by the ward, conservatee,
9 guardian or conservator, or upon the court's own motion.

10 (4) An order fixing the date, time and a place that is in the best
11 interests of the proposed ward or proposed conservatee, at which the
12 proposed ward or proposed conservatee shall have the opportunity to
13 consult with the court appointed attorney. This consultation shall be
14 scheduled to occur not later than five days prior to the scheduled trial on
15 the petition, provided that if an examination and evaluation as provided
16 for in section 15, and amendments thereto, is ordered, then this consul-
17 tation shall be scheduled to occur prior to the time at which that exami-
18 nation and evaluation is scheduled to occur.

19 (5) A notice as provided for in section 17, and amendments thereto.

20 (6) An order for an examination and evaluation as provided for in
21 section 15, and amendments thereto. If the petition is accompanied by a
22 report of an examination and evaluation of the proposed ward or proposed
23 conservatee, as provided for in section 9 or 11, and amendments thereto,
24 and the court determines that such report meets the requirements of
25 section 15, and amendments thereto, the court may determine that no
26 additional examination or evaluation is required and that none shall be
27 ordered unless requested by the proposed ward or proposed conservatee
28 pursuant to subsection (c) of section 15, and amendments thereto.

29 (b) Upon the filing of a petition as provided for in section 10, and
30 amendments thereto, alleging that the proposed ward or proposed con-
31 servatee is a minor in need of a guardian or conservator, or both, the
32 court shall issue an order fixing the date, time and place of the trial on
33 the petition. If the petition is filed on behalf of the minor by the minor's
34 natural guardian, the time of the hearing designated in the order may be
35 forthwith and without notice. In all other cases the trial shall be held no
36 earlier than seven days or later than 21 days after the date of the filing
37 of the petition, unless those persons or agencies entitled to notice pur-
38 suant to subsection (d) of section 17, and amendments thereto, have en-
39 tered their appearances, waived notice and consented to the appointment
40 of the suggested guardian or conservator, or both, in which case the trial
41 may be held forthwith and without notice.

42 (c) Upon the filing of a petition as provided for in section 12, and
43 amendments thereto, alleging that the proposed ward or proposed con-

1 servatee is a person who has been previously adjudged as impaired in
2 another state, the court shall issue an order fixing the date, time and place
3 of the trial on the petition, which trial shall be held no earlier than seven
4 days or later than 21 days after the date of the filing of the petition, unless
5 those persons or agencies entitled to notice pursuant to subsection (f) of
6 section 17, and amendments thereto, have entered their appearances,
7 waived notice, agreed to the court's accepting jurisdiction of the case if
8 transferred from the other state, and consented to the appointment in
9 Kansas of the suggested guardian or conservator, or both, in which case
10 the trial may be held forthwith and without notice.

11 (d) Upon the filing of a petition as provided for in section 13, and
12 amendments thereto, alleging that the proposed conservatee is a person
13 in need of an ancillary conservator and requesting the appointment of an
14 ancillary conservator in Kansas, the court shall issue an order fixing the
15 date, time and place of the trial on the petition, which trial shall be held
16 no earlier than seven days or later than 21 days after the date of the filing
17 of the petition, unless those persons or agencies entitled to notice pur-
18 suant to subsection (e) of section 17, and amendments thereto, have en-
19 tered their appearances, waived notice and consented to the appointment
20 in Kansas of the suggested ancillary conservator, in which case the trial
21 may be held forthwith and without notice.

22 New Sec. 15. (a) Upon the filing of a petition as provided for in
23 section 9, and amendments thereto, alleging that the proposed ward or
24 proposed conservatee is an adult with an impairment in need of a guardian
25 or conservator, or both, or as provided for in section 11, and amendments
26 thereto, alleging that the proposed ward or proposed conservatee is a
27 minor with an impairment in need of a guardian or conservator, or both,
28 the court shall order the proposed ward or proposed conservatee to sub-
29 mit to an examination and evaluation to be conducted through a general
30 hospital, psychiatric hospital, community mental health center, commu-
31 nity developmental disability organization, or by a private physician, psy-
32 chiatrist, psychologist or other professional appointed by the court who
33 is qualified to evaluate the proposed ward's or proposed conservatee's
34 alleged impairment. The order shall be served in the manner provided
35 for in section 17, and amendments thereto, and may be served at the
36 same time or after the notice provided for therein.

37 (b) Unless otherwise specified by the court, the report of the exam-
38 ination and evaluation submitted to the court shall contain:

- 39 (1) The proposed ward's or proposed conservatee's name, age and
40 date of birth;
- 41 (2) a description of the proposed ward's or proposed conservatee's
42 physical and mental condition;
- 43 (3) a description of the nature and extent of the proposed ward's or

1 proposed conservatee's cognitive and functional abilities and limitations,
2 including adaptive behaviors and social skills, and, as appropriate, edu-
3 cational and developmental potential;

4 (4) a prognosis for any improvement and, as appropriate, any rec-
5 ommendation for treatment or rehabilitation;

6 (5) a list and description of any prior assessments, evaluations or ex-
7 aminations of the proposed ward or proposed conservatee, including the
8 dates thereof, which were relied upon in the preparation of this
9 evaluation;

10 (6) the date and location where this examination and evaluation oc-
11 curred, and the name or names of the professional or professionals per-
12 forming the examination and evaluation and such professional's
13 qualifications;

14 (7) a statement by the professional that the professional has person-
15 ally completed an independent examination and evaluation of the pro-
16 posed ward or proposed conservatee, or by a professional on behalf of
17 the professionals who have together completed an independent exami-
18 nation and evaluation of the proposed ward or proposed conservatee that
19 they have done so, and that the report submitted to the court contains
20 the results of that examination and evaluation, and the professional's or
21 professionals' opinion with regard to the issues of whether or not the
22 proposed ward or proposed conservatee is an adult or a minor with an
23 impairment in need of a guardian or conservator, or both, and, if ascer-
24 tainable, whether it would be injurious to the proposed ward or proposed
25 conservatee to be required to be present at the trial on the petition, or
26 whether the proposed ward or proposed conservatee could meaningfully
27 participate in those proceedings; and

who may be

28 (8) the signature of the professional who prepared the report.

29 (c) The professional shall file with the court, at least five days prior
30 to the date of the trial, such professional's written report concerning the
31 examination and evaluation ordered by the court. The report shall be
32 made available by the court to counsel for all parties.

33 (d) In lieu of entering an order for an examination and evaluation as
34 provided for herein, the court may determine that the report accompa-
35 nying the petition as provided for in subsection (c) of section 9 or sub-
36 section (c) of section 11, and amendments thereto, is in compliance with
37 the requirements of this section and that no further examination or eval-
38 uation should be required, unless the proposed ward or proposed con-
39 servatee, or such person's attorney, requests such an examination and
40 evaluation in writing. Any such request shall be filed with the court, and
41 a copy thereof delivered to the petitioner, at least four days prior to the
42 date of the trial. Accompanying the request shall be a statement of the
43 reasons why an examination and evaluation is requested and the name

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

6 New Sec. 16. (a) Upon the filing of a petition as provided for in
7 section 9, 10, 11, 12 or 13, and amendments thereto, or at any time
8 thereafter until the trial provided for in section 18, and amendments
9 thereto, the court may enter any of the following:

10 (1) An order for an investigation and report concerning the proposed
11 ward's or proposed conservatee's family relationships, past conduct, the
12 nature and extent of any property or income of the proposed ward or
13 proposed conservatee; whether the proposed ward or proposed conser-
14 vatee is likely to injure self or others, or other matters as the court may
15 specify. If requested to do so by the court, the secretary of social and
16 rehabilitation services shall conduct this investigation. Otherwise, the
17 court may appoint any other person who is qualified to conduct this in-
18 vestigation, and the costs of this investigation shall be assessed as provided
19 for in section 44, and amendments thereto.

45

20 (2) Any orders requested or authorized pursuant to section 15, and
21 amendments thereto.

24

22 (3) For good cause shown, an order of continuance of the trial set
23 pursuant to section 14, and amendments thereto.

24 (4) For good cause shown, an order of advancement of the trial set
25 pursuant to section 14, and amendments thereto.

26 (5) For good cause shown, an order changing the place of the trial
27 set pursuant to section 14, and amendments thereto.

28 (6) A notice in the manner provided for in section 17, and amend-
29 ments thereto.

30 (b) Upon the filing of a petition as provided for in section 10, and
31 amendments thereto, alleging that the proposed ward or proposed con-
32 servatee is a minor in need of a guardian or conservator, or both, the
33 court may issue any of the following:

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

35 (2) An order requiring that the minor appear at the time and place
36 of the trial set pursuant to subsection (b) of section 14, and amendments
37 thereto. If an order to appear is entered, but is later rescinded, the court
38 shall enter in the record of the proceedings the facts upon which the
39 court found subsequent to the issuance of the order that the presence of
40 the minor should be excused.

41 (3) An order appointing an attorney to represent the minor. The court
42 shall give preference, in the appointment of the attorney, to any attorney
43 who has represented the minor in other matters if the court has knowl-

1 edge of that prior representation, or to an attorney whom the minor, if
2 14 years of age or older, has requested. Any appointment made by the
3 court shall terminate upon a final determination of the petition and any
4 appeal therefrom, unless the court continues the appointment by further
5 order. Thereafter, an attorney may be appointed by the court if requested,
6 in writing, by the guardian, conservator or minor, if 14 years of age or
7 older, or upon the court's own motion.

8 (4) A notice in the manner provided for in section 17, and amend-
9 ments thereto.

10 (5) An order for a psychological or other examination and evaluation
11 of the minor as may be specified by the court. The court may order the
12 minor to submit to such an examination and evaluation to be conducted
13 through a general hospital, psychiatric hospital, community mental health
14 center, community developmental disability organization, or by a private
15 physician, psychiatrist, psychologist or other person appointed by the
16 court who is qualified to examine and evaluate the minor. The costs of
17 this examination and evaluation shall be assessed as provided for in section
18 44, and amendments thereto.

19 (c) Upon the filing of a petition as provided for in section 11, and
20 amendments thereto, alleging that the proposed ward or proposed con-
21 servatee is a minor with an impairment in need of a guardian or conser-
22 vator, or both, the court may issue an order of temporary custody of the
23 minor.

24 (d) Upon the filing of a petition as provided for in section 12, and
25 amendments thereto, alleging that the proposed ward or proposed con-
26 servatee is a person who has been previously adjudged as impaired in
27 another state, the court may issue any of the following:

28 (1) An order appointing an attorney to represent the proposed ward
29 or proposed conservatee. In making this appointment, the court shall
30 consider the appointment of any attorney who has represented the pro-
31 posed ward or proposed conservatee in other matters if the court has
32 knowledge of that prior representation. Any appointment made by the
33 court shall terminate upon a final determination of the petition and any
34 appeal therefrom, unless the court continues the appointment by further
35 order. Thereafter, an attorney may be appointed at any time if requested,
36 in writing, by the ward, conservatee, guardian or conservator, or upon the
37 court's own motion.

38 (2) An order requiring that the proposed ward or proposed conser-
39 vatee appear at the time and place of the trial set pursuant to subsection
40 (d) of section 14, and amendments thereto. If an order to appear is en-
41 tered, but later rescinded, the court shall enter in the record of the pro-
42 ceedings the facts upon which the court found subsequent to the issuance
43 of the order that the presence of the proposed ward or proposed conser-

1 vatee should be excused.

2 (3) An order for an examination and evaluation of the proposed ward
3 or proposed conservatee as may be specified by the court. The court may
4 order the proposed ward or proposed conservatee to submit to such an
5 examination and evaluation to be conducted through a general hospital,
6 psychiatric hospital, community mental health center, community devel-
7 opmental disability organization, or by a private physician, psychiatrist,
8 psychologist or other person appointed by the court who is qualified to
9 examine and evaluate the proposed ward or proposed conservatee. The
10 costs of this examination and evaluation shall be assessed as provided for
11 in section 44, and amendments thereto.

12 (4) A notice in the manner provided for in section 17, and amendments
13 thereto.

14 (e) Upon the filing of a petition as provided for in section 13, and
15 amendments thereto, alleging that the proposed conservatee is a person
16 in need of an ancillary conservator and requesting the appointment of an
17 ancillary conservator in Kansas, the court may issue any of the following:

18 (1) An order appointing an attorney to represent the proposed con-
19 servatee. In making this appointment, the court shall consider the ap-
20 pointment of any attorney who has represented the proposed conservatee
21 in other matters if the court has knowledge of that prior representation.
22 Any appointment made by the court shall terminate upon a final deter-
23 mination of the petition and any appeal therefrom, unless the court con-
24 tinues the appointment by further order. Thereafter, an attorney may be
25 appointed at any time if requested, in writing, by the conservatee or con-
26 servator, or upon the court's own motion.

27 (2) A notice in the manner provided for in section 17, and amendments
28 thereto.

29 New Sec. 17. (a) The notice required by subsection (a)(5) of ~~sections~~ section
30 ~~14 and 16~~, and amendments thereto, and any notice which the court may
31 require pursuant to section 16, and amendments thereto, shall state:

32 (1) That a petition has been filed alleging that the proposed ward or
33 proposed conservatee is either an adult with an impairment in need of a
34 guardian or conservator, or both, or a minor in need of a guardian or
35 conservator, or both, or a minor with an impairment in need of a guardian
36 or conservator, or both, or a person who has been previously adjudged as
37 impaired in another state, or a person in need of an ancillary conservator,
38 and requesting the appointment of a guardian or a conservator, or both,
39 or an ancillary conservator in this state;

40 (2) the date, time and place when the trial upon the petition shall be
41 held;

42 (3) whether the proposed ward or proposed conservatee has been
43 ordered to appear at this trial, or whether the court has made any finding

1 which excuses the presence of the proposed ward or proposed conser-
2 vatee at the trial;

3 (4) whether any attorney has been appointed by the court to repre-
4 sent the proposed ward or proposed conservatee, and if so, the name of
5 that attorney and the date, time and place where the proposed ward or
6 proposed conservatee shall have the opportunity to consult with that
7 attorney;

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

12 (6) that if the court has appointed a temporary guardian or a tem-
13 porary conservator, or both, or a temporary ancillary conservator, that the
14 proposed ward or proposed conservatee, or certain others, may request
15 a hearing upon that appointment if that request is made in writing and
16 filed with the court not later than the third day following the entry of the
17 ex parte order appointing a temporary guardian or temporary conservator,
18 or both, or a temporary ancillary conservator, or of the service of that
19 order upon the proposed ward or proposed conservatee, if later;

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

23 (8) that the proposed ward or proposed conservatee, if alleged to be
24 an adult with an impairment in need of a guardian or a conservator, or
25 both, has a right to demand a jury trial by filing a written request for such
26 with the court at least four days prior to the date of the trial; and

27 (9) that if the proposed ward or proposed conservatee demands a jury
28 trial, that the trial may have to be continued by the court for a reasonable
29 time in order to empanel a jury, but that this continuance will not exceed
30 30 days from the date of the filing of the demand.

31 (b) The court may order any of the following persons to serve the
32 notice upon the proposed ward or proposed conservatee:

- 33 (1) The petitioner or the attorney for the petitioner;
- 34 (2) the attorney appointed by the court to represent the proposed
35 ward or proposed conservatee;
- 36 (3) any law enforcement officer; or
- 37 (4) any other person whom the court finds to be a proper person to
38 serve this notice.

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

41 (1) This notice shall be personally served on the proposed ward or
42 proposed conservatee as soon as possible, but in no case later than 10
43 days prior to the date of the trial and immediate return thereof shall be

1 made to the court by the person serving this notice. If the proposed ward
2 or proposed conservatee cannot be personally served with this notice
3 within Kansas, the court shall direct how this notice shall be served upon
4 the proposed ward or proposed conservatee.

5 (2) This notice shall be served on the attorney of the proposed ward
6 or proposed conservatee as soon as possible, but in no case later than 10
7 days prior to the date of the trial and immediate return thereof shall be
8 made to the court by the person serving this notice.

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

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

15 (1) This notice shall be served on the attorney appointed by the court
16 to represent the minor, if one has been appointed, and on those persons
17 and agencies, if any, required to be named by the petitioner pursuant to
18 subsection (b)(5) of section 10, and amendments thereto, as soon as pos-
19 sible, but in no case later than 10 days prior to the date of the trial and
20 immediate return thereof shall be made to the court by the person serving
21 this notice.

either

6

or subsection (b)(6) of section 11, and amendments thereto,

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

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

27 (1) This notice shall be served on the attorney appointed by the court
28 to represent the proposed ward or proposed conservatee, if one has been
29 appointed, and on those persons and agencies, if any, required to be
30 named by the petitioner pursuant to subsections (b)(6) and (b)(7) of sec-
31 tion 12, and amendments thereto, as soon as possible, but in no case later
32 than 10 days prior to the date of the trial and immediate return thereof
33 shall be made to the court by the person serving this notice.

34 (2) The court may order that a copy of this notice shall be served on
35 such other persons, including the proposed ward or proposed conserva-
36 tee, as the court determines and in such manner as the court directs.

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

39 (1) This notice shall be served on the attorney appointed by the court
40 to represent the proposed conservatee, if one has been appointed, and
41 on those persons and agencies, if any, required to be named by the pe-
42 titioner pursuant to subsections (b)(5), ~~(b)(6)~~ and (b)(7) of section 13, and
43 amendments thereto as soon as possible, but in no case later than 10 days

6

1 prior to the date of the trial and immediate return thereof shall be made
2 to the court by the person serving this notice.

3 (2) The court may order that a copy of this notice shall be served on
4 such other persons, including the proposed conservatee, as the court de-
5 termines and in such manner as the court directs.

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

9 New Sec. 18. (a) The trial upon a petition filed pursuant to section
10 9, 10, 11, 12 or 13, and amendments thereto, shall be held at the time
11 and place specified in the court's order entered pursuant to section 14,
12 and amendments thereto, unless an order of advancement, continuance
13 or change of place has been issued pursuant to section 16, and amend-
14 ments thereto, and may be consolidated with the trial provided for in the
15 care and treatment act for mentally ill persons, K.S.A. 2000 Supp. 59-
16 2945 *et seq.*, and amendments thereto, or the care and treatment act for
17 persons with an alcohol or substance abuse problem, K.S.A. 2000 Supp.
18 59-29b45, and amendments thereto, if the petition also incorporates the
19 allegations required by, and is filed in compliance with, the provisions of
20 either of those acts.

21 (b) If the petition alleges that the proposed ward or proposed con-
22 servatee is an adult with an impairment in need of a guardian or conser-
23 vator, or both, the trial may be held to a jury if, at least four days prior
24 to the date of the trial, a written demand for jury trial is filed with the
25 court by the proposed ward or proposed conservatee. In all other cases,
26 the trial shall be held to the court.

27 (c) The jury, if one is demanded, shall consist of six persons and shall
28 be selected as provided by law. Notwithstanding any provision of K.S.A.
29 43-166, and amendments thereto, to the contrary, a panel of prospective
30 jurors may be assembled by the clerk upon less than 20 days notice in
31 this circumstance. From this panel, 12 qualified jurors who have been
32 passed for cause shall be empaneled. Prior service as a juror in any other
33 court shall not exempt, for that reason alone, any person from jury service
34 hereunder. From the panel so obtained, the proposed ward or proposed
35 conservatee, or the attorney for the proposed ward or proposed conser-
36 vatee, shall strike one name; then the petitioner, or the petitioner's at-
37 torney, shall strike one name; and so on alternatively until each has
38 stricken three names so as to reach the jury of six persons. During this
39 process, if either party neglects or refuses to aid in striking the names,
40 the court shall strike a name on behalf of such party.

41 (d) The petitioner and the proposed ward or proposed conservatee
42 shall each be afforded an opportunity to appear at the trial, to testify and
43 to present and cross-examine witnesses. If the trial has been consolidated

1 with a trial being held pursuant to either the care and treatment act for
 2 mentally ill persons or the care and treatment act for persons with an
 3 alcohol or substance abuse problem persons not necessary for the conduct
 4 of the proceedings may be excluded as provided for in those Acts. The
 5 trial 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 rele-
 7 vant and material evidence which may be offered, including the testimony
 8 or written report, findings or recommendations of any professional or
 9 other person who has examined or evaluated the proposed ward or pro-
 10 posed conservatee and the testimony and written findings and recom-
 11 mendations of the secretary of social and rehabilitation services or any
 12 other person appointed by the court to conduct an investigation pursuant
 13 to section 15, and amendments thereto. Such evidence shall not be priv-
 14 ileged for the purpose of this trial.

16

15 (e) Upon completion of the trial:

16 (1) If the court finds by clear and convincing evidence that the pro-
 17 posed ward or proposed conservatee is an adult with an impairment in
 18 need of a guardian or a conservator, or both, or a minor in need of a
 19 guardian or a conservator, or both, or a minor with an impairment in need
 20 of a guardian or a conservator, or both, or a person who has been previ-
 21 ously adjudged as impaired in another state, the court, pursuant to section
 22 19, and amendments thereto, shall appoint a qualified and suitable indi-
 23 vidual or corporation as the guardian or conservator, or both, and shall
 24 specify what duties, responsibilities, powers and authorities as provided
 25 for in section 26, 27, 28, 29 or 30, and amendments thereto, the guardian
 26 or conservator shall have. If the court appoints co-guardians or co-con-
 27 servators, or both, the court shall specify whether such co-guardians or
 28 co-conservators, or both, shall have the authority to act independently, to
 29 act only in concert, or under what circumstances or with regard to what
 30 matter they may act independently and when they may act only in concert.

31 (2) If a jury has been demanded in the case of an adult and the jury
 32 finds by clear and convincing evidence that the proposed ward or pro-
 33 posed conservatee is unable to meet essential needs for physical health,
 34 safety or welfare, or is unable to manage such person's estate, then the
 35 court shall determine if the proposed ward or proposed conservatee is in
 36 need of a guardian or a conservator, or both, and if so, the court, pursuant
 37 to section 19, and amendments thereto, shall appoint a qualified and
 38 suitable individual or corporation as the guardian or conservator, or both,
 39 and shall specify what duties, responsibilities, powers and authorities as
 40 provided for in section 26, 27, 28, 29 or 30, and amendments thereto, the
 41 guardian or conservator shall have. If the court appoints co-guardians or
 42 co-conservators, or both, the court shall specify whether such co-guard-
 43 ians or co-conservators, or both, shall have the authority to act indepen-

1 dently or whether they shall be required to act only in concert.
 2 (3) If the court finds by clear and convincing evidence that the pro-
 3 posed conservatee is a person in need of an ancillary conservator, the
 4 court, pursuant to section 19, and amendments thereto, shall appoint a
 5 qualified and suitable individual or corporation as the ancillary conser-
 6 vator, and shall specify what duties, responsibilities, powers and author-
 7 ities as provided for in section 29 or 30, and amendments thereto, the
 8 ancillary conservator shall have. If the court appoints co-ancillary conser-
 9 vators, the court shall specify whether such co-ancillary conservators shall
 10 have the authority to act independently or whether they shall be required
 11 to act only in concert.

12 (f) If the court does not find by clear and convincing evidence that
 13 the proposed ward or proposed conservatee is an adult with an impair-
 14 ment in need of a guardian or a conservator, or both, or a minor in need
 15 of a guardian or a conservator, or both, or a minor with an impairment
 16 in need of a guardian or a conservator, or both, or a person who has been
 17 previously adjudged as impaired in another state, or a person in need of
 18 an ancillary conservator, or does not find that the proposed ward or pro-
 19 posed conservatee is in need of a guardian or a conservator, even though
 20 the jury has determined that the proposed ward or proposed conservatee
 21 is unable to meet essential needs for physical health, safety or welfare, or
 22 is unable to manage such person's estate, because other ~~alternative means~~
 23 exist and are sufficient to meet those needs of the proposed ward or
 24 proposed conservatee, then the court shall deny the requested
 25 appointments.

appropriate alternatives

26 New Sec. 19. (a) The court in appointing a guardian or conservator
 27 shall give consideration to the individual or corporation suggested by:

- 28 (1) The petitioner;
- 29 (2) a natural guardian if such suggestion is made pursuant to section
 30 5, and amendments thereto, or made in any other manner;
- 31 (3) the proposed ward or proposed conservatee, if such suggestion is
 32 made within any power of attorney or made in any other manner;
- 33 (4) a minor who is the proposed ward or proposed conservatee, if
 34 over 14 years of age; or
- 35 (5) the spouse, adult child or other close family member of the pro-
 36 posed ward or proposed conservatee.

37 (b) The court, in appointing a guardian or conservator, shall consider
 38 the workload ~~and capabilities~~ of any suggested guardian or conservator
 39 before making such appointment, and the court shall give particular at-
 40 tention in making such appointment to the number of other cases in
 41 which the suggested guardian or conservator, other than a corporation, is
 42 currently serving as guardian or conservator, or both, particularly if that
 43 number is more than 15 or more wards or conservatees, or both.

, capabilities and potential conflicts of interest

1 (c) In appointing a guardian for a person who is an adherent of a
2 religion whose tenets and practices call for reliance on prayer alone for
3 healing, the court shall consider, but shall not be limited to, the appoint-
4 ment of an individual as guardian who is sympathetic to and willing to
5 support this system of healing.

6 New Sec. 20. (a) When the court appoints an individual or a corpo-
7 ration as a guardian, the court shall require that the individual or a rep-
8 resentative on behalf of the corporation file with the court an oath or
9 affirmation as required by K.S.A. 59-1702, and amendments thereto.

10 (b) When the court appoints an individual or a corporation as a con-
11 servator, except as provided for in subsections (c), (d) or (e), or in section
12 6, and amendments thereto, the court shall require that the individual or
13 a representative on behalf of the corporation file with the court a bond
14 in the amount of 125% of the combined value of the tangible and intan-
15 gible personal property in the conservatee's estate and the total of any
16 annual income from any source which the conservator may be expected
17 to receive on behalf of the conservatee, minus any reasonably expected
18 expenses, conditioned upon the faithful discharge of all the duties of the
19 conservator's trust according to law, and with sufficient sureties as deter-
20 ~~mined by the court.~~

may determine necessary or appropriate

21 (c) When the court appoints an individual or a corporation as a con-
22 servator pursuant to a request for a voluntary conservatorship as provided
23 for in section 7, and amendments thereto, and the person for whom the
24 voluntary conservatorship is established has requested that the individual
25 or corporation appointed not be required to file a bond, the court may
26 waive the filing of a bond; provided that the court may later require the
27 filing of a bond if circumstances so require.

28 (d) If, at the time of the appointment of a conservator, there is no
29 property in the possession of the conservatee requiring a conservatorship,
30 but the court finds that there is likely to be such at some point in time,
31 the court may waive the filing of a bond ~~at this time~~, and order that the
32 conservator shall immediately file a report with the court upon either
33 coming into possession of any property of the conservatee; or if the con-
34 servatee becomes entitled to receive any property which ~~should require~~
35 ~~a conservatorship~~. Upon the filing of such a report, the court, following
36 any hearing the court may determine appropriate, may require the con-
37 servator to file a bond as provided for herein.

the conservator

the conservator believes

be placed within the

38 (e) If the conservator appointed is the individual or corporation sug-
39 gested by a testator or settlor as provided for in section 5, and amend-
40 ments thereto, and the testator or settlor has provided by will or trust
41 that no bond should be required of such conservator, the court may waive
42 the filing of a bond; provided that the court ~~later~~ may require the filing
43 of a bond if circumstances so require.

later

1 (f) If the conservator is a bank having trust authority or a trust com-
2 pany organized and having its principal place of business within the state
3 of Kansas, the court may waive the filing of a bond.

4 (g) If the conservator appointed is under contract with the Kansas
5 guardianship program, the Kansas guardianship program shall act as sur-
6 ety on the bond. The court shall order that a certified copy of the order
7 appointing a conservator who is under contract with the Kansas guardi-
8 anship program be sent to the director of the Kansas guardianship
9 program.

10 (h) If the individual appointed as the guardian or as the conservator,
11 or both, resides outside of Kansas, the court shall require that person,
12 and in the case of a corporation being appointed as the guardian or the
13 conservator, or both, the court shall require a representative of the cor-
14 poration, to appoint, in writing, a resident agent pursuant to K.S.A. 59-
15 1706, and amendments thereto.

16 (i) Upon the filing of the required oath or bond, and appointment
17 and consent of a resident agent, the court shall issue letters of guardi-
18 anship to the guardian or letters of conservatorship to the conservator, or
19 both. The court may order that a certified copy of these letters be sent
20 to such persons or agencies as the court specifies.

21 New Sec. 21. (a) ~~A private, nonprofit~~ corporation organized under
22 the Kansas general corporation code may act as guardian for an individual
23 found to be in need of a guardian under the act for obtaining a guardian
24 or conservator, or both, if the ~~private, nonprofit~~ corporation has been
25 certified by the secretary of social and rehabilitation services as a suitable
26 agency to perform the duties of a guardian.

Any

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

32 (1) Whether the ~~private, nonprofit~~ corporation is capable of perform-
33 ing the duties of a guardian;

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

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

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

43 (c) Application for certification under this section shall be made to

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

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

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

New Sec. 22. (a) At any time after the filing of the petition provided for in section 9, 10, 11 or 12, and amendments thereto, but prior to the trial thereon, the court, upon the request of the proposed ward or proposed conservatee, or upon the court's own motion, may issue an order of referral for trial to the district court of:

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

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

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

(b) If the petition filed pursuant to section 9, 10, 11 or 12, and amendments thereto, is filed in a county in which the proposed ward or proposed conservatee is found because the proposed ward or proposed conservatee is confined to a psychiatric hospital, the court may not issue an order of referral for trial pursuant to this section unless the proposed ward or proposed conservatee has requested or consented to this referral.

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

(d) Upon receipt of an order of referral for trial and certified copies of the pleadings and orders in the case, the district court to which a referral has been made shall cause notice of the referral for trial to be given to all persons entitled to notice pursuant to section 17, and amendments thereto, and shall thereafter proceed in the case as if the petition

appointment as provided for in section 19
 as the guardian of any person
 , treatment or housing to that person
 any
 utilized for
 that
 written

1 had been originally filed therein, except that if the original court having
2 venue has previously set the matter for trial pursuant to section 14, and
3 amendments thereto, but the court to which the order of referral for trial
4 has been made cannot conduct the trial at that time because notice of a
5 change of location of the trial cannot be served on any interested party
6 at least 48 hours prior to the trial, or because of scheduling conflicts, then
7 the court to which the matter has been transferred for trial may set a new
8 date and time for the trial at a time not to exceed 21 days from the
9 issuance of the order of referral for trial, and shall cause notice thereof
10 to be given as provided for in section 17, and amendments thereto.

11 (e) At the conclusion of the trial held pursuant to section 18, and
12 amendments thereto, the court to which the matter has been referred
13 for trial shall determine the issues as provided for in subsection (d) of
14 section 18, and amendments thereto, and may deny the request contained
15 in the petition as the findings of the court require, but shall not appoint
16 a guardian or a conservator even if the need for such has been shown. In
17 such case, the court shall transmit the findings of the court following the
18 trial, along with any statement of the costs incurred, and a certified copy
19 of all pleadings filed and orders entered during the course of the referral
20 and trial, to the original court having venue.

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

24 New Sec. 23. (a) At any time after the trial and appointment of a
25 guardian or conservator as provided for in section 18, and amendments
26 thereto, and upon the written request of the guardian or conservator, or
27 upon the court's own motion, and after notice to any persons as the court
28 may direct, the court may transfer venue to another district court for
29 good cause shown. In such case, the transferring court shall transmit to
30 the court to which venue is being transferred a certified copy of all plead-
31 ings and orders in the case.

32 (b) Any district court to which venue is transferred shall proceed in
33 the case as if the petition and all proceedings to that point had originally
34 been filed or occurred therein. In the event that, due to the transfer of
35 venue, notice of a change of location of a hearing previously scheduled is
36 required, but cannot be served on any interested party at least 48 hours
37 prior to the hearing, or if any hearing previously scheduled by the trans-
38 ferring court cannot be held as scheduled by the receiving court because
39 of scheduling conflicts, then the receiving court may continue the hearing
40 for up to seven full working days to allow adequate time for notice to be
41 given and the hearing to be held.

42 New Sec. 24. (a) At any time after the filing of the petition provided
43 for in section 9, 10, 11, 12 or 13, and amendments thereto, but prior to

the trial provided for in section 18, and amendments thereto, any person may file in addition to that original petition, or as a part thereof, a verified petition requesting the appointment of a temporary guardian or a temporary conservator, or both, except if the petition alleges that the proposed conservatee is a person in need of an ancillary conservator, and requests the appointment of an ancillary conservator in Kansas, in which case the petition may request the appointment of a temporary ancillary conservator. The petition shall include:

- (1) The petitioner's name and address;
- (2) the proposed ward's or proposed conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the proposed ward's or proposed conservatee's permanent residence;
- (3) a statement that it is the petitioner's belief that there is an imminent danger to the physical health or safety of the proposed ward requiring immediate action to be taken to protect the proposed ward, or that there is an imminent danger that the estate of the proposed conservatee will be significantly depleted unless immediate action is taken to protect the estate, or both;
- (4) the factual basis upon which the petitioner alleges this imminent danger;
- (5) the names and addresses of witnesses by whom the truth of this petition may be proved;
- (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 temporary guardian or temporary conservator, or both, and if the proposed temporary guardian or temporary conservator is under contract with the Kansas guardianship program, that fact; and
- (7) a request that the court make an ex parte determination that there exists such imminent danger, and that the court appoint a temporary guardian or a temporary conservator, or both, with such powers as the court deems necessary to protect the proposed ward or the estate of the proposed conservatee.

(b) If the court determines that there is probable cause to believe that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or is a minor in need of a guardian or a conservator, or both, or is a minor with an impairment in need of a guardian or a conservator, or both, or is a person who has been previously adjudged as impaired in another state, or is a person in need of an ancillary conservator, as alleged in the original petition, and that there exists an imminent danger to the physical health or safety of the proposed ward, or that there exists an imminent danger that

if it appears that there may be an imminent danger to the physical health or safety of the proposed ward requiring immediate action to be taken to protect the proposed ward, or that there may be an imminent danger that the estate of the proposed conservatee will be significantly depleted unless immediate action is taken to protect the estate, or both,

(1)

1 the estate of the proposed conservatee will be significantly depleted, the
 2 court may enter an ex parte emergency order appointing a temporary
 3 guardian or a temporary conservator, or both, ~~and the court shall specify~~
 4 what powers and duties as provided for in section 26, 27, 28, 29, 30 or
 5 31, and amendments thereto, the temporary guardian or temporary con-
 6 servator shall have. The court may further authorize the temporary guard-
 7 ian or temporary conservator to seek appropriate injunctive or other im-
 8 mediate relief from any appropriate court or other authority.

9 (c) If the court enters an ex parte order appointing a temporary
 10 guardian or a temporary conservator, or both, the proposed ward or pro-
 11 posed conservatee, the attorney for the proposed ward or proposed con-
 12 servatee, the spouse of the proposed ward or proposed conservatee, or
 13 in the case of a minor, the natural guardian of the minor, may request a
 14 hearing on the matter if a written request for such is filed with the court
 15 not later than the third day following the entry of the ex parte order, or
 16 of service of the ex parte order upon the proposed ward or proposed
 17 conservatee, if later. Upon receipt of such a request, the court shall fix
 18 the time and place for a hearing upon the request and shall direct how
 19 and to whom notice of such hearing shall be given.

20 (d) In lieu of entering an ex parte emergency order of appointment
 21 of a temporary guardian or a temporary conservator, or both, the court
 22 may deny the relief requested or set the time and place for a hearing to
 23 be held on the request for the appointment of a temporary guardian or
 24 a temporary conservator, or both, which hearing shall be held not later
 25 than the second day following the filing of the petition, excluding any
 26 Saturday, Sunday or legal holiday. The court may direct that notice
 27 thereof be given to the petitioner, the original petitioner, if different, the
 28 proposed ward or proposed conservatee, the spouse of the proposed ward
 29 or proposed conservatee, in the case of a minor, the natural guardian of
 30 the minor, and such other persons as the court determines appropriate.
 31 The court shall determine by whom and in what manner such notice shall
 32 be given. The court may enter an order requiring that the proposed ward
 33 or proposed conservatee appear at the time and place of the hearing
 34 unless the court makes a finding prior to the hearing that the presence
 35 of the proposed ward or proposed conservatee will be injurious to the
 36 person's health or welfare, or that the proposed ward's or proposed con-
 37 servatee's impairment is such that the person could not participate in the
 38 proceedings, or that the proposed ward or proposed conservatee has filed
 39 with the court a written waiver of such person's right to appear in person.
 40 In any such case, the court shall enter in the record of the proceedings
 1 the facts upon which the court has found that the presence of the pro-
 2 posed ward or proposed conservatee at the hearing should be excused.

43 (e) Any hearing held pursuant to subsection (c) or (d) shall be con-

(2) The

(3) Subject to the provisions of subsec-
 tion (g), the court shall specify within its
 order when the authority of the temporary
 guardian or temporary conservator, or both,
 shall expire, but in no case shall the court
 specify a date beyond 30 days following the
 issuance of the order. The court may issue
 successive orders extending the authority of
 a temporary guardian or temporary conserva-
 tor, or both, only upon the filing of a
 written request for such, and following a
 hearing held similarly as provided for in
 subsection (e) to determine the need for and
 appropriateness of any such extension.

(4) The court shall order that a copy of
 any order issued pursuant to this subsection
 be promptly served upon the proposed ward or
 proposed conservatee, the attorney for the
 proposed ward or proposed conservatee, the
 spouse of the proposed ward or proposed con-
 servatee, and in the case of a minor, the
 natural guardian of the minor, along with
 notice. Such notice shall specify the rights
 of the proposed ward or proposed conservatee,
 and of others, consistent with the provisions
 of subsection (c).

, which hearing shall be held not later than
 the second day following the filing of the
 request, excluding any Saturday, Sunday or
 legal holiday,

(b) (3),

1 ducted in as informal a manner as may be consistent with orderly pro-
2 cedure. The rules governing evidentiary and procedural matters shall be
3 applied in a manner so as to facilitate informal, efficient presentation of
4 all relevant, probative evidence and resolution of the issues with due
5 regard for the interests of all parties.

6 (f) If after any hearing held pursuant to subsection (c) or (d) the court
7 determines that there is probable cause to believe that the proposed ward
8 or proposed conservatee is an adult with an impairment in need of a
9 guardian or a conservator, or both, or a minor in need of a guardian or a
10 conservator, or both, or a minor with an impairment in need of a guardian
11 or a conservator, or both, or a person who has been previously adjudged
12 as impaired in another state, or a person in need of an ancillary conser-
13 vator, as alleged in the original petition, and that there exists an imminent
14 danger to the physical health or safety of the proposed ward, or that there
15 exists an imminent danger that the estate of the proposed conservatee
16 will be significantly depleted, the court may appoint, or continue the
17 appointment of, a temporary guardian or a temporary conservator, or
18 both, and the court shall specify what duties, responsibilities, powers and
19 authorities as provided for in section 26, 27, 28, 29 or 30, and amendments
20 thereto, the temporary guardian or temporary conservator shall have. The
21 court may further authorize the temporary guardian or temporary con-
22 servator to seek appropriate injunctive or other immediate relief from any
23 appropriate court or other authority. Otherwise, if the court determines
24 that there is probable cause to believe that the proposed ward or proposed
25 conservatee is an adult with an impairment in need of a guardian or a
26 conservator, or both, or a minor in need of a guardian or a conservator,
27 or both, or a minor with an impairment in need of a guardian or a con-
28 servator, or both, or a person who has been previously adjudged as im-
29 paired in another state, or a person in need of an ancillary conservator,
30 as alleged in the original petition, but that there is not probable cause to
31 believe that there exists an imminent danger to the physical health or
32 safety of the proposed ward, or that there exists an imminent danger that
33 the estate of the proposed conservatee will be significantly depleted, the
34 court shall deny the request for the appointment of a temporary guardian
35 or a temporary conservator, or both, or shall terminate the earlier ap-
36 pointment of the temporary guardian or temporary conservator, or both,
37 but shall continue the matter to trial on the original petition provided for
38 in section 18, and amendments thereto.

39 (g) The appointment and authority of any temporary guardian or tem-
40 porary conservator shall expire at the conclusion of the trial provided for
41 in section 18, and amendments thereto, if the petition is denied, or upon
42 the issuance of appropriate letters to any guardian or conservator ap-
43 pointed by the court at the conclusion of the trial, or as otherwise ordered

1 by the court, but such expiration shall not affect the validity of any action
2 taken pursuant to the authority of the temporary guardian or temporary
3 conservator during the time of such person's appointment. The temporary
4 guardian or temporary conservator shall be required to provide an ac-
5 counting as directed by the court.

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

17 New Sec. 25. (a) Any person may file at any time after the filing of
18 the petition provided for in section 9, 10, 11 or 12, and amendments
19 thereto, in addition to that original petition, or as a part thereof, or at any
20 time after the appointment of a guardian or a conservator as provided for
21 in section 18, and amendments thereto, a verified petition requesting the
22 appointment of a standby guardian or a standby conservator, or both. The
23 petition shall include:

- 24 (1) The petitioner's name and address, and if the petitioner is the
- 25 ward's or conservatee's court appointed guardian or conservator, that fact;
- 26 (2) the proposed ward's, ward's, proposed conservatee's or conser-
- 27 vatee's name, age, date of birth, address of permanent residence, and
- 28 present address or whereabouts, if different from the proposed ward's,
- 29 ward's, proposed conservatee's or conservatee's permanent residence;
- 30 (3) the name and address of the ward's or conservatee's court ap-
- 31 pointed guardian or conservator, if different from the petitioner;
- 32 (4) the factual basis upon which the petitioner alleges the need for a
- 33 standby guardian or standby conservator, or both, or that it would be in
- 34 the best interests of the proposed ward, ward, proposed conservatee or
- 35 conservatee to have the court appoint a standby guardian or standby con-
- 36 servator, or both;
- 37 (5) the names and addresses of witnesses by whom the truth of this
- 38 petition may be proved;
- 39 (6) the name, address and relationship to the proposed ward, ward,
- 40 proposed conservatee or conservatee, if any, of the individual or corpo-
- 41 ration whom the petitioner suggests that the court appoint as the standby
- 42 guardian or standby conservator, and if the suggested standby guardian
- 43 or conservator is under contract with the Kansas guardianship program,

1 that fact, and

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

8 (b) When the court appoints either an individual or a corporation as
9 a guardian or a conservator, or both, the court may appoint an additional
10 individual or corporation as the standby guardian or standby conservator,
11 or **both**. Such standby guardian or conservator shall be selected in ac-
12 cordance with the provisions of section 19, and amendments thereto.

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

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

23 (e) A standby guardian shall have the authority and responsibility to
24 assume the duties, responsibilities, powers and authorities assigned to the
25 guardian upon the temporary absence or impairment of the guardian, or
26 the resignation or death of the guardian. Within 10 days of such assump-
27 tion, **the** standby guardian shall file with the court a written notice of that
28 fact **and** a written report of the circumstances which caused the standby
29 guardian to have assumed those duties, responsibilities, powers and au-
30 thorities. The report shall specify whether such assumption is intended
31 to be only temporary and the date by which it is expected that the guard-
32 ian **shall** be able to reassume such duties, responsibilities, powers and
33 authorities, or that the guardian is thought to be permanently unable to
34 reassume such duties, responsibilities, powers and authorities. This notice
35 and report may be accompanied by or include a petition pursuant to
36 section 39, and amendments thereto, requesting the appointment of a
37 successor guardian.

38 (f) A standby conservator shall have the authority and responsibility
39 to assume the duties, responsibilities, powers and authorities assigned to
40 the **conservator** upon the temporary absence or impairment of the con-
41 servator, or the resignation or death of the conservator, only if the standby
42 conservator shall file with the court a written notice of temporary absence,
43 impairment, resignation or death of the conservator. The notice shall

1 specify if the absence or impairment of the conservator is expected to be
 2 only temporary, the date by which it is expected that the conservator shall
 3 be able to reassume such duties, responsibilities, powers and authorities,
 4 and the reasons why the standby conservator believes it is necessary for
 5 the standby conservator to assume the duties, responsibilities, powers and
 6 authorities of the conservator. Otherwise, the notice shall advise the court
 7 that proceedings pursuant to section 39, and amendments thereto, to
 8 appoint a successor conservator are required, or the notice may be ac-
 9 companied by or include a petition requesting the appointment of a suc-
 10 cessor conservator. Upon receipt of such notice, the court may specify a
 11 bond that the standby conservator shall file with the court before assum-
 12 ing such duties, responsibilities, powers and authorities, or may authorize
 13 the standby conservator to assume such of the conservator's duties, re-
 14 sponsibilities, powers and authorities as the court shall specify.

15 (g) Upon receipt of a notice as provided for in subsection (e) or (f),
 16 the court may set a hearing to review the circumstances of the ward or
 17 conservatee as provided for in section 35 or 36, and amendments thereto,
 18 or may otherwise proceed pursuant to section 39, and amendments
 19 thereto, to remove the guardian or conservator, or both, and to appoint
 20 a successor guardian or conservator, or both.

21 (h) If before proceedings pursuant to section 39, and amendments
 22 thereto, to remove the guardian or conservator, or both, or to appoint a
 23 successor guardian or conservator, or both, have been commenced, the
 24 guardian or conservator is able to reassume the duties, responsibilities,
 25 powers and authorities of such appointment, the guardian or conservator,
 26 or both, shall so notify the court, in writing, of that reassumption and
 27 appropriately shall report to the court within the next scheduled report
 28 or accounting as required pursuant to section 34, and amendments
 29 thereto. Such report or accounting may include or attach a report or
 30 accounting of the standby guardian or standby conservator.

31 New Sec. 26. (a) (1) The individual or corporation appointed by the
 32 court to serve as the guardian shall carry out diligently and in good faith,
 33 the general duties and responsibilities, and shall have the general powers
 34 and authorities, provided for in this section as well as any specific duties,
 35 responsibilities, powers and authorities assigned to the guardian by the
 36 court. In doing so, a guardian shall at all times be subject to the control
 37 and direction of the court, and shall act in accordance with the provisions
 38 of any guardianship plan filed with the court pursuant to section 27, and
 39 amendments thereto. The court shall have the authority to appoint coun-
 40 sel for the guardian, and the fees of such attorney may be assessed as
 41 costs pursuant to section 44, and amendments thereto.

42 (2) A guardian shall become and remain personally acquainted with
 43 the ward, the spouse of the ward and with other interested persons as-

1 sociated with the ward and who are knowledgeable about the ward, the
2 ward's needs and the ward's responsibilities. A guardian shall exercise
3 authority only as necessitated by the ward's limitations. A guardian shall
4 encourage the ward to participate in making decisions affecting the ward.
5 A guardian shall encourage the ward to act on the ward's own behalf to
6 the extent the ward is able. A guardian shall encourage the ward to de-
7 velop or regain the skills and abilities necessary to meet the ward's own
8 essential needs and to otherwise manage the ward's own affairs. In making
9 decisions on behalf of the ward, a guardian shall consider the expressed
10 desires and personal values of the ward to the extent known to the guard-
11 ian. A guardian shall strive to assure that the personal, civil and human
12 rights of the ward are protected. A guardian shall at all times act in the
13 best interests of the ward and shall exercise reasonable care, diligence
14 and prudence.

15 (b) A guardian shall have the following general duties, responsibili-
16 ties, powers and authorities:

17 (1) If the ward is a minor, to have the custody and control of the
18 minor, and to provide for the minor's care, treatment, habilitation, edu-
19 cation, support and maintenance;

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

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

25 (4) to assure that the ward resides in the least restrictive setting ap-
26 propriate to the needs of the ward and which is reasonably available;

27 (5) to assure that the ward receives any necessary and reasonably
28 available medical care, consistent with the provisions of section 28, and
29 amendments thereto, when applicable, and any reasonably available non-
30 medical care or other services as may be needed to preserve the health
31 of the ward or to assist the ward to develop or retain skills and abilities;

32 (6) to promote and protect the comfort, safety, health and welfare of
33 the ward;

34 (7) to make necessary determinations and arrangements for, and to
35 give the necessary consents in regard to, the ward's funeral arrangements,
36 burial or cremation, the performance of an autopsy upon the body of the
37 ward, and anatomical gifts of the ward, subject to the provisions and
38 limitations provided for in K.S.A. 65-2893 and 65-3210 and K.S.A. 2000
39 Supp. 65-1734, and amendments thereto; and

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

42 (c) A guardian shall not be obligated by virtue of the guardian's ap-
43 pointment to use the guardian's own financial resources for the support

1 of the ward.

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

12 (3) to consent to the adoption of the ward, unless approved by the
13 court;

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

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

24 (6) to consent, on behalf of the ward, to the performance of any
25 experimental biomedical or behavioral procedure on the ward, or for the
26 ward to be a participant in any biomedical or behavioral experiment, with-
27 out the prior review and approval of such by either an institutional review
28 board as provided for in title 45, part 46 of the code of federal regulations,
29 or if such regulations do not apply, then by a review committee estab-
30 lished by the agency, institution or treatment facility at which the pro-
31 cedure or experiment is proposed to occur, composed of members se-
32 lected for the purposes of determining whether the proposed procedure
33 or experiment:

34 (A) Does not involve any significant risk of harm to the physical or
35 mental health of the ward, or the use of aversive stimulants, and is in-
36 tended to preserve the life or health of the ward or to assist the ward to
37 develop or regain skills or abilities; or

38 (B) involves a significant risk of harm to the physical or mental health
39 of the ward, or the use of an aversive stimulant, but that the conducting
40 of the proposed procedure or experiment is intended either to preserve
41 the life of the ward, or to significantly improve the quality of life of the
42 ward, or to assist the ward to develop or regain significant skills or abilities,
43 and that the guardian has been fully informed concerning the potential

1 risks and benefits of the proposed procedure or experiment or of any
2 aversive stimulant proposed to be used, and as to how and under what
3 circumstances the aversive stimulant may be used, and has specifically
4 consented to such;

or withdrawal

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

or life-sustaining

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

10 (B) if the ward, prior to the court's appointment of a guardian pur-
11 suant to section 18, and amendments thereto, shall have executed a du-
12 rable power of attorney for health care decisions pursuant to K.S.A. 58-
13 629, and amendments thereto, and such shall not have been revoked by
14 the ward prior thereto, and there is included therein any provision rele-
15 vant to the withholding of life-saving medical care, treatment, services or
16 procedures, then the guardian shall have the authority to act as provided
17 for therein, even if the guardian has revoked or otherwise amended that
18 power of attorney pursuant to the authority of K.S.A. 58-627, and amend-
19 ments thereto, or the guardian may allow the agent appointed by the
20 ward to act on the ward's behalf if the guardian has not revoked or oth-
21 erwise amended that power of attorney; or

or withdrawal

or life-sustaining

22 (C) in the circumstances where the ward's treating physician shall
23 certify in writing to the guardian that the ward is suffering from an illness
24 for which further treatment, other than for the relief of pain, would not
25 likely prolong the life of the ward other than by artificial means, nor would
26 be likely to restore to the ward any significant degree of capabilities be-
27 yond those the ward currently possesses, and which opinion is concurred
28 in by either a second physician or by any "medical ethics" or similar
29 committee established by the hospital or treatment facility at which the
30 ward is being treated, for the purposes of reviewing such circumstances
31 and the appropriateness of any type of "comfort care only" physician's
32 order,

is in a persistent vegetative state or

or other medical condition

to which the healthcare provider caring
for the ward has access

established

~~33 (8) to consent, on behalf of the ward, to the withdrawal of life sus-
34 taining medical care, treatment, services or procedures, except:~~

which would have the effect of withholding or
withdrawing life-saving or life-sustaining care

~~35 (A) In accordance with the provisions of any declaration of the ward
36 made pursuant to the provisions of K.S.A. 65-28,101 through 65-28,109,
37 and amendments thereto; or~~

~~38 (B) if the ward, prior to the court's appointment of a guardian pur-
39 suant to section 18, and amendments thereto, shall have executed a du-
40 rable power of attorney for health care decisions pursuant to K.S.A. 58-
41 629, and amendments thereto, and such shall not have been revoked by
42 the ward prior thereto, and there is included therein any provision rele-
43 vant to the withdrawal of life-sustaining medical care, treatment, services~~

1 or procedures, then the guardian shall have the authority to act as pro-
2 vided for therein, even if the guardian has revoked or otherwise amended
3 that power of attorney pursuant to the authority of K.S.A. 58-627, and
4 amendments thereto, or the guardian may allow the agent appointed by
5 the ward to act on the ward's behalf if the guardian has not revoked or
6 otherwise amended that power of attorney; or

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

19 ~~§ (B)~~ to exercise any control or authority over the ward's estate, except
20 if the court shall specifically authorize such. The court may assign such
21 authority to the guardian, including the authority to establish certain
22 trusts as provided in section 31, and amendments thereto, and may waive
23 the requirement of the posting of a bond, only if:

24 (A) Initially, the combined value of any funds and property in the
25 possession of the ward or in the possession of any other person or entity,
26 but which the ward is otherwise entitled to possess, equals \$10,000 or
27 less; and

28 (B) either the court requires the guardian to report to the court the
29 commencement of the exercising of such authority, or requires the guard-
30 ian to specifically request of the court the authority to commence the
31 exercise of such authority, as the court shall specify; and

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

34 (i) File a guardianship plan as provided for in section 27, and amend-
35 ments thereto, which contains elements similar to those which would be
36 contained in a conservatorship plan as provided for in section 29, and
37 amendments thereto;

38 (ii) petition the court for appointment of a conservator as provided
39 for in section 9, 10 or 11, and amendments thereto; or

40 (iii) notify the court as the court shall specify that the value of the
41 conservatee's estate has equaled or exceeded \$10,000, if the court has
42 earlier appointed a conservator but did not issue letters of conservatorship
43 pending such notification; and

1 9 ~~(10)~~ to place the ward in a treatment facility as defined in section 28,
2 and amendments thereto, except if authorized by the court as provided
3 for therein.

4 (f) The guardian shall file with the court reports concerning the status
5 of the ward and the actions of the guardian as the court shall direct
6 pursuant to section ~~35~~, and amendments thereto.

34

7 New Sec. 27. (a) At any time, the court may require the guardian,
8 or the guardian may at any time choose, to develop and file with the court
9 a plan for the care of the ward. This plan shall be developed consistent
10 with the provisions of subsection (a) of section 26, and amendments
11 thereto. This plan may provide for, but need not be limited to providing
12 for:

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

15 (2) what degree of autonomy the ward will have with regard to mak-
16 ing choices concerning such matters as attending any educational or vo-
17 cational training, employment, volunteering for any type of service or
18 activity, traveling independently, and obtaining either routine or specified
19 medical care without the guardian's consent, and what restrictions the
20 guardian will place upon the ward with regard to such choices; and

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

24 (b) If the court has not also appointed a conservator for the ward,
25 the court may further require the guardian, or the guardian may choose,
26 to include as a part of the guardian's plan, what restrictions, if any, the
27 guardian will place upon the ward's use of the ward's financial assets or
28 the ward's access to those assets. In any case, the court shall not approve
29 any guardianship plan which does not comply with the provisions of sub-
30 section (e)(9) of section 26, and amendments thereto, if applicable.

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

38 (d) Any guardianship plan filed with the court shall be effectuated by
39 the guardian to the maximum extent possible consistent with any changing
40 circumstances of the ward. Within each report concerning the status of
41 the ward submitted to the court as the court directs pursuant to section
42 35, and amendments thereto, the guardian shall explain any actions taken
43 in deviance from the plan and the reasons therefor.

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

4 New Sec. 28. (a) At any time after the filing of the petition provided
5 for in section 9, 10, 11 or 12, and amendments thereto, any person may
6 file in addition to that original petition, or as a part thereof, or at any time
7 after the appointment of a temporary guardian as provided for in section
8 24, and amendments thereto, or a guardian as provided for in section 18,
9 and amendments thereto, the temporary guardian or guardian may file,
10 a verified petition requesting that the court grant authority to the tem-
11 porary guardian or guardian to admit the proposed ward or ward to a
12 treatment facility and to consent to the care and treatment of the pro-
13 posed ward or ward therein. The petition shall include:

14 (1) The petitioner's name and address, and if the petitioner is the
15 proposed ward's or ward's court appointed temporary guardian or guard-
16 ian, that fact;

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

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

23 (4) the factual basis upon which the petitioner alleges the need for
24 the proposed ward or ward to be admitted to and treated at a treatment
25 facility, or for the proposed ward or ward to continue to be treated at the
26 treatment facility to which the proposed ward or ward has already been
27 admitted, or for the guardian to have continuing authority to admit the
28 ward for care and treatment at a treatment facility pursuant to subsection
29 (b)(3) of K.S.A. 2000 Supp. 59-2949, or subsection (b)(3) of K.S.A. 2000
30 Supp. 59-29b49, and amendments thereto;

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

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

38 (b) The petition may be accompanied by a report of an examination
39 and evaluation of the proposed ward or ward conducted by an appropri-
40 ately qualified professional, which shows that the criteria set out in sub-
section (e) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, or
K.S.A. 76-12b03, and amendments thereto, are met.

43 (c) Upon the filing of such a petition, the court shall issue the

, as defined in subsection (h),

1 following:

2 (1) An order fixing the date, time and place of a hearing on the pe-
3 tition. Such hearing, in the court's discretion, may be conducted in a
4 courtroom, a treatment facility or at some other suitable place. The time
5 fixed in the order shall in no event be earlier than seven days or later
6 than 21 days after the date of the filing of the petition. The court may
7 consolidate this hearing with the trial upon the original petition filed
8 pursuant to section 9, 10, 11 or 12, and amendments thereto, or with the
9 trial provided for in the care and treatment act for mentally ill persons or
10 the care and treatment act for persons with an alcohol or substance abuse
11 problem, if the petition also incorporates the allegations required by, and
12 is filed in compliance with, the provisions of either of those acts.

13 (2) An order requiring that the proposed ward or ward appear at the
14 time and place of the hearing on the petition unless the court makes a
15 finding prior to the hearing that the presence of the proposed ward or
16 ward will be injurious to the person's health or welfare, or that the pro-
17 posed ward's or ward's impairment is such that the person could not
18 meaningfully participate in the proceedings, or that the proposed ward
19 or ward has filed with the court a written waiver of such ward's right to
20 appear in person. In any such case, the court shall enter in the record of
21 the proceedings the facts upon which the court has found that the pres-
22 ence of the proposed ward or ward at the hearing should be excused.
23 Notwithstanding the foregoing provisions of this subsection, if the pro-
24 posed ward or ward files with the court at least one day prior to the date
25 of the hearing a written notice stating the person's desire to be present
26 at the hearing, the court shall order that the person must be present at
27 the hearing.

28 (3) An order appointing an attorney to represent the proposed ward
29 or ward. The court shall give preference, in the appointment of this at-
30 torney, to any attorney who has represented the proposed ward or ward
31 in other matters, if the court has knowledge of that prior representation.
32 The proposed ward, or the ward with the consent of the ward's conser-
33 vator, if one has been appointed, shall have the right to engage an attorney
34 of the proposed ward's or ward's choice and, in such case, the attorney
35 appointed by the court shall be relieved of all duties by the court. Any
36 appointment made by the court shall terminate upon a final determina-
37 tion of the petition and any appeal therefrom, unless the court continues
38 the appointment by further order.

39 (4) An order fixing the date, time and a place that is in the best
40 interest of the proposed ward or ward, at which the proposed ward or
41 ward shall have the opportunity to consult with such ward's attorney. This
42 consultation shall be scheduled to occur prior to the time at which the
43 examination and evaluation ordered pursuant to subsection (d)(1), if or-

1 dered, is scheduled to occur.

2 (5) A notice similar to that provided for in section 17, and amend-
3 ments thereto.

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

6 (1) An order for a psychological or other examination and evaluation
7 of the proposed ward or ward, as may be specified by the court. The court
8 may order the proposed ward or ward to submit to such an examination
9 and evaluation to be conducted through a general hospital, psychiatric
10 hospital, community mental health center, community developmental dis-
11 ability organization, or by a private physician, psychiatrist, psychologist or
12 other person appointed by the court who is qualified to examine and
13 evaluate the proposed ward or ward. The costs of this examination and
14 evaluation shall be assessed as provided for in section 44, and amend-
15 ments thereto.

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

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

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

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

29 (e) The hearing on the petition shall be held at the time and place
30 specified in the court's order issued pursuant to subsection (c), unless an
31 order of advancement, continuance, or a change of place of the hearing
32 has been issued pursuant to subsection (d). The petitioner and the pro-
33 posed ward or ward shall each be afforded an opportunity to appear at
34 the hearing, to testify and to present and cross-examine witnesses. If the
35 hearing has been consolidated with a trial being held pursuant to either
36 the care and treatment act for mentally ill persons or the care and treat-
37 ment act for persons with an alcohol or substance abuse problem, persons
38 not necessary for the conduct of the proceedings may be excluded as
39 provided for in those acts. The hearing shall be conducted in as informal
40 a manner as may be consistent with orderly procedure. The court shall
41 have the authority to receive all relevant and material evidence which
42 may be offered, including the testimony or written report, findings or
43 recommendations of any professional or other person who has examined

1 or evaluated the proposed ward or ward pursuant to any order issued by
2 the court pursuant to subsection (d). Such evidence shall not be privileged
3 for the purpose of this hearing.

4 (f) Upon completion of the hearing, if the court finds by clear and
5 convincing evidence that the criteria set out in subsection (e) of K.S.A.
6 2000 Supp. 59-2946 ~~or K.S.A. 76-12b03~~, and amendments thereto, are
7 met, and after a careful consideration of reasonable alternatives to ad-
8 mission of the proposed ward or ward to a treatment facility, the court
9 may enter an order granting such authority to the temporary guardian or
10 guardian as is appropriate, including continuing authority to the guardian
11 to readmit the ward to an appropriate treatment facility as may later
12 become necessary. Any such grant of continuing authority shall expire
13 two years after the date of final discharge of the ward from such a treat-
14 ment facility if the ward has not had to be readmitted to a treatment
15 facility during that two-year period of time. Thereafter, any such grant of
16 continuing authority may be renewed only after the filing of another pe-
17 tition seeking authority in compliance with the provision of this section.

18 (g) Nothing herein shall be construed so as to prohibit the head of a
19 treatment facility from admitting a proposed ward or ward to that facility
20 as a voluntary patient if the head of the treatment facility is satisfied that
21 the proposed ward or ward at that time has the capacity to understand
22 such ward's illness and need for treatment, and to consent to such ward's
23 admission and treatment. Upon any such admission, the head of the treat-
24 ment facility shall give notice to the temporary guardian or guardian as
25 soon as possible of the ward's admission, and shall provide to the tem-
26 porary guardian or guardian copies of any consents the proposed ward or
27 ward has given. Thereafter, the temporary guardian or guardian shall
28 timely either seek to obtain proper authority pursuant to this section to
29 admit the proposed ward or ward to a treatment facility and to consent
30 to further care and treatment, or shall otherwise assume responsibility
31 for the care of the proposed ward or ward, consistent with the authority
32 of the temporary guardian or guardian, and may arrange for the discharge
33 from the facility of the proposed ward or ward, unless the head of the
34 treatment facility shall file a petition requesting the involuntary commit-
35 ment of the proposed ward or ward to that or some other facility.

36 (h) As used herein, "treatment facility" means the Kansas neurolog-
37 ical institute, Larned state hospital, Osawatomie state hospital, Parsons
38 state hospital and training center, the rainbow mental health facility, any
39 intermediate care facility for the mentally retarded, any psychiatric hos-
40 pital licensed pursuant to K.S.A. 75-3307b, and amendments thereto, and
41 any other facility for mentally ill persons or mentally retarded or devel-
42 opmentally disabled persons licensed pursuant to K.S.A. 75-3307b, and
43 amendments thereto, if the proposed ward or ward is to be admitted as

, and amendments thereto, or in
K.S.A. 76-12b03 or K.S.A. 39-1803

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1 an inpatient or resident of that facility.

2 New Sec. 29. (a) (1) The individual or corporation appointed by the
3 court to serve as the conservator shall carry out diligently and in good
4 faith the general duties and responsibilities, and shall have the general
5 powers and authorities, provided for in this section, as well as any specific
6 duties, responsibilities, powers and authorities assigned to the conservator
7 by the court. In doing so, a conservator at all times shall be subject to the
8 control and direction of the court, and shall act in accordance with the
9 provisions of any conservatorship plan filed with the court pursuant to
10 section 30, and amendments thereto. The court shall have the authority
11 to appoint counsel for the conservator, and the fees of such attorney may
12 be assessed as costs pursuant to section 44, and amendments thereto. 45

13 (2) A conservator, in the exercise of the conservator's responsibilities
14 and authorities, should become aware of the conservatee's needs and
15 responsibilities. A conservator shall exercise authority only as necessitated
16 by the conservatee's limitations. A conservator shall encourage the con-
17 servatee to participate in the making of decisions affecting the conser-
18 vatee's estate. A conservator shall encourage the conservatee to manage
19 as much of the conservatee's estate as the conservatee is able to manage.
20 A conservator shall consider and, to the extent possible, act in accordance
21 with the expressed desires and personal values of the conservatee. A con-
22 servator shall assist the conservatee in developing or regaining the skills
23 and abilities necessary in order for the conservatee to be able to manage
24 the conservatee's own estate. A conservator shall strive to assure that the
25 personal, civil and human rights of the conservatee are protected. A con-
26 servator shall at all times act in the best interests of the conservatee and
27 shall exercise reasonable care, diligence and prudence.

28 (b) A conservator shall have the following general duties, responsi-
29 bilities, powers and authorities:

30 (1) To pay the reasonable charges for the support, maintenance, care,
31 treatment, habilitation and education of the conservatee in a manner suit-
32 able to the conservatee's station in life and the value of the conservatee's
33 estate; but nothing herein shall be construed to release a natural guardian
34 from the ordinary obligations imposed by law for the support, mainte-
35 nance, care, treatment, habilitation and education of the natural guard-
36 ian's minor children;

37 (2) to pay all just and lawful debts of the conservatee and the reason-
38 able charges for the support, maintenance, care, treatment, habilitation
39 and education of the conservatee's spouse and minor children;

40 (3) to separately possess and manage all the assets of the estate of
41 the conservatee and to collect all debts and assert all claims in favor of
42 the conservatee, and with the approval of the court, to compromise the
43 same. The conservator shall keep any property of the conservatee's estate

1 insured against theft, other loss or damage, in reasonable amounts based
2 upon the value of the estate, and for the benefit of the conservatee or
3 the conservatee's estate;

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

6 (5) to sell assets of the conservatee's estate when the interests of the
7 conservatee or conservatee's estate require the sale thereof;

8 (6) to possess and manage any ongoing business that the conservatee
9 was managing and operating prior to the appointment of the conservator,
10 and to divest the conservatee's estate of any interests therein, with the
11 approval of the court, when the conservator deems it in the best interests
12 of the conservatee or the conservatee's estate to do so; and

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

21 (c) A conservator shall not be obligated by virtue of the conservator's
22 appointment to use the conservator's own financial resources for the sup-
23 port of the conservatee.

24 (d) A conservator shall not be personally liable:

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

30 (2) on any mortgage note or by reason of the covenants in any in-
31 strument of conveyance duly executed by the conservator in the conser-
32 vator's representative capacity as authorized by the court;

33 (3) on a contract properly entered into in a fiduciary capacity in the
34 course of administration of the estate unless the conservator fails to reveal
35 in the contract the representative capacity and to identify the estate;

36 (4) for obligations arising from ownership or control of property of
37 the estate or for other acts or omissions occurring in the course of ad-
38 ministration of the estate unless the conservator is personally at fault;

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

42 (6) for retaining, until maturity, any security or investment which is
43 included in the conservatee's estate at the time of the establishment of

1 the conservatorship, even though such security or investment may not be
2 considered prudent or reasonable.

3 (e) A conservator shall be entitled to receive on behalf of the con-
4 servatee's estate any distributive share of the assets of an estate or trust,
5 and shall have the same right as any other distributee or beneficiary to
6 accept or demand distribution in kind, and may retain, until maturity, any
7 security or investment so distributed to the conservator, even though such
8 security or investment may not be considered prudent or reasonable.

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

10 (1) To use the assets of a minor's estate to pay any obligation imposed
11 by law upon the minor's natural guardian or natural guardians, including
12 the support, maintenance, care, treatment, habilitation or education of
13 the minor, except with the specific approval of the court granted upon a
14 showing of extreme hardship;

15 (2) to sell, convey, lease or mortgage the conservatee's interest in the
16 homestead of the conservatee, except with the approval of the court, and
17 no conservator's deed or other instrument executed by virtue of the
18 court's approval shall be valid unless the spouse, or if the spouse has been
19 adjudicated a person with an impairment in need of a conservator, the
20 conservator appointed for the spouse, shall join therein as one of the
21 grantors thereof;

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

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

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

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

36 (7) to extend, except with the approval of the court, an existing mort-
37 gage in favor of the conservatee or conservatee's estate, for a period of
38 more than five years;

39 (8) to extend, except with the approval of the court, an existing mort-
40 gage which obligates the conservatee or the conservatee's estate, unless
41 the extension agreement contains the same prepayment privileges, the
42 rate of interest does not exceed the lowest rate in the mortgage extended,
43 and the extension does not exceed five years; or

1 (9) to make any gift on behalf of the conservatee, except with the
2 approval of the court upon a finding that:

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

5 (B) sufficient funds and assets will remain in the conservatee's estate
6 after the making of such a gift to meet the expected needs and respon-
7 sibilities of the conservatee; and

8 (C) any person or entity who would have received the property to be
9 gifted had the conservatee died at the time of the gift, but who is not the
10 person or entity giving the gift, has either consented to or agreed with
11 the giving of the gift, in writing, or has received notice of the proposal to
12 make the gift and been given the opportunity to request a hearing thereon
13 by the 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
15 court's issuance of letters of conservatorship as provided for in section
16 20, and amendments thereto, an initial inventory of all of the property
17 and assets of the conservatee's estate, including any sources of regular
18 income to the estate.

19 (h) The conservator shall file with the court accountings and other
20 reports concerning the status of the estate and the actions of the conser-
21 vator as the court shall direct pursuant to section 34, and amendments
22 thereto.

23 New Sec. 30. (a) At any time, the court may require the conservator,
24 or the conservator may at any time choose, to develop and file with the
25 court a plan for the administration of the conservatee's estate. This plan
26 shall be developed consistent with the provisions of section 29, and
27 amendments thereto. This plan may provide for, but need not be limited
28 to providing for:

29 (1) What autonomy the conservatee will have with regard to keeping
30 and utilizing any earnings from employment or gifts which the conser-
31 vatee may have or receive; and

32 (2) what responsibility the conservator shall have with regard to pro-
33 tecting the eligibility of the conservatee for any type of public or other
34 benefit.

35 (b) If required by the court, the court may set a date by which this
36 conservatorship plan shall be filed with the court. Otherwise, the conser-
37 vator may at any time file a plan with the court. Upon the filing of a plan,
38 the court may require the conservator to give notice thereof to such per-
39 sons as the court directs. Any interested party may request that the court
40 conduct a hearing concerning any plan filed with the court. The court
41 may require the conservator to amend or withdraw any plan filed.

42 (c) Any conservatorship plan filed with the court shall be effectuated
43 by the conservator to the maximum extent possible consistent with any

, or under the circumstances, would have made such
a gift or gifts

receiving

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1 changing circumstances of the conservatee. Within each accounting sub-
2 mitted to the court as the court directs pursuant to section 34, and amend-
3 ments thereto, the conservator shall explain any actions taken in deviance
4 from the plan and the reasons therefor.

5 (d) At any time deemed appropriate by the conservator, the conser-
6 vator may file a revised conservatorship plan consistent with the provi-
7 sions of this section.

8 New Sec. 31. (a) At any time the conservator, or the guardian if the
9 guardian has been granted the authority to exercise control or authority
10 over the ward's estate pursuant to subsection ~~(d)~~(9) of section 26, and
11 amendments thereto, may file a verified petition requesting that the court
12 grant authority to the conservator or guardian to establish an irrevocable
13 trust which will enable the conservatee or ward to qualify for benefits
14 from any federal, state or local government program, or which will ac-
15 celerate the conservatee's or ward's qualification for such benefits.

16 (b) The petition shall include:

17 (1) The conservator's or guardian's name and address, and if the con-
18 servator is the petitioner and is both the conservator and the guardian, a
19 statement of that fact, or if the guardian is the petitioner, a statement that
20 the court has previously granted to the guardian the authority to exercise
21 control or authority over the ward's estate;

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

25 (3) the name and address of the conservatee's court appointed guard-
26 ian, if a guardian has been appointed by the court and is different from
27 the conservator;

28 (4) the names and addresses of any spouse, adult children and adult
29 grandchildren of the conservatee or ward, and those of any parents and
30 adult siblings of the conservatee or ward, or if no such names or addresses
31 are known to the petitioner, the name and address of at least one adult
32 who is nearest in kinship to the conservatee, or if none, that fact. If no
33 such names and addresses are known to the petitioner, but the petitioner
34 has reason to believe such persons exist, then the petition shall state that
35 fact and that the petitioner has made diligent inquiry to learn those names
36 and addresses;

37 (5) a statement of whether the secretary of social and rehabilitation
38 services has an interest in the matter by virtue of the purpose of the trust
39 being to enable the conservatee or ward to qualify for benefits from any
40 program administered by the secretary;

41 (6) the names and addresses of other persons, if any, whom the pe-
42 titioner knows to have an interest in the matter, or a statement that the
43 petitioner knows of no other persons having an interest in the matter;

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

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

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

7 (10) a request that the court find that the conservator or guardian
8 should be granted such authority, and that the court grant to the conser-
9 vator or guardian the authority to establish such a trust.

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

12 (d) Upon the filing of such a petition, the court shall issue an order
13 fixing the date, time and place of a hearing upon the petition, which
14 hearing may be held forthwith and without further notice if those persons
15 named within the petition pursuant to the requirements of subsections
16 (b)(4), (b)(5) and (b)(6), as applicable, have entered their appearances,
17 waived notice and agreed to the court's granting to the conservator or
18 guardian the authority to establish the proposed trust. Otherwise, the
19 court shall require the petitioner to give notice of this hearing to such
20 persons and in such manner as the court may direct, including therewith
21 a copy of the proposed trust instrument. This notice shall advise such
22 persons that if they have any objections to this authority being granted to
23 the conservator or guardian, that they must file their written objections
24 with the court prior to the scheduled hearing or that they must appear at
25 the hearing to present those objections. The court may appoint an attor-
26 ney to represent the conservatee or ward in this matter similarly as pro-
27 vided for in subsection (a)(3) of section 14, and amendments thereto, and
28 in such event, the court shall require the petitioner to also give this notice
29 to that attorney.

30 (e) At the conclusion of the hearing, if the court finds by a prepon-
31 derance of the evidence that:

32 (1) The establishment of such a trust will enable the conservatee or
33 ward to qualify for benefits from any federal, state or local government
34 program, or will accelerate the qualification of the conservatee or ward
35 for such benefits;

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

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

39 (4) the provisions of the trust will provide for the distribution of the
40 trust estate for the benefit of the conservatee or ward for special needs
41 not satisfied from governmental benefits and that distributions will be
42 made in compliance with any requirements of the governmental program
43 from which the conservatee or ward receives such benefits, and further,

1 that distributions will only be made in similar manner and under similar
2 circumstances as the conservatee's or ward's estate would otherwise have
3 been distributed by the conservator or guardian for the benefit of the
4 conservatee or ward had the trust not been established; and

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

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

15 (B) the conservatee or ward, should this termination of the trust oc-
16 cur during any time the conservatorship or guardianship has been ter-
17 minated and the conservatee or ward restored to capacity; or

18 (C) the legal representative of the conservatee's or ward's estate,
19 should this termination of the trust occur by virtue of the conservatee's
20 or ward's death, then the court may grant to the conservator or guardian
21 the authority to establish such a trust and to transfer specified property
22 or assets from the conservatee's or ward's estate to the trust. The court
23 shall order the conservator or guardian to report any such transfer within
24 the conservator's or guardian's next accounting as required by section 34,
25 and amendments thereto.

26 (f) The court may require as a condition of the court's granting to the
27 conservator or guardian the authority to establish such a trust that the
28 sole trustee of the trust be the court appointed conservator or guardian,
29 and that the conservator or guardian, acting as the trustee, shall be subject
30 to the same requirements and limitations as provided for in this act con-
31 cerning conservatorships and shall report and account to the court con-
32 cerning the trust estate the same as if the trust estate remained within
33 the conservatee's or ward's estate.

34 New Sec. 32. (a) At any time after the 17th birthday of a minor con-
35 servatee who has not been adjudged to be a minor with an impairment
36 in need of a guardian or conservator, or both, but before 30 days prior to
37 the minor's 18th birthday, the conservator may file a verified petition
38 requesting that the court grant authority to the conservator to establish a
39 plan for the extended distribution of the minor's estate to the minor after
40 the minor's 18th birthday. The petition shall include:

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

43 (2) the minor's name, age, date of birth, address of permanent resi-

1 dence, and present address or whereabouts, if different from the minor's
 2 permanent residence;

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

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

12 (5) a description of the funds or assets of the minor's estate which
 13 the conservator proposes to distribute to the minor over an extended
 14 period following the minor's 18th birthday;

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

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

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

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

25 (b) Upon the filing of such a petition, the court shall issue an order
 26 fixing the date, time and place of a hearing on the petition, which hearing
 27 may be held forthwith and without further notice if the minor and those
 28 other persons named within the petition pursuant to the requirements of
 29 subsection (a)(4), as applicable, have entered their appearance, waived
 30 notice, and agreed to the court's granting to the conservator the authority
 31 to establish the plan for the extended distribution of the minor's estate
 32 as contained within the petition. Otherwise, the court shall require the
 33 conservator to give notice of this hearing to the minor and those other
 34 persons in such manner as the court may direct. The court shall require
 35 that the notice be accompanied by a copy of the petition containing a
 36 description of the plan proposed by the conservator. The court shall re-
 37 quire that the notice advise the minor and those other persons that if
 38 they have any objections to this authority being granted to the conser-
 39 vator, that they must file their written objections with the court prior to
 40 the scheduled hearing or that they must appear at the hearing to present
 41 those objections. The court may appoint an attorney to represent the
 42 minor in this matter similarly as provided for in subsection (a)(3) of sec-
 43 tion 14, and amendments thereto, and in such event, the court shall re-

1 quire the conservator to also give this notice to that attorney.

2 (c) At the conclusion of the hearing, if the court finds by a prepon-
3 derance of the evidence that:

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

6 (2) the plan approved by the court will fully distribute all of the funds
7 and assets of the minor's estate to the minor by the minor's 25th birthday;
8 and

9 (3) the plan approved by the court adequately provides for meeting
10 the expected needs of the minor from the minor's 18th birthday until the
11 final distribution of the funds or assets which the court authorizes to be
12 set aside or transferred from the estate are paid over to the minor, in-
13 cluding provisions for accelerated distribution in extraordinary circum-
14 stances, which may require court approval, then the court may grant to
15 the conservator the authority to establish such a plan and to effectuate it.
16 The court shall order the conservator to report any expenditure or transfer
17 of funds or assets from the minor's estate for the purposes of effectuating
18 this plan within the conservator's next accounting as required by section
19 34, and amendments thereto.

20 (d) The court may require that the conservator continue to administer
21 the plan after the minor becomes 18 years of age. The court may extend
22 the conservatorship with regard to the funds or assets of the minor's estate
23 which are set aside to effectuate the plan and in such case the conservator
24 shall continue to be subject to the same requirements and limitations as
25 provided for in this act concerning conservatorships and shall report and
26 account to the court concerning the plan's execution, even though other
27 funds or assets of the minor's estate are paid over to the minor upon the
28 minor's becoming 18 years of age.

29 (e) The minor shall be without the power, voluntarily or involuntarily,
30 to sell, mortgage, pledge, hypothecate, assign, alienate, anticipate, trans-
31 fer or convey any interest in the principal or the income from any funds
32 or assets of the minor's estate set aside or transferred to effectuate a plan
33 for extended distribution as herein provided until such is actually paid to
34 the minor.

35 New Sec. 33. (a) Any person having a claim for payment against the
36 conservatee or the conservatee's estate, other than for any tort for which
37 the claimant has not been awarded judgment, or any person having a
38 claim for payment for any goods or services provided to the conservatee
39 or the conservatee's estate by the claimant in reliance upon actions or the
40 authority of the conservator, may file with the court a verified petition
41 requesting payment for such. The petition shall include:

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

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

Based upon the value, nature and character of the assets within the minor's estate, the minor does not possess the maturity and judgment to make determinations and act responsibly with regard to such estate, and that therefore it

that the court

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

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

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

9 (b) Upon the filing of such a petition, the court shall issue an order
10 fixing the date, time and place of a hearing on the petition. The court
11 shall require the petitioner to give notice of this hearing to the conservator
12 and to such other persons as the court may direct. The court may appoint
13 an attorney to represent the conservatee in this matter similarly as pro-
14 vided for in subsection (a)(3) of section 14, and amendments thereto.

15 (c) At the completion of the hearing, if the court finds, by a prepon-
16 derance of the evidence, that the petitioner is owed the claim, or some
17 part thereof, the court shall issue an order to the conservator to pay the
18 same from the conservatee's estate, or to pay so much of the claim as the
19 court allows, and to include such in the conservator's next report and
20 accounting. Otherwise, the court shall deny the petitioner's request. The
21 court may assess against the claimant the costs and expenses, including
22 reasonable attorney fees, incurred by the conservator in defending against
23 the claim if the court denies the petition.

24 New Sec. 34. (a) The guardian or conservator appointed by the court
25 pursuant to section 18, and amendments thereto, annually, and at other
26 times as the court may specify, shall file with the court, in such form as
27 the supreme court may require by rule, or in the absence of such rule or
28 in supplement thereto, as the court may require, reports and accountings
29 concerning the status of the ward or conservatee, the estate of the ward
30 or conservatee, and the actions of the guardian or conservator.

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

- 33 (1) A change of address of the guardian or conservator;
- 34 (2) a change of residence or placement of the ward or conservatee;
- 35 (3) a significant change in the health or impairment of the ward or
36 conservatee;

37 (4) the acquisition by the ward of any real property, or the receipt or
38 accumulation of other property or income by the ward or by the guardian
39 on behalf of the ward, which causes the total value of the ward's estate
40 to equal or exceed \$10,000; or

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

42 (c) Upon the death of the guardian or conservator, or upon the guard-
43 ian or conservator being adjudged in this state to be an adult with an

1 impairment in need of a guardian or a conservator, or both, or being
2 similarly adjudged in any other state, a representative on behalf of the
3 guardian or conservator, as the court may allow, shall file a final report
4 or accounting on behalf of that guardian or conservator.

5 (d) If the guardian or conservator is under contract with the Kansas
6 guardianship program, the court shall order that the guardian or conser-
7 vator file with the Kansas guardianship program a copy of each report or
8 accounting filed with the court.

9 (e) At the termination of the guardianship, or upon the resignation,
10 impairment, death or removal of the guardian, the guardian or a repre-
11 sentative on behalf of the guardian, as the court may allow, shall file with
12 the court a final report concerning the status of the ward and of the
13 actions and recommendations of the guardian.

14 (f) At the termination of the conservatorship, or upon the resignation,
15 impairment, death or removal of the conservator, the conservator or a
16 representative on behalf of the conservator, as the court may allow, shall
17 file with the court a final report and accounting concerning the status of
18 the conservatee, of the conservatee's estate, and of the actions and rec-
19 ommendations of the conservator. The conservator, the conservator's es-
20 tate and the conservator's surety shall not be finally discharged until such
21 final report and accounting is filed, and the accounting allowed and settled
22 as provided for in section 37, and amendments thereto. The conservator's
23 surety, in the surety's discretion, may file any report or accounting it
24 deems appropriate, or perform the duties of the conservator upon the
25 resignation, death, impairment or removal of the conservator, subject to
26 the authority of the standby conservator, if a standby conservator has been
27 appointed by the court pursuant to section 25, and amendments thereto.

28 New Sec. 35. (a) Upon the filing of a report by the guardian pursuant
29 to section 34, and amendments thereto, the court or a designee of the
30 court shall review the report, the court's prior orders, any guardianship
31 plan which has been filed with the court pursuant to section 27, and
32 amendments thereto, and which remains in effect, and any reports which
33 the guardian has previously filed, to determine whether:

- 34 (1) The current report reflects reasonable administration of the
- 35 guardianship;
- 36 (2) the guardian is performing assigned duties and responsibilities, or
- 37 exercising granted powers and authorities, in a manner consistent with
- 38 the prior orders of the court and with any guardianship plan in effect;
- 39 (3) additional duties, responsibilities, powers or authorities should be
- 40 granted to the guardian, or limitations should be made with regard
- 41 thereto, or other modifications should be made within the guardianship
- 42 to protect the interests of the ward or the ward's estate; or
- 43 (4) further proceedings as provided for in this act may be appropriate.

1 (b) Upon the filing of any report, or based upon other information
 2 which comes to the court's attention concerning matters contained within
 3 the report or which should be contained within the report, the court may
 4 set a hearing upon the matter and may require the guardian to appear
 5 before the court. The court may require the guardian to give notice of
 6 this hearing to such persons and in such manner as the court may direct.
 7 The court may appoint an attorney to represent the ward in this matter
 8 similarly as provided for in subsection (a)(3) of section 14, and amend-
 9 ments thereto. The court may require the guardian, and may allow the
 10 ward, the conservator, if a conservator has been appointed, and other
 11 interested persons, to present evidence concerning the actions of the
 12 guardian or the recommendations of such persons.

13 (c) At the conclusion of the court's review of the guardian's report,
 14 or following any hearing held as provided for in subsection (b), the court
 15 shall issue an order either approving or disapproving the guardian's re-
 16 port. The court may approve a reasonable guardian's fee which shall be
 17 assessed to the ward's estate. The court within its order may grant to or
 18 withdraw from the guardian specified duties, responsibilities, powers or
 19 authorities as provided for in section 26, and amendments thereto, may
 20 specifically order the guardian with regard to the performance of assigned
 21 duties, responsibilities, powers or authorities, including requiring the
 22 guardian to file an amended report, may require the guardian to develop
 23 and file with the court a guardianship plan as provided for in section 27,
 24 and amendments thereto, or the court may proceed pursuant to section
 25 39, and amendments thereto, to remove the guardian and to appoint a
 26 successor guardian, or the court may proceed pursuant to section 41 or
 27 42, and amendments thereto, to restore the ward to capacity or terminate
 28 the guardianship.

29 (d) If the court, pursuant to subsection (e)(9) of section 26, and
 30 amendments thereto, has authorized the guardian to exercise any control
 31 or authority over the ward's estate, then, in addition to or as a part of
 32 each report filed by the guardian pursuant to this section, the guardian
 33 also shall account for the ward's estate. In reviewing the guardian's report,
 34 the court also shall review the guardian's accounting and at the conclusion
 35 thereof, if the court finds that the accounting accurately accounts for the
 36 ward's estate and shows appropriate administration on the part of the
 37 guardian, the court shall issue an order approving the accounting.

38 New Sec. 36. (a) Upon the filing of a report or accounting by the
 39 conservator pursuant to section 34, and amendments thereto, the court
 40 or a designee of the court shall review the report or accounting, the court's
 41 prior orders, any conservatorship plan which has been filed with the court
 42 pursuant to section 30, and amendments thereto, and which remains in
 43 effect, and any reports and accountings which the conservator has pre-

1 viously filed, to determine whether:

2 (1) The current report or accounting reflects reasonable administra-
3 tion of the conservatorship;

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

7 (3) additional duties, responsibilities, powers or authorities should be
8 granted to the conservator, or limitations should be made with regard
9 thereto, or other modifications should be made within the conservator-
10 ship to protect the interests of the conservatee or the conservatee's estate;
11 or

12 (4) further proceedings as provided for in this act may be appropriate.

13 (b) Upon the filing of any report or accounting, or based upon other
14 information which comes to the court's attention concerning matters con-
15 tained within the report or accounting or which should be contained
16 within the report or accounting, the court may set a hearing upon the
17 matter and may require the conservator to appear before the court. The
18 court may require the conservator to give notice of this hearing to such
19 persons and in such manner as the court may direct. The court may
20 appoint an attorney to represent the conservatee in this matter similarly
21 as provided for in subsection (a)(3) of section 14, and amendments
22 thereto. The court may require the conservator, and may allow the con-
23 servatee, the guardian, if a guardian has been appointed, and other in-
24 terested persons, to present evidence concerning the actions of the con-
25 servator or the recommendations of such persons.

26 (c) At the conclusion of the court's review of the conservator's report
27 or accounting, or following any hearing held as provided for in subsection
28 (b), the court shall issue an order either approving or disapproving the
29 conservator's report or accepting or rejecting the conservator's account-
30 ing. The court within its order may grant to or withdraw from the con-
31 servator specified duties, responsibilities, powers or authorities as pro-
32 vided for in section 29, and amendments thereto, may specifically order
33 the conservator with regard to the performance of assigned duties, re-
34 sponsibilities, powers or authorities, including requiring the conservator
35 to file an amended report or accounting, may require the conservator to
36 develop and file with the court a conservatorship plan as provided for in
37 section 30, and amendments thereto, or the court may proceed pursuant
38 to section 39, and amendments thereto, to remove the conservator and
39 to appoint a successor conservator, or the court may proceed pursuant to
40 section 41 or 42, and amendments thereto, to restore the conservatee to
41 capacity or terminate the conservatorship.

42 (d) No order issued pursuant to this section shall be construed to
43 have finally allowed or settled any conservator's accounting, except if pro-

1 ceedings have been held in compliance with section 37, and amendments
2 thereto.

3 New Sec. 37. (a) At the time of or at any time after the filing of an
4 accounting by the conservator, the conservator may file with the court a
5 verified petition requesting a hearing on that accounting for the purposes
6 of allowance and settlement. The petition shall include:

7 (1) The conservator's name and address, and if the conservator is also
8 the guardian, that fact;

9 (2) the conservatee's name, age, date of birth, address of permanent
10 residence, and present address or whereabouts, if different from the con-
11 servatee's permanent residence;

12 (3) the name and address of the court appointed guardian, if different
13 from the conservator;

14 (4) the names and addresses of any spouse, adult children and adult
15 grandchildren of the conservatee, and those of any parent and adult sib-
16 lings of the conservatee, or if no such names or addresses are known to
17 the petitioner, the name and address of at least one adult who is nearest
18 in kinship to the conservatee, or if none, that fact. If no such names or
19 addresses are known to the conservator, but the conservator has reason
20 to believe that such persons exist, then the petition shall state that fact
21 and that the conservator has made diligent inquiry to learn those names
22 and addresses;

23 (5) the names and addresses of other persons, if any, whom the con-
24 servator knows to have an interest in the matter, or a statement that the
25 petitioner knows of no other persons having an interest in the matter;

26 (6) designation of the accounting period for which allowance and set-
27 tlement is sought; and

28 (7) a request that this accounting be accepted and that the court issue
29 an order providing that all matters related thereto are finally allowed and
30 settled.

31 (b) Upon the filing of such a petition, the court shall issue an order
32 fixing the date, time and place of a hearing on the petition, which hearing
33 may be held forthwith and without further notice if those persons named
34 within the petition pursuant to the requirement of subsections (a)(3),
35 (a)(4) and (a)(5), as applicable, have entered their appearances, waived
36 notice, and agreed to the court's accepting the accounting and issuing an
37 order of final allowance and settlement. Otherwise, the court shall require
38 the conservator to give notice of this hearing to such persons in such
39 manner as the court may specify, including therewith a copy of the con-
40 servator's petition and a copy or copies of the accounting or accountings
41 for which the conservator requests an order of final allowance and settle-
42 ment. This notice shall advise such persons that if they have any objections
43 to the accounting or accountings for which final allowance and settlement

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1 is sought that they must file their written objections with the court prior
2 to the scheduled hearing or that they must appear at the hearing to pres-
3 ent those objections. The court may appoint an attorney to represent the
4 conservatee in this matter similarly as provided for in subsection (a)(3) of
5 section 14, and amendments thereto, and in such event, the court shall
6 require the conservator to also give this notice to that attorney.

7 (c) In the absence of a petition having been filed by the conservator
8 pursuant to this section, the court may set a hearing to determine whether
9 an order of final allowance and settlement should be issued with regard
10 to any accounting which has been previously filed by the conservator, and
11 may require the conservator or some other person to give notice thereof
12 as provided for herein.

13 (d) The hearing shall be conducted in as informal a manner as may
14 be consistent with orderly procedure. The court shall have the authority
15 to receive all relevant and material evidence which may be offered, in-
16 cluding the testimony or written report, findings or recommendations of
17 any professional or other person who has familiarity with the conservatee
18 or the conservatee's estate. The court may review the court's prior orders,
19 any conservatorship plan which has been filed pursuant to section 30, and
20 amendments thereto, and any reports and accountings which have been
21 filed by the guardian or conservator, or both, even if previously approved
22 or allowed, to determine whether the current accounting seems reason-
23 able in light of the past reports or accountings, and to determine whether
24 any further proceedings under this act may be appropriate. The court
25 shall give to the conservator, to the conservatee, and to other interested
26 persons, the opportunity to present evidence to the court concerning the
27 actions of the conservator, the conservatee's estate and the recommen-
28 dations of such persons.

29 (e) At the conclusion of the hearing, if the court finds, by a prepon-
30 derance of the evidence, that the accounting accurately accounts for the
31 conservatee's estate, shows appropriate administration on the part of the
32 conservator, that any fees of the conservator are reasonable, and that due
33 notice and an opportunity to be heard has been provided to any interested
34 parties, the court shall approve the accounting and order that it is allowed
35 and settled. Such allowance and settlement shall relieve the conservator
36 and the conservator's sureties from liability for all acts and omissions
37 which are fully and accurately described in the accounting, including the
38 investments of the assets of the conservatee's estate.

39 (f) If the court finds by a preponderance of the evidence that the
40 conservator has innocently misused any funds or assets of the conserva-
41 tee's estate, the court shall order the conservator to repay such funds or
42 return such assets to the conservatee's estate. If the court finds that the
43 conservator has embezzled or converted for the conservator's own per-

1 sonal use any funds or assets of the conservatee's estate, the court shall
2 find the conservator liable for double the value of those funds or assets,
3 as provided for in K.S.A. 59-1704, and amendments thereto. The court
4 may order the forfeiture of the conservator's bond, or such portion
5 thereof as equals the value of such funds or assets, including any lost
6 earnings and the costs of recovering those funds or assets, including rea-
7 sonable attorney fees, as the court may allow, and may require of the
8 surety satisfaction thereof. Neither the conservator, nor the conservator's
9 estate or surety, shall be finally released from such bond until the satis-
10 fication thereof.

In either case,

11 (g) At no time shall the conservator, or the conservator's estate or
12 surety, be finally released from the bond required by the court pursuant
13 to section 20, and amendments thereto until a final accounting has been
14 filed, allowed and settled as provided for herein.

15 (h) Upon the filing of a final accounting, delivery of any remaining
16 funds and assets of the conservatee's estate to the person entitled thereto,
17 and presentation to the court of a receipt for such, the court may issue a
18 final order of allowance and settlement as provided for herein, and only
19 thereby finally shall release the conservator, the conservator's estate and
20 the conservator's surety.

21 New Sec. 38. (a) A verified petition requesting the court to modify
22 its prior order appointing co-guardians or co-conservators, or both, by
23 either changing the authority of the co-guardians or co-conservators, or
24 both, to act independently, to act only in concert, or to act only in concert
25 with regard to certain matters, or to remove one or both of the co-guard-
26 ians or co-conservators, or both, and to appoint only a single guardian or
27 a single conservator, or both, shall include:

28 (1) The petitioner's name and address, and if the petitioner is one of
29 the ward's or conservatee's court appointed co-guardians or co-conser-
30 vators, that fact;

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

34 (3) the names and addresses of each of the court appointed co-guard-
35 ians or co-conservators, or both, who are not the petitioner;

36 (4) the factual basis upon which the petitioner alleges the need for
37 the court to modify its prior order of appointment, and whether the pe-
38 titioner requests that the court require the co-guardians or co-conser-
39 vators, or both, to act independently, to act only in concert, or to act only
40 in concert with regard to certain matters, or whether the petitioner re-
41 quests that the court remove one of the co-guardians or co-conservators,
42 or both, and appoint only a single guardian or a single conservator, or
43 both;

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

3 (6) if the petitioner is requesting the appointment of a single guardian
4 or a single conservator, or both, to replace the co-guardians or co-con-
5 servators, or both, the name, address, and relationship to the ward or
6 conservatee, if any, of the individual or corporation whom the petitioner
7 suggests that the court appoint as the single guardian or single conser-
8 vator, or both, and if the suggested single guardian or single conservator
9 is under contract with the Kansas guardianship program, that fact; and

10 (7) a request that the court make a determination that the co-guard-
11 ians or co-conservators, or both, should each have the authority to act
12 independently, should be required to act only in concert or only in concert
13 with regard to certain matters, or that the co-guardians or co-conserva-
14 tors, or both, should be replaced with a single guardian or a single con-
15 servator, or both.

16 (b) Upon the filing of such a petition, the court shall issue an order
17 fixing the date, time and place of a hearing on the petition, which hearing
18 may be held forthwith and without further notice if each of the co-guard-
19 ians or co-conservators, as applicable, and, if in the opinion of the court,
20 all other persons necessary to the matter, have entered their appearance,
21 waived notice, and agreed to the court granting the petitioner's request.
22 Otherwise, the court shall require the petitioner to give notice of this
23 hearing to such persons and in such manner as the court may specify,
24 including therewith a copy of the petition. The court shall require the
25 petitioner to give this notice to any co-guardians or co-conservators, or
26 both. The court may appoint an attorney to represent the ward or con-
27 servatee in this matter, similarly as provided for in subsection (a)(3) of
28 section 14, and amendments thereto, and in such event, the court shall
29 require the petitioner to also give this notice to that attorney.

30 (c) In the absence of a petition having been filed pursuant to this
31 section, but whenever the court believes that it may be in the best inter-
32 ests of the ward or conservatee to consider modification of the court's
33 prior order appointing co-guardians or co-conservators, or both, the court
34 may set a hearing thereon, and may require one of the co-guardians or
35 co-conservators to give notice thereof as provided for herein.

36 (d) The hearing shall be conducted in as informal a manner as may
37 be consistent with orderly procedure. The court shall have the authority
38 to receive all relevant and material evidence which may be offered, in-
39 cluding the testimony or written report, findings or recommendations of
40 any professional or other person who has familiarity with the ward or
41 conservatee or the conservatee's estate. The court may review the court's
42 prior orders, any guardianship plan or conservatorship plan which has
43 been filed pursuant to section 27 or 30, and amendments thereto, and

1 any reports or accountings which have been filed by the co-guardians or
2 co-conservators, or both, even if previously approved or allowed. The
3 court shall give to the co-guardians or co-conservators, or both, to the
4 ward or conservatee, and to other interested persons, the opportunity to
5 present information to the court concerning the actions of the co-guard-
6 ians or co-conservators, or both, and of the recommendations of such
7 persons.

8 (e) At the conclusion of the hearing, if the court finds that it is in the
9 best interests of the ward or conservatee to do so, the court may modify
10 its prior orders to provide that the co-guardians or co-conservators, or
11 both, shall have the authority to act independently, to act only in concert,
12 in certain circumstances or with regard to certain matters to act indepen-
13 dently and in certain other circumstances or with regard to certain other
14 matters to act only in concert, or the court may remove the co-guardians
15 or co-conservators, or both, and appoint a single guardian or a single
16 conservator, or both. In making any such appointments, the court shall
17 act in accordance with sections 19 and 20, and amendments thereto.

18 (f) If the court finds by a preponderance of the evidence that a co-
19 conservator has innocently misused any funds or assets of the conserva-
20 tee's estate, the court shall order the co-conservator to repay such funds
21 or return such assets to the conservator's estate. If the court finds that a
22 co-conservator has embezzled or converted for the co-conservator's per-
23 sonal use any funds or assets of the conservatee's estate, the court shall
24 find the co-conservator liable for double the value of those funds or assets,
25 as provided for in K.S.A. 59-1704, and amendments thereto. The court
26 may order the forfeiture of the co-conservator's bond, or such portion
27 thereof as equals the value of such funds or assets, including any lost
28 earnings and the costs of recovering those funds or assets, including rea-
29 sonable attorney fees, as the court may allow, and may require of the
30 surety satisfaction thereof. Neither the conservator, nor the conservator's
31 estate or surety, shall be finally released from such bond until the satis-
32 faction thereof.

In either case,

33 (g) No co-conservator, nor the co-conservator's estate or surety, shall
34 be finally released from their bond until a final accounting has been filed,
35 allowed and settled as provided for in section 37, and amendments
36 thereto.

37 New Sec. 39. (a) A verified petition may be filed requesting the court
38 to accept the resignation of the guardian or the conservator, or both, to
39 remove the guardian or conservator, or both, or to appoint a successor
40 guardian or conservator, or both, and shall include:

- 41 (1) The petitioner's name and address, and if the petitioner is the
42 ward's or conservatee's court appointed guardian or conservator, that fact;
- 43 (2) the ward's or conservatee's name, age, date of birth, address of

1 permanent residence, and present address or whereabouts, if different
2 from the ward's or conservatee's permanent residence;
3 (3) the name and address of the court appointed guardian or conser-
4 vator, or both, if different from the petitioner;
5 (4) the factual basis upon which the petitioner alleges the need for
6 the removal of the guardian or conservator, or both, or the appointment
7 of a successor guardian or conservator, or both. If the current guardian
8 or conservator is requesting the court to accept the guardian's or conser-
9 vator's resignation, the petition shall include a statement to that effect
10 and state the reasons why the guardian or conservator, or both, desires
11 to resign;
12 (5) the names and addresses of witnesses by whom the truth of this
13 petition may be proved;
14 (6) the name, address, and relationship to the ward or conservatee,
15 if any, of the individual or corporation whom the petitioner suggests that
16 the court appoint as the successor guardian or conservator, and if the
17 suggested successor guardian or conservator is under contract with the
18 Kansas guardianship program, that fact; and
19 (7) a request that the court make a determination that the guardian
20 or conservator should be allowed to resign or should be removed, or that
21 a successor guardian or conservator, or both, should be appointed.
22 (b) Upon the filing of such a petition, the court shall issue an order
23 fixing the date, time and place of a hearing on the petition, which hearing
24 may be held forthwith and without further notice if, in the opinion of the
25 court, all persons necessary to the matter have entered their appearances,
26 waived notice, and agreed to the court's entering the order requested.
27 Otherwise, the court shall require the petitioner to give notice of this
28 hearing to such persons and in such manner as the court may direct,
29 including therewith a copy of the petition. This notice shall advise such
30 persons that if they have any objections to the petition that they must file
31 their written objections with the court prior to the scheduled hearing or
32 that they must appear at the hearing to present those objections. If the
33 petitioner is not the guardian or conservator, the court shall require the
34 petitioner to give this notice to the guardian or conservator, or both. The
35 court may appoint an attorney to represent the ward or conservatee in
36 this matter, similarly as provided for in subsection (a)(3) of section 14,
37 and amendments thereto, and in such event, the court shall require the
38 petitioner also to give this notice to that attorney.
39 (c) In the absence of a petition having been filed, but at any time
40 when the court has reason to believe that removal of the guardian or
41 conservator, or both, may be necessary, the court may set a hearing
42 thereon, and may require the guardian, conservator or some other person
43 to give notice thereof as provided for herein. Nothing herein shall be

1 construed such that the court does not have the authority to suspend
2 immediately the powers and authorities of a guardian or conservator, or
3 both, whenever the court determines that it is in the best interests of the
4 ward or conservatee to do so.

5 (d) The hearing shall be conducted in as informal a manner as may
6 be consistent with orderly procedure. The court shall have the authority
7 to receive all relevant and material evidence which may be offered, in-
8 cluding the testimony or written report, findings or recommendations of
9 any professional or other person who has familiarity with the ward or
10 conservatee or the conservatee's estate. The court may review the courts
11 prior orders, any guardianship plan or conservatorship plan filed pursuant
12 to section 27 or 30, and amendments thereto, which is in effect, and any
13 reports or accountings which have been filed by the guardian or conser-
14 vator, or both, even if previously approved or allowed. The court shall
15 give to the guardian or conservator, or both, to the ward or conservatee,
16 and to other interested persons, the opportunity to present evidence to
17 the court concerning the actions of the guardian or conservator, or both,
18 and of the recommendations of such persons.

19 (e) At the conclusion of the hearing, if the court finds, by a prepon-
20 derance of the evidence, that the guardian or conservator, or both, should
21 be permitted to resign, or should be removed for failure to fulfill the
22 duties or responsibilities of being a guardian or conservator, or for the
23 manner in which the guardian or conservator has exercised the powers
24 or authorities granted to the guardian or conservator, the court may so
25 order and in such case shall revoke the letters of guardianship or conser-
26 vatorship, or both, previously issued pursuant to section 20, and amend-
27 ments thereto. The court may appoint a successor guardian or conser-
28 vator, or both. In making any such appointments, the court shall act in
29 accordance with sections 19 and 20, and amendments thereto.

30 (f) If the court finds that the conservator has innocently misused any
31 funds or assets of the conservatee's estate, the court shall order the con-
32 servator to repay such funds or return such assets to the conservatee's
33 estate. If the court finds that the conservator has embezzled or converted
34 for the conservator's personal use any funds or assets of the conservatee's
35 estate, the court shall find the conservator liable for double the value of
36 those funds or assets, as provided for in K.S.A. 59-1704, and amendments
37 thereto. The court may order the forfeiture of the conservator's bond, or
38 such portion thereof as equals the value of such funds or assets, including
39 any lost earnings and the costs of recovering those funds or assets, in-
40 cluding reasonable attorney fees, as the court may allow, and may require
41 of the surety satisfaction thereof. Neither the conservator, nor the con-
42 servator's estate or surety, shall be finally released from such bond until
43 the satisfaction thereof.

In either case,

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1 New Sec. 40. (a) At any time the court has reason to believe that the
 2 guardian or conservator, or both, has failed to faithfully or diligently carry
 3 out such person's duties or responsibilities or to properly exercise such
 4 person's powers or authorities in a manner consistent with the provisions
 5 of section 26 or 29, and amendments thereto, or with any prior order of
 6 the court, the court may issue to the guardian or conservator, or both, an
 7 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 such person has failed
 9 to faithfully or diligently carry out such person's duties or responsibilities
 10 or to properly exercise such person's powers or authorities.

11 (b) At such hearing, the court shall give to the guardian or conser-
 12 vator, or both, the opportunity to present evidence concerning their ac-
 13 tions. The court shall also have the authority to receive all relevant and
 14 material evidence which may be offered by other interested parties, in-
 15 cluding the testimony or written report, findings or recommendations of
 16 any professional or other person who has familiarity with the ward or
 17 conservatee, or the conservatee's estate. The court may review the court's
 18 prior orders, any guardianship plan or conservatorship plan filed pursuant
 19 to section 27 or 30, and amendments thereto, which is in effect, and any
 20 reports or accountings which have been filed by the guardian or conser-
 21 vator, or both, even if previously approved or allowed.

22 (c) At the conclusion of the hearing, if the court finds, by a prepon-
 23 derance of the evidence, that the guardian or conservator, or both, has
 24 failed to faithfully or diligently carry out such person's duties or respon-
 25 sibilities or to properly exercise such person's powers or authorities, the
 26 court may remove the guardian or conservator, or both, and in such case,
 27 the court shall revoke the letters of guardianship or conservatorship, or
 28 both, previously issued pursuant to section 20, and amendments thereto.
 29 Otherwise, the court may issue appropriate orders further directing the
 30 guardian or conservator, or both, with regard to the performance of such
 31 person's duties or responsibilities or the exercise of such person's powers
 32 or authorities, or the court may dismiss the proceedings.

33 (d) If the court finds that the guardian or conservator has innocently
 34 misused any funds or assets of the ward's or conservatee's estate, the court
 35 shall order the guardian or conservator to repay such funds or return such
 36 assets to the ward's or conservatee's estate. If the court finds that the
 37 guardian or conservator has embezzled or converted for such person's
 38 personal use any funds or assets of the ward's or conservatee's estate, the
 39 court shall find the guardian or conservator liable for double the value of
 40 those funds or assets, as provided for in K.S.A. 59-1704, and amendments
 41 thereto, and in such case, neither the guardian or conservator, or the
 42 guardian's or conservator's estate, shall be finally released until the sat-
 43 isfaction thereof. The court may order the forfeiture of the conservator's

In either case,

1 bond, or such portion thereof as equals the value of such funds or assets,
2 including any lost earnings and the costs of recovering those funds or
3 assets, including reasonable attorney fees, as the court may allow, and
4 may require of the surety satisfaction thereof, and in such case the court
5 shall not finally release the conservator's surety until such order has been
6 satisfied.

7 (e) If the guardian or conservator, or both, fail or refuse to appear as
8 ordered, the court may proceed as provided for in article 12 of chapter
9 20 of the Kansas Statutes Annotated or K.S.A. 59- 2217a, and amend-
10 ments thereto.

11 New Sec. 41. (a) The ward or conservatee may at any time file a
12 verified petition with the court requesting that the court find that the
13 ward or conservatee is no longer impaired, and request that the court
14 restore the ward or conservatee to capacity.

15 (b) The petition shall include:

16 (1) The ward's or conservatee's name, age, date of birth, address of
17 permanent residence, and present address or whereabouts, if different
18 from the ward's or conservatee's permanent residence;

19 (2) the name and address of the ward's or conservatee's court ap-
20 pointed guardian or conservator, or both;

21 (3) the factual basis upon which the ward or conservatee alleges that
22 they are no longer impaired;

23 (4) the names and addresses of the witnesses by whom the truth of
24 the petition may be proved; and

25 (5) a request that the court find that the ward or conservatee is no
26 longer impaired, and therefore entitled to be restored to capacity.

27 (c) (1) Upon the filing of such a petition, the court shall review the
28 petition to determine whether probable cause exists to warrant further
29 proceedings. If the court finds probable cause to warrant further pro-
30 ceedings, the court shall issue an order fixing the date, time and place of
31 a hearing on the petition, which hearing shall be held not later than 30
32 days following the filing of the petition. If the court does not find within
33 the petition facts sufficient to constitute probable cause to warrant further
34 proceedings, the court nonetheless may issue an order for an examination
35 and evaluation of the ward or conservatee to determine if there is suffi-
36 cient cause for further proceedings. The court may order the ward or
37 conservatee to submit to such an examination and evaluation to be con-
38 ducted through a general hospital, psychiatric hospital, community mental
39 health center, community developmental disability organization, or by a
40 private physician, psychiatrist, psychologist or other person appointed by
41 the court who is qualified to examine and evaluate the ward or conser-
42 vatee. The costs of this examination and evaluation shall be assessed as
43 provided for in section ~~44~~, and amendments thereto.

1 (2) If the court does not find probable cause to warrant further pro-
2 ceedings and the court does not issue an order for an examination and
3 evaluation, or if the court has within the past six months conducted either
4 the trial upon the original petition provided for in section 18, and amend-
5 ments thereto, or a hearing on a previous petition for restoration, the
6 court may decline to set a hearing on the petition and may dismiss the
7 petition without further proceedings.

8 (d) If the court orders an examination and evaluation, and the report
9 of that examination and evaluation contains information upon which the
10 court finds probable cause to warrant further proceedings, the court shall
11 issue an order fixing the date, time and place of a hearing on the petition,
12 which hearing shall be held not later than 30 days following receipt of
13 the report of the examination and evaluation. Otherwise, the court may
14 dismiss the petition without further proceedings.

15 (e) The court may at any time on its own motion issue an order fixing
16 the date, time and place of a hearing on whether the ward or conservatee
17 should be restored to capacity.

18 (f) If the court issues an order setting the petition for a hearing, or
19 issues an order on its own motion, the court may issue the following:

20 (1) An order appointing an attorney to represent the ward or conser-
21 vatee in this matter, similarly as provided for in subsection (a)(3) of section
22 14, and amendments thereto;

23 (2) an order requiring that the ward or conservatee appear at the time
24 and place of the hearing on the petition. If an order to appear is entered,
25 but is later rescinded, the court shall enter in the record of the proceed-
26 ings the facts upon which the court found subsequent to the issuance of
27 the order that the presence of the ward or conservatee should be excused;

28 (3) a notice of the hearing to the guardian or conservator, or both,
29 and to other interested parties. The court may order the attorney for the
30 ward or conservatee, or another appropriate person, to serve this notice
31 as the court may direct;

32 (4) an order of referral for hearing to the district court of the county
33 of residence of the ward or conservatee, or of the county wherein the
34 ward or conservatee may be found, except that no order of referral for
35 hearing shall be issued if objected to by the ward or conservatee. The
36 district court to which an order of referral for hearing is made shall pro-
37 ceed in the case as if the petition for restoration had been filed therein,
38 except that upon completion of the hearing the court shall transmit the
39 findings of the court, along with any statement of the costs incurred, and
40 a certified copy of all pleadings filed and orders entered during the course
41 of the referral, to the original court having venue. Thereafter, the original
42 court shall proceed as provided for under this act;

43 (5) for good cause shown, an order of continuance of the hearing;

1 (6) for good cause shown, an order of advancement of the hearing;
2 and
3 (7) for good cause shown, an order changing the place of the hearing.
4 (g) The hearing upon the petition, or the court's own motion, shall
5 be conducted in as informal a manner as may be consistent with orderly
6 procedure. The court shall have the authority to receive all relevant and
7 material evidence which may be offered, including the testimony or writ-
8 ten report, findings or recommendations of any professional or other per-
9 son who has familiarity with the ward or conservatee.

10 (h) At the conclusion of the hearing, if the court does not find, by
11 clear and convincing evidence, that the ward or conservatee is impaired,
12 the court shall order that the ward or conservatee is restored to capacity
13 and shall proceed to terminate the guardianship or conservatorship, or
14 both, as provided for in subsection (i) or (j) of section ~~14~~ and amendments
15 thereto. Otherwise, the court shall make such further orders in the guard-
16 ianship or conservatorship, or both, as may be appropriate under this act.

42

17 New Sec. 42. (a) At any time following the appointment of a guardian
18 or a conservator, any person, including the ward or conservatee, may file
19 a verified petition with the court requesting that the court find that the
20 ward or conservatee is no longer in need of a guardian or a conservator,
21 or both, and requesting that the court terminate the guardianship or con-
22 servatorship, or both.

23 (b) The petition shall include:

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

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

30 (3) the name and address of the ward's or conservatee's court ap-
31 pointed guardian or conservator, or both, if different from the petitioner;

32 (4) the factual basis upon which the petitioner alleges that the ward
33 or conservatee is no longer in need of a guardian or conservator, or both;

34 (5) the names and addresses of the witnesses by whom the truth of
35 the petition may be proved; and

36 (6) a request that the court find that the ward or conservatee is no
37 longer in need of a guardian or conservator, or both, and that the court
38 terminate the guardianship or conservatorship, or both.

39 (c) (1) Upon the filing of such a petition, the court shall review the
40 petition to determine whether probable cause exists to warrant further
41 proceedings. If the court finds probable cause to warrant further pro-
42 ceedings, the court shall issue an order fixing the date, time and place of
43 a hearing on the petition, which hearing shall be held not later than 30

1 days following the filing of the petition. If the court does not find within
2 the petition facts sufficient to constitute probable cause to warrant further
3 proceedings, the court nonetheless may issue an order for an investigation
4 and report concerning the circumstances of the ward or conservatee. The
5 court may appoint any qualified person to conduct this investigation. The
6 costs of this investigation shall be assessed as provided for in section 44,
7 and amendments thereto.

45

8 (2) If the court does not find probable cause to warrant further pro-
9 ceedings and the court does not issue an order for an investigation and
10 report, or if the court has within the past six months conducted either
11 the trial upon the original petition provided for in section 18, and amend-
12 ments thereto, or a hearing on a previous petition for termination, the
13 court may decline to set a hearing on the petition and may dismiss the
14 petition without further proceedings.

15 (d) If the court orders an investigation, and the report of that inves-
16 tigation contains information upon which the court finds probable cause
17 to warrant further proceedings, the court shall issue an order fixing the
18 date, time and place of a hearing on the petition, which hearing shall be
19 held not later than 30 days following receipt of the report of the inves-
20 tigation. Otherwise, the court may dismiss the petition without further
21 proceedings.

22 (e) The court may at any time on its own motion issue an order fixing
23 the date, time and place of a hearing on whether the guardianship or
24 conservatorship, or both, should be terminated.

25 (f) If the court issues an order setting the petition for a hearing, or
26 issues an order on its own motion, the court may issue the following:

27 (1) An order appointing an attorney to represent the ward or conser-
28 vatee in this matter, similarly as provided for in subsection (a)(3) of section
29 14, and amendments thereto;

30 (2) a notice of the hearing to the guardian or conservator, or both,
31 and to other interested parties. The court may order the petitioner, or
32 another appropriate person, to serve this notice as the court may direct;

33 (3) for good cause shown, an order of continuance of the hearing;

34 (4) for good cause shown, an order of advancement of the hearing;
35 and

36 (5) for good cause shown, an order changing the place of the hearing.

37 (g) The hearing upon the petition, or the court's own motion, shall
38 be conducted in as informal a manner as may be consistent with orderly
39 procedure. The court shall have the authority to receive all relevant and
40 material evidence which may be offered, including the testimony or writ-
41 ten report, findings or recommendations of any professional or other per-
42 son who has familiarity with the ward or conservatee or the conservatee's
43 estate.

1 (h) At the conclusion of the hearing, if the court does not find, by
2 clear and convincing evidence, that the ward or conservatee is in need of
3 a guardian or conservator, or both, the court shall order that the guardi-
4 anship or conservatorship, or both, be terminated as provided for herein.
5 The court may assign to the guardian or conservator additional respon-
6 sibilities, duties, powers or authorities as the court determines appropri-
7 ate to facilitate the closure of the guardianship or conservatorship, or
8 both, including, if the ward or conservatee is deceased, authority to the
9 guardian or conservator to pay from the ward's or conservatee's estate
10 any reasonable funeral expenses, any medical expenses from the ward's
11 or conservatee's last illness, and any claim for medical assistance paid for
12 pursuant to K.S.A. 39-709, and amendments thereto, with due regard to
13 the rights of a surviving spouse, if any, and creditors.

14 (i) Upon the court ordering that the guardianship be terminated, the
15 guardian shall give any necessary notices with regard to the termination
16 of the guardian's authority, shall assist the ward to establish an independ-
17 ent residence, if applicable, and shall file a final report with the court
18 concerning the actions of the guardian. The court shall review the report
19 and if the court finds matters in order, the court shall approve this final
20 report and shall finally discharge the guardian.

21 (j) Upon the court ordering that the conservatorship be terminated,
22 the conservator shall take any necessary action to close the conservator's
23 administration of the conservatee's estate, and to deliver the property and
24 assets of the conservatee's estate to the conservatee or otherwise as the
25 court may direct. If the conservatee is deceased, and the funeral and last
26 illness expenses, payment of any claim for medical expenses paid for pur-
27 suant to K.S.A. 39-709, and amendments there, payment of the fees of
28 the conservator as the court may allow, and payment of the costs of the
29 final accounting and closing of the conservatee's estate, will deplete the
30 estate, the conservator shall show such depletion on the final accounting.
31 ~~If the court approves, allows and settles this final accounting pursuant to~~
32 ~~the provisions of section 37, and amendments thereto, the court finally~~
33 ~~shall discharge the conservator and the conservator's surety.~~ If such ex-
34 penses will not deplete the estate, the remaining property and assets of
35 the conservatee's estate shall be delivered by the conservator to the ap-
36 propriate person or agency as determined by the court, and the conser-
37 vator shall report such fact to the court in a final accounting. Upon the
38 filing of a final accounting, and presentation to the court of a receipt for
39 such property and assets, if the court approves, allows and settles this
40 final accounting pursuant to the provisions of section 37, and amendments
41 thereto, the court finally shall discharge the conservator and the conser-
42 vator's surety. Neither the conservator, nor the conservator's estate or
43 surety, shall be finally discharged until all of the property and assets of

finally

~~the conservatee's estate have been dispersed as directed by the court.~~

2 New Sec. 43. (a) The court at any time, upon the request of any party
3 or upon the court's own motion, may issue a written order directing that
4 any medical or treatment records, evaluations or investigative reports filed
5 with the court, attached to any pleading, produced in response to any
6 order issued by the court, or introduced in evidence, shall be separately
7 maintained in a confidential manner, to be disclosed only:

8 (1) Upon the written consent or request of the proposed ward or
9 proposed conservatee, if no guardian or conservator is appointed by the
10 court;

11 (2) upon the written consent of the guardian or conservator;

12 (3) upon the written consent of the former ward or former conser-
13 vatee, if restored to capacity pursuant to section 41, and amendments
14 thereto;

15 (4) upon the order of any court of record after a determination has
16 been made by the court that such records or reports are necessary for
17 the conduct of proceedings before the court and are otherwise admissible
18 as evidence;

19 (5) to any state or national accreditation agency or for a scholarly
20 study, but the court shall require, before such disclosure is made, a pledge
21 from that state or national accreditation agency or scholarly investigator
22 that such agency or investigator will not disclose the name of any patient
23 or former patient to any person not otherwise authorized by law to receive
24 such information; or

25 (6) in proceedings under this act, upon the written request of any
26 attorney representing any party.

27 (b) To the extent the provisions of K.S.A. 65-5601 through 65-5605,
28 or K.S.A. 2000 Supp. 59-2979 or 59-29b79, and amendments thereto, are
29 applicable to medical or treatment records of any patient or former pa-
30 tient who may be the subject of proceedings under this act, the provisions
31 of K.S.A. 65-5601 through 65-5605 or K.S.A. 59-2979 or 59-29b79, and
32 amendments thereto, as applicable, shall control the disposition of infor-
33 mation contained in such records. Willful violation of this section is a class
34 C misdemeanor.

35 New Sec. 44. (a) In each proceeding the court shall allow and order
36 paid to any individual or institution as a part of the costs thereof a rea-
37 sonable fee and expenses for any professional services ordered performed
38 by the court pursuant to this act other than those performed by any in-
39 dividual or institution under the jurisdiction of the department of social
40 and rehabilitation services, but including the fee of counsel for the pro-
41 posed ward or proposed conservatee or ward or conservatee when counsel
is appointed by the court. The court may allow and order paid the fee of
counsel for the petitioner. ~~Other costs and fees may be allowed and paid~~

ADD (NEW) NEW SECTION 43 (and re-number all remaining sections in the Bill)

(a) At any time the court may enter an order summarily terminating the guardianship in any of the following circumstances:

(1) the ward is deceased;

(2) the ward, who was a minor and not adjudicated to be a minor with an impairment which would otherwise make that minor an adult with an impairment in need of a guardian, has become 18 years of age, has had the rights of majority conferred upon them pursuant to K.S.A. 38-108 and amendments thereto, or is now considered to be of the age of majority pursuant to K.S.A. 38-101 and amendments thereto; or

(3) no further need for the guardianship exists.

(b) At any time the court may enter an order summarily terminating the conservatorship in any of the following circumstances:

(1) the conservatee is deceased and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable; or

(2) no further need for the conservatorship exists and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto.

(c) At any time the court may enter an order summarily terminating the voluntary conservatorship in any of the following circumstances:

(1) the conservatee has filed a verified petition pursuant to new section 42 and amendments thereto, requesting the termination of the conservatorship and the court has issued orders consistent with the requirements (cont. on page 73a)

and any respondent

of subsection (j) of new section 42 and amendments thereto, as applicable;

(2) the conservatee has been adjudicated an adult with an impairment in need of a conservator by a court of competent jurisdiction either within this or another state, and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable;

(3) no further need for the conservatorship exists and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable; or

(4) the conservatee is deceased and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable.

1 as are allowed by law for similar services in other cases. The costs shall
2 be taxed to the estate of the proposed ward or proposed conservatee or
3 ward or conservatee, to those bound by law to support the proposed ward
4 or proposed conservatee or ward or conservatee, to other parties when-
5 ever it would be just and equitable to do so, or to the county of residence
6 of the proposed ward or proposed conservatee or ward or conservatee as
7 the court having venue shall direct.

8 (b) In any contested proceeding or matter the court, in its discretion,
9 may require one or more parties to give security for the costs thereof, or
10 in lieu thereof to file a poverty affidavit as provided for in the code of
11 civil procedure.

12 (c) Any district court receiving a statement of costs from another
13 district court shall approve the same for payment out of the general fund
14 of its county except that it may refuse to approve the same for payment
15 only on the grounds that the proposed ward or proposed conservatee or
16 ward or conservatee is not a resident of that county. In such case it shall
17 transmit the statement of costs to the secretary of social and rehabilitation
18 services who shall determine the question of residence and certify those
19 findings to each district court. If the claim for costs is not paid within 30
20 days after such certification, an action may be maintained thereon by the
21 claimant county in the district court of the claimant county against the
22 debtor county. The findings made by the secretary of social and rehabil-
23 itation services as to the residence of the proposed ward or proposed
24 conservatee or ward or conservatee shall be applicable only to the as-
25 sessment of costs. Any county of residence which pays from its general
26 fund court costs to the district court of another county may recover the
27 same in any court of competent jurisdiction from the estate of the pro-
28 posed ward or proposed conservatee or ward or conservatee or from those
29 bound by law to support the proposed ward or proposed conservatee or
30 ward or conservatee, unless the court finds that the proceedings in which
31 such costs were incurred were instituted without probable cause and not
32 in good faith.

33 New Sec. 45. (a) Any person who has been adjudged a disabled per-
34 son prior to the effective date of this act and who has not been restored
35 to capacity, for the purposes of this act, shall be considered to be either:

- 36 (1) An adult with an impairment in need of a guardian or conservator,
37 or both;
- 38 (2) a minor in need of a guardian or conservator, or both;
- 39 (3) a minor with an impairment in need of a guardian or conservator,
40 or both;
- 41 (4) a person previously adjudged as impaired in another state; or
- 42 (5) a person in need of an ancillary conservator.

43 (b) Within one year from the effective date of this act, any person

1 with an interest in the matter may file a verified petition requesting that
2 the court determine whether the ward or conservatee meets the defini-
3 tion of impaired as contained within this act, or meets the requirements
4 of being in need of a guardian or conservator. Thereafter, all proceedings
5 shall be as provided for in this act.

6 (c) No act of a guardian or conservator performed prior to the effec-
7 tive date of this act, which was performed in compliance with any pro-
8 vision of the act for obtaining a guardian or conservator, or both, in effect
9 prior to the effective date of this act, shall be deemed unlawful because
10 of any provision of this act.

11 (d) Upon and after the effective date of this act, all acts of any guard-
12 ian or conservator appointed by any court prior to the effective date of
13 this act shall comply with the provisions of this act.

14 Sec. 46. K.S.A. 2000 Supp. 9-1215 is hereby amended to read as
15 follows: 9-1215. Subject to the provisions of this section and K.S.A. 9-
16 1216 and amendments thereto, an individual adult or minor, hereafter
17 referred to as the owner, may enter into a written contract with any bank
18 located in this state providing that the balance of the owner's deposit
19 account, or the balance of the owner's legal share of a deposit account,
20 at the time of death of the owner shall be made payable on the death of
21 the owner to one or more persons or, if the persons predecease the owner,
22 to another person or persons, hereafter referred to as the beneficiary or
23 beneficiaries. If any beneficiary is a minor at the time the account, or any
24 portion of the account, becomes payable to the beneficiary and the bal-
25 ance, or portion of the balance, exceeds the amount specified by ~~K.S.A.~~
26 ~~59-2003~~ section 4, and amendments thereto, the moneys shall be payable
27 only to a conservator of the minor beneficiary.

28 Transfers pursuant to this section shall not be considered testamentary
29 or be invalidated due to nonconformity with the provisions of chapter 59
30 of the Kansas Statutes Annotated.

31 Every contract authorized by this section shall be considered to contain
32 a right on the part of the owner during the owner's lifetime both to
33 withdraw funds on deposit in the account in the manner provided in the
34 contract, in whole or in part, as though no beneficiary has been named,
35 and to change the designation of beneficiary. The interest of the bene-
36 ficiary shall be considered not to vest until the death of the owner and,
37 if there is a claim pursuant to subsection (g) of K.S.A. 39-709 and amend-
38 ments thereto, until such claim is satisfied.

39 No change in the designation of the beneficiary shall be valid unless
40 executed in the form and manner prescribed by the bank and delivered
41 to the bank prior to the death of the owner.

42 For the purposes of this section, the balance of the owner's deposit
43 account or the balance of the owner's legal share of a deposit account

1 shall not be construed to include any portion of the account which under
2 the law of joint tenancy is the property of another joint tenant of the
3 account upon the death of the owner.

4 As used in this section, "person" means any individual, individual or
5 corporate fiduciary or nonprofit religious or charitable organization as
6 defined by K.S.A. 79-4701, and amendments thereto.

7 Sec. 47. K.S.A. 2000 Supp. 9-1216 is hereby amended to read as
8 follows: 9-1216. When the owner and the bank have entered into a con-
9 tract authorized in K.S.A. 9-1215, and amendments thereto, the owner's
10 deposit account subject to the contract or any part of or interest on the
11 account shall be paid by the bank to the owner or pursuant to the owner's
12 order during the owner's lifetime. On the owner's death, the deposit
13 account or any part of or interest on the account shall be paid by the bank
14 to the secretary of social and rehabilitation services for a claim pursuant
15 to subsection (g) of K.S.A. 39-709 and amendments thereto or, if there
16 is no such claim or if any portion of the account remains after such claim
17 is satisfied, to the designated beneficiary or beneficiaries. If any desig-
18 nated beneficiary is a minor at the time the account, or any portion of
19 the account, becomes payable to the beneficiary and the balance, or por-
20 tion of the balance, exceeds the amount specified by ~~K.S.A. 59-2003~~ *sec-*
21 *tion 4*, and amendments thereto, the bank shall pay the moneys or any
22 interest on them only to a conservator of the minor beneficiary. The
23 receipt of the conservator shall release and discharge the bank for the
24 payment.

25 Sec. 48. K.S.A. 17-2263 is hereby amended to read as follows: 17-
26 2263. Subject to the provisions of this section and K.S.A. 17-2264 and
27 amendments thereto, an individual adult or minor, hereafter referred to
28 as the shareholder, may enter into a written contract with any credit union
29 located in this state providing that the balance of the shareholder's ac-
30 count, or the balance of the shareholder's legal share of an account, at
31 the time of death of the shareholder shall be made payable on the death
32 of the shareholder to one or more persons or, if the persons predecease
33 the owner, to another person or persons, hereafter referred to as the
34 beneficiary or beneficiaries. If any beneficiary is a minor at the time the
35 account, or any portion of the account, becomes payable to the beneficiary
36 and the balance, or portion of the balance, exceeds the amount specified
37 by ~~K.S.A. 59-2003~~ *section 4*, and amendments thereto, the moneys shall
38 be payable only to a conservator of the minor beneficiary.

39 Transfers pursuant to this section shall not be considered testamentary
40 or be invalidated due to nonconformity with the provisions of chapter 59
41 of the Kansas Statutes Annotated.

42 Every contract authorized by this section shall be considered to contain
43 a right on the part of the shareholder during the shareholder's lifetime

1 both to withdraw funds on deposit in the account in the manner provided
2 in the contract, in whole or in part, as though no beneficiary has been
3 named, and to change the designation of beneficiary. The interest of the
4 beneficiary shall be considered not to vest until the death of the share-
5 holder and, if there is a claim pursuant to subsection (g) of K.S.A. 39-709
6 and amendments thereto, until such claim is satisfied.

7 No change in the designation of the beneficiary shall be valid unless
8 executed in the form and manner prescribed by the credit union and
9 delivered to the credit union prior to the death of the shareholder.

10 For the purposes of this section, the balance of the shareholder's ac-
11 count or the balance of the shareholder's legal share of an account shall
12 not be construed to include any portion of the account which under the
13 law of joint tenancy is the property of another joint tenant of the account
14 upon the death of the owner.

15 As used in this section, "person" means any individual, individual or
16 corporate fiduciary or nonprofit religious or charitable organization as
17 defined by K.S.A. 79-4701 and amendments thereto.

18 Sec. 49. K.S.A. 17-2264 is hereby amended to read as follows: 17-
19 2264. When the shareholder and the credit union have entered into a
20 contract authorized in K.S.A. 17-2263 and amendments thereto, the
21 shareholder's account subject to the contract or any part of or interest on
22 the account shall be paid by the credit union to the shareholder or pur-
23 suant to the shareholder's order during the shareholder's lifetime. On the
24 shareholder's death, the deposit account or any part of or interest on the
25 account shall be paid by the credit union to the secretary of social and
26 rehabilitation services for a claim pursuant to subsection (g) of K.S.A. 39-
27 709 and amendments thereto or, if there is no such claim or if any portion
28 of the account remains after such claim is satisfied, to the designated
29 beneficiary or beneficiaries. If any designated beneficiary is a minor at
30 the time the account, or any portion of the account, becomes payable to
31 the beneficiary and the balance, or portion of the balance, exceeds the
32 amount specified by ~~K.S.A. 59-3003~~ section 4, and amendments thereto,
33 the credit union shall pay the moneys or any interest on them only to a
34 conservator of the minor beneficiary. The receipt of the conservator shall
35 release and discharge the credit union for the payment.

36 Sec. 50. K.S.A. 17-5828 is hereby amended to read as follows: 17-
37 5828. Subject to the provisions of this section and K.S.A. 17-5829 and
38 amendments thereto, an individual adult or minor, hereafter referred to
39 as the owner, may enter into a written contract with any savings and loan
40 association located in this state providing that the balance of the owner's
41 deposit account, or the balance of the owner's legal share of a deposit
42 account, at the time of death of the owner shall be made payable on the
43 death of the owner to one or more persons or, if the persons predecease

1 the owner, to another person or persons, hereafter referred to as the
2 beneficiary or beneficiaries. If any beneficiary is a minor at the time the
3 account, or any portion of the account, becomes payable to the beneficiary
4 and the balance, or portion of the balance, exceeds the amount specified
5 by ~~K.S.A. 59-3003~~ section 4, and amendments thereto, the moneys shall
6 be payable only to a conservator of the minor beneficiary.

7 Transfers pursuant to this section shall not be considered testamentary
8 or be invalidated due to nonconformity with the provisions of chapter 59
9 of the Kansas Statutes Annotated.

10 Every contract authorized by this section shall be considered to contain
11 a right on the part of the owner during the owner's lifetime both to
12 withdraw funds on deposit in the account in the manner provided in the
13 contract, in whole or in part, as though no beneficiary has been named,
14 and to change the designation of beneficiary. The interest of the bene-
15 ficiary shall be considered not to vest until the death of the owner and,
16 if there is a claim pursuant to subsection (g) of K.S.A. 39-709 and amend-
17 ments thereto, until such claim is satisfied.

18 No change in the designation of the beneficiary shall be valid unless
19 executed in the form and manner prescribed by the savings and loan
20 association and delivered to the savings and loan association prior to the
21 death of the owner.

22 For the purposes of this section, the balance of the owner's deposit
23 account or the balance of the owner's legal share of a deposit account
24 shall not be construed to include any portion of the account which under
25 the law of joint tenancy is the property of another joint tenant of the
26 account upon the death of the owner.

27 As used in this section, "person" means any individual, individual or
28 corporate fiduciary or nonprofit religious or charitable organization as
29 defined by K.S.A. 79-4701 and amendments thereto.

30 Sec. 51. K.S.A. 17-5829 is hereby amended to read as follows: 17-
31 5829. When the owner and the savings and loan association have entered
32 into a contract authorized in K.S.A. 17-5828 and amendments thereto,
33 the owner's deposit account subject to the contract or any part of or
34 interest on the account shall be paid by the savings and loan association
35 to the owner or pursuant to the owner's order during the owner's lifetime.
36 On the owner's death, the deposit account or any part of or interest on
37 the account may be paid by the savings and loan association to the sec-
38 retary of social and rehabilitation services for a claim pursuant to subsec-
39 tion (g) of K.S.A. 39-709 and amendments thereto or, if there is no such
40 claim or if any portion of the account remains after such claim is satisfied,
41 to the designated beneficiary or beneficiaries. If any designated benefi-
42 ciary is a minor at the time the account, or any portion of the account,
43 becomes payable to the beneficiary and the balance, or portion of the

1 balance, exceeds the amount specified by ~~K.S.A. 59-3003~~ section 4, and
2 amendments thereto, the savings and loan association shall pay the mon-
3 eys or any interest on them only to a conservator of the minor beneficiary.
4 The receipt of the conservator shall release and discharge the savings and
5 loan association for the payment.

6 Sec. 52. K.S.A. 38-1505 is hereby amended to read as follows: 38-
7 1505. (a) *Appointment of guardian ad litem; duties.* Upon the filing of a
8 petition the court shall appoint a person who is an attorney to serve as
9 guardian *ad litem* for a child who is the subject of proceedings under this
10 code. The guardian *ad litem* shall make an independent investigation of
11 the facts upon which the petition is based and shall appear for and rep-
12 resent the child.

13 (b) *Attorney for parent or custodian.* A parent or custodian of a child
14 alleged or adjudged to be a child in need of care may be represented by
15 an attorney, other than the guardian *ad litem* appointed for the child, in
16 connection with all proceedings under this code. If at any stage of the
17 proceedings a parent desires but is financially unable to employ an attor-
18 ney, the court shall appoint an attorney for the parent. It shall not be
19 necessary to appoint an attorney to represent a parent who fails or refuses
20 to attend the hearing after having been properly served with process in
21 accordance with K.S.A. 38-1534 and amendments thereto. A parent or
22 custodian who is not a minor, a mentally ill person as defined in K.S.A.
23 2000 Supp. 59-2946 and amendments thereto or a disabled person as
24 defined in K.S.A. ~~59-3002~~ 77-201 and amendments thereto may waive
25 counsel either in writing or on the record.

26 (c) *Attorney for parent who is a minor, mentally ill or disabled.* The
27 court shall appoint an attorney for a parent who is a minor, a mentally ill
28 person as defined in K.S.A. ~~59-2902~~ 2000 Supp. 59-2946 and amend-
29 ments thereto or a disabled person as defined in K.S.A. ~~59-3002~~ 77-201
30 and amendments thereto, unless the court determines that there is an
31 attorney retained who will appear and represent the interests of the per-
32 son in the proceedings under this code.

33 (d) *Continuation of representation.* A guardian *ad litem* appointed for
34 a child or an attorney appointed for a parent or custodian shall continue
35 to represent the client at all subsequent hearings in proceedings under
36 this code, including any appellate proceedings, unless relieved by the
37 court upon a showing of good cause or upon transfer of venue.

38 (e) *Fees for counsel.* A guardian *ad litem* or attorney appointed for
39 parties to proceedings under this section shall be allowed a reasonable
40 fee for their services, which may be assessed as an expense in the pro-
41 ceedings as provided in K.S.A. 38-1511 and amendments thereto.

42 Sec. 53. K.S.A. 39-789 is hereby amended to read as follows: 39-789.
43 Assistance shall not be withheld from any institutionalized person or any

1 person seeking home and community based services who would otherwise
2 qualify for assistance under this act but who, by reason of ~~disability~~ *being*
3 *a disabled person* as defined by K.S.A. ~~59-3002~~ 77-201, and amendments
4 thereto, is unable to give the consent prerequisite to the property and
5 income transfers described in this act, provided that the spouse of the
6 individual seeking assistance seeks a court order of maintenance, an order
7 of conservatorship or of property and income division pursuant to this act
8 within one year from the beginning of the first benefit period.

9 Sec. 54. K.S.A. 39-970 is hereby amended to read as follows: 39-970.

10 (a) (1) On and after July 1, 1998, no person shall knowingly operate an
11 adult care home if, in the adult care home, there works any person who
12 has been convicted of or has been adjudicated a juvenile offender because
13 of having committed an act which if done by an adult would constitute
14 the commission of capital murder, pursuant to K.S.A. 21-3439 and
15 amendments thereto, first degree murder, pursuant to K.S.A. 21-3401
16 and amendments thereto, second degree murder, pursuant to subsection
17 (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter,
18 pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide
19 pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a
20 dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto,
21 rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent lib-
22 erities with a child, pursuant to K.S.A. 21-3503 and amendments thereto,
23 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and
24 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-
25 3506 and amendments thereto, indecent solicitation of a child, pursuant
26 to K.S.A. 21-3510 and amendments thereto, aggravated indecent solici-
27 tation of a child, pursuant to K.S.A. 21-3511 and amendments thereto,
28 sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amend-
29 ments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amend-
30 ments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518
31 and amendments thereto, or similar statutes of other states or the federal
32 government.

33 (2) On and after July 1, 1998, a person operating an adult care home
34 may employ an applicant who has been convicted of any of the following
35 if five or more years have elapsed since the applicant satisfied the sen-
36 tence imposed or was discharged from probation, a community correc-
37 tional services program, parole, postrelease supervision, conditional re-
38 lease or a suspended sentence; or if five or more years have elapsed since
39 the applicant has been finally discharged from the custody of the com-
40 missioner of juvenile justice or from probation or has been adjudicated a
41 juvenile offender, whichever time is longer: A felony conviction for a
42 crime which is described in: (A) article 34 of chapter 21 of the Kansas
43 Statutes Annotated and amendments thereto, except those crimes listed

1 in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas
2 Statutes Annotated and amendments thereto, except those crimes listed
3 in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) a
4 conviction of an attempt under K.S.A. 21-3301 and amendments thereto
5 to commit any act listed in this subsection or subsection (a)(1); or (D)
6 similar statutes of other states or the federal government.

7 (b) No person shall operate an adult care home if such person has
8 been found to be ~~a disabled person~~ in need of a guardian or conservator,
9 or both *as provided in sections 1 through 45, and amendments thereto.*

10 (c) The secretary of health and environment shall have access to any
11 criminal history record information in the possession of the Kansas bureau
12 of investigation concerning persons working in an adult care home. The
13 secretary shall have access to these records for the purpose of determining
14 whether or not the adult care home meets the requirements of this sec-
15 tion. The Kansas bureau of investigation may charge to the department
16 of health and environment a reasonable fee for providing criminal history
17 record information under this subsection.

18 (d) For the purpose of complying with this section, the operator of
19 an adult care home shall request from the department of health and
20 environment information obtained by the secretary of health and envi-
21 ronment which relates to a person who works in the adult care home, or
22 is being considered for employment by the adult care home, for the pur-
23 pose of determining whether such person is subject to the provision of
24 this section. For the purpose of complying with this section, the operator
25 of an adult care home shall receive from any employment agency which
26 provides employees to work in the adult care home written certification
27 that such employees are not prohibited from working in the adult care
28 home under this section. For the purpose of complying with this section,
29 information relating to convictions and adjudications by the federal gov-
30 ernment or to convictions and adjudications in states other than Kansas
31 shall not be required until such time as the secretary of health and en-
32 vironment determines the search for such information could reasonably
33 be performed and the information obtained within a two-week period.
34 For the purpose of complying with this section, a person who operates
35 an adult care home may hire an applicant for employment on a conditional
36 basis pending the results from the department of health and environment
37 of a request for information under this subsection. No adult care home,
38 the operator or employees of an adult care home or an employment
39 agency, or the operator or employees of an employment agency, shall be
40 liable for civil damages resulting from any decision to employ, to refuse
41 to employ or to discharge from employment any person based on such
42 adult care home's compliance with the provisions of this section if such
43 adult care home or employment agency acts in good faith to comply with

1 this section.

2 (e) The secretary of health and environment shall charge each person
3 requesting information under this section a fee equal to cost, not to ex-
4 ceed \$10, for each name about which an information request has been
5 submitted to the department under this section.

6 (f) No person who works for an adult care home and who is currently
7 licensed or registered by an agency of this state to provide professional
8 services in the state and who provides such services as part of the work
9 which such person performs for the adult care home shall be subject to
10 the provisions of this section.

11 (g) A person who volunteers in an adult care home shall not be sub-
12 ject to the provisions of this section because of such volunteer activity.

13 (h) No person who has been employed by the same adult care home
14 for five consecutive years immediately prior to the effective date of this
15 act shall be subject to the provisions of this section while employed by
16 such adult care home.

17 (i) The operator of an adult care home shall not be required under
18 this section to conduct a background check on an applicant for employ-
19 ment with the adult care home if the applicant has been the subject of a
20 background check under this act within one year prior to the application
21 for employment with the adult care home. The operator of an adult care
22 home where the applicant was the subject of such background check may
23 release a copy of such background check to the operator of an adult care
24 home where the applicant is currently applying.

25 (j) No person who is in the custody of the secretary of corrections
26 and who provides services, under direct supervision in nonpatient areas,
27 on the grounds or other areas designated by the superintendent of the
28 Kansas soldiers' home or the Kansas veterans' home shall be subject to
29 the provisions of this section while providing such services.

30 (k) This section shall be part of and supplemental to the adult care
31 home licensure act.

32 Sec. 55. K.S.A. 44-513a is hereby amended to read as follows: 44-
33 513a. Whenever a minor person shall be entitled to compensation under
34 the provisions of the workers compensation act, the administrative law
35 judge is authorized to direct such compensation to be paid in accordance
36 with ~~K.S.A. 59-3001~~ *et seq. sections 1 through 45*, and amendments
37 thereto.

38 Sec. 56. K.S.A. 58-629 is hereby amended to read as follows: 58-629.

39 (a) A durable power of attorney for health care decisions may convey to
40 the agent the authority to:

41 (1) Consent, refuse consent, or withdraw consent to any care, treat-
42 ment, service or procedure to maintain, diagnose or treat a physical or
43 mental condition, and to make decisions about organ donation, autopsy,

1 and disposition of the body;
 2 (2) make all necessary arrangements for the principal at any hospital,
 3 psychiatric hospital or psychiatric treatment facility, hospice, nursing
 4 home or similar institution; to employ or discharge health care personnel
 5 to include physicians, psychiatrists, psychologists, dentists, nurses, ther-
 6 apists or any other person who is licensed, certified, or otherwise au-
 7 thorized or permitted by the laws of this state to administer health care
 8 as the agent shall deem necessary for the physical, mental and emotional
 9 well being of the principal; and

10 (3) request, receive and review any information, verbal or written,
 11 regarding the principal's personal affairs or physical or mental health in-
 12 cluding medical and hospital records and to execute any releases of other
 13 documents that may be required in order to obtain such information.

14 (b) The powers of the agent herein shall be limited to the extent set
 15 out in writing in the durable power of attorney for health care decisions,
 16 and shall not include the power to revoke or invalidate a previously ex-
 17 isting declaration by the principal in accordance with the natural death
 18 act. No agent powers conveyed pursuant to this section shall be effective
 19 until the occurrence of the principal's ~~disability or incapacity, as defined~~
 20 ~~in K.S.A. 59-3002 and amendments thereto;~~ *impairment* as determined
 21 by the principal's attending physician, as defined in subsection (a) of
 22 K.S.A. 65-28,102 and amendments thereto, unless the durable power of
 23 attorney for health care decisions specifically provides otherwise. Nothing
 24 in this act shall be construed as prohibiting an agent from providing treat-
 25 ment by spiritual means through prayer alone and care consistent there-
 26 with, in lieu of medical care and treatment, in accordance with the tenets
 27 and practices of any church or religious denomination of which the prin-
 28 cipal is a member.

29 (c) In exercising the authority under the durable power of attorney
 30 for health care decisions, the agent has a duty to act consistent with the
 31 expressed desires of the principal.

32 (d) Neither the treating health care provider, as defined by subsec-
 33 tion (c) of K.S.A. 65-4921 and amendments thereto, nor an employee of
 34 the treating health care provider, nor an employee, owner, director or
 35 officer of a facility described in K.S.A. 58-629(a)(2) may be designated as
 36 the agent to make health care decisions under a durable power of attorney
 37 for health care decisions unless:

- 38 (1) Related to the principal by blood, marriage or adoption; or
- 39 (2) the principal and agent are members of the same community of
- 40 persons who are bound by vows to a religious life and who conduct or
- 41 assist in the conduct of religious services and actually and regularly engage
- 42 in religious, benevolent, charitable or educational ministrations or the
- 43 performance of health care services.

1 (e) A durable power of attorney for health care decisions shall be:

2 (1) Dated and signed in the presence of two witnesses at least 18
3 years of age neither of whom shall be the agent, related to the principal
4 by blood, marriage or adoption, entitled to any portion of the estate of
5 the principal according to the laws of intestate succession of this state or
6 under any will of the principal or codicil thereto, or directly financially
7 responsible for the principal's health care; or

8 (2) acknowledged before a notary public.
9 (f) Death of the principal shall not prohibit or invalidate acts of the
10 agent in arranging for organ donation, autopsy or disposition of body.

11 (g) Any person who in good faith acts pursuant to the terms of a
12 durable power of attorney for health care decisions without knowledge
13 of its invalidity shall be immune from liability that may be incurred or
14 imposed from such action.

15 Sec. 57. K.S.A. 2000 Supp. 58-24a15 is hereby amended to read as
16 follows: 58-24a15. Conservators shall not invest funds under their control
17 and management in investments other than those specifically permitted
18 by ~~K.S.A. 59-3019~~ section 29, and amendments thereto, except upon the
19 entry of an order of a court of competent jurisdiction, after a hearing on
20 a verified petition. Before authorizing any such investment, the court shall
21 require evidence of value and advisability of such purchase.

22 Sec. 58. K.S.A. 59-1701 is hereby amended to read as follows: 59-
23 1701. (a) No bank, savings and loan association or other corporation shall
24 be appointed or authorized directly or indirectly to act as a fiduciary in
25 this state except:

26 (1) A bank, savings and loan association or other corporation organ-
27 ized under the laws of, and having its principal place of business in, this
28 state;

29 (2) a national bank, federal savings bank or federal savings and loan
30 association located in this state;

31 (3) a bank, savings and loan association or other corporation organ-
32 ized under the laws of, and having its principal place of business in, an-
33 other state which permits a bank, savings and loan association or other
34 corporation which is similarly organized in this state to act in a like fi-
35 duciary capacity in the other state under similar conditions;

36 (4) a national bank, federal savings bank or federal savings and loan
37 association located in another state which permits a national bank, federal
38 savings bank or federal savings and loan association located in this state
39 to act in a like fiduciary capacity in the other state under similar
40 conditions;

41 (5) a nonprofit corporation certified in accordance with ~~K.S.A. 59-
42 3037~~ section 21, and amendments thereto, to the extent provided by that
43 statute; or

1 (6) as provided in K.S.A. 59-1707 and 59-1708, and amendments
2 thereto.

3 (b) No officer, employee or agent of a bank, savings and loan asso-
4 ciation or corporation which is not authorized to act as a fiduciary in this
5 state shall be permitted to act as a fiduciary, whether such officer, em-
6 ployee or agent is a resident or a nonresident of this state, when in fact
7 such officer, employee or agent is acting as a fiduciary on behalf of such
8 bank, savings and loan association or corporation.

9 (c) No bank, savings and loan association or other corporation, other
10 than a nonprofit corporation certified in accordance with ~~K.S.A. 59-3037~~
11 *section 21*, and amendments thereto, shall be appointed guardian of the
12 person of a ward.

13 Sec. 59. K.S.A. 2000 Supp. 59-2946 is hereby amended to read as
14 follows: 59-2946. When used in the care and treatment act for mentally
15 ill persons:

16 (a) "Discharge" means the final and complete release from treat-
17 ment, by either the head of a treatment facility acting pursuant to K.S.A.
18 2000 Supp. 59-2950 and amendments thereto or by an order of a court
19 issued pursuant to K.S.A. 2000 Supp. 59-2973 and amendments thereto.

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

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

24 (d) (1) "Mental health center" means any community mental health
25 center organized pursuant to the provisions of K.S.A. 19-4001 through
26 19-4015 and amendments thereto, or mental health clinic organized pur-
27 suant to the provisions of K.S.A. 65-211 through 65-215 and amendments
28 thereto, or a mental health clinic organized as a not-for-profit or a for-
29 profit corporation pursuant to K.S.A. 17-1701 through 17-1775 and
30 amendments thereto or K.S.A. 17-6001 through 17-6010 and amend-
31 ments thereto, and licensed in accordance with the provisions of K.S.A.
32 75-3307b and amendments thereto.

33 (2) "Participating mental health center" means a mental health center
34 which has entered into a contract with the secretary of social and reha-
35 bilitation services pursuant to the provisions of K.S.A. 39-1601 through
36 39-1612 and amendments thereto.

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

43 (f) (1) "Mentally ill person subject to involuntary commitment for

1 care and treatment” means a mentally ill person, as defined in subsection
2 (e), who also lacks capacity to make an informed decision concerning
3 treatment, is likely to cause harm to self or others, and whose diagnosis
4 is not solely one of the following mental disorders: Alcohol or chemical
5 substance abuse; antisocial personality disorder; mental retardation; or-
6 ganic personality syndrome; or an organic mental disorder.

7 (2) “Lacks capacity to make an informed decision concerning treat-
8 ment” means that the person, by reason of the person’s mental disorder,
9 is unable, despite conscientious efforts at explanation, to understand ba-
10 sically the nature and effects of hospitalization or treatment or is unable
11 to engage in a rational decision-making process regarding hospitalization
12 or treatment, as evidenced by an inability to weigh the possible risks and
13 benefits.

14 (3) “Likely to cause harm to self or others” means that the person,
15 by reason of the person’s mental disorder: (a) Is likely, in the reasonably
16 foreseeable future, to cause substantial physical injury or physical abuse
17 to self or others or substantial damage to another’s property, as evidenced
18 by behavior threatening, attempting or causing such injury, abuse or dam-
19 age; except that if the harm threatened, attempted or caused is only harm
20 to the property of another, the harm must be of such a value and extent
21 that the state’s interest in protecting the property from such harm out-
22 weighs the person’s interest in personal liberty; or (b) is substantially
23 unable, except for reason of indigency, to provide for any of the person’s
24 basic needs, such as food, clothing, shelter, health or safety, causing a
25 substantial deterioration of the person’s ability to function on the person’s
26 own.

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

40 (g) “Patient” means a person who is a voluntary patient, a proposed
41 patient or an involuntary patient.

42 (1) “Voluntary patient” means a person who is receiving treatment at
43 a treatment facility pursuant to K.S.A. 2000 Supp. 59-2949 and amend-

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1 ments thereto.

2 (2) "Proposed patient" means a person for whom a petition pursuant
3 to K.S.A. 2000 Supp. 59-2952 or ~~K.S.A. 2000 Supp.~~ 59-2957 and amend-
4 ments thereto has been filed.

5 (3) "Involuntary patient" means a person who is receiving treatment
6 under order of a court or a person admitted and detained by a treatment
7 facility pursuant to an application filed pursuant to subsection (b) or (c)
8 of K.S.A. 2000 Supp. 59-2954 and amendments thereto.

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

14 (i) "Psychologist" means a licensed psychologist, as defined by K.S.A.
15 74-5302 and amendments thereto.

16 (j) "Qualified mental health professional" means a physician or psy-
17 chologist who is employed by a participating mental health center or who
18 is providing services as a physician or psychologist under a contract with
19 a participating mental health center, a licensed masters level psychologist,
20 a licensed marriage and family therapist, a licensed professional coun-
21 selor, a licensed specialist social worker or a licensed master social worker
22 or a registered nurse who has a specialty in psychiatric nursing, who is
23 employed by a participating mental health center and who is acting under
24 the direction of a physician or psychologist who is employed by, or under
25 contract with, a participating mental health center.

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

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

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

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

37 (5) "Registered nurse" means a person licensed as a registered pro-
38 fessional nurse by the board of nursing under K.S.A. 65-1113 through 65-
39 1164 and amendments thereto.

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

42 (l) "State psychiatric hospital" means Larned state hospital, Osawa-
43 tomie state hospital, Rainbow mental health facility or Topeka state

1 hospital.

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

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

10 (o) The terms defined in ~~K.S.A. 59-3002~~ section 2, and amendments
11 thereto shall have the meanings provided by that section.

12 Sec. 60. K.S.A. 2000 Supp. 59-2948 is hereby amended to read as
13 follows: 59-2948. (a) The fact that a person may have voluntarily accepted
14 any form of psychiatric treatment, or become subject to a court order
15 entered under authority of this act, shall not be construed to mean that
16 such person shall have lost any civil right they otherwise would have as a
17 resident or citizen, any property right or their legal capacity, except as
18 may be specified within any court order or as otherwise limited by the
19 provisions of this act or the reasonable rules and regulations which the
20 head of a treatment facility may for good cause find necessary to make
21 for the orderly operations of that facility. No person held in custody under
22 the provisions of this act shall be denied the right to apply for a writ of
23 habeas corpus.

24 (b) There shall be no implication or presumption that a patient within
25 the terms of this act is for that reason alone a disabled person as defined
26 in ~~K.S.A. 59-3002~~ in need of a guardian or a conservator as provided for
27 in sections 1 through 45, and amendments thereto.

28 Sec. 61. K.S.A. 2000 Supp. 59-2949 is hereby amended to read as
29 follows: 59-2949. (a) A mentally ill person may be admitted to a treatment
30 facility as a voluntary patient when there are available accommodations
31 and the head of the treatment facility determines such person is in need
32 of treatment therein, and that the person has the capacity to consent to
33 treatment, except that no such person shall be admitted to a state psy-
34 chiatric hospital without a written statement from a qualified mental
35 health professional authorizing such admission.

36 (b) Admission shall be made upon written application:

37 (1) If such person is 18 years of age or older the person may make
38 such application for themselves; or

39 (2) (A) If such person is less than 18 years of age, a parent may make
40 such application for their child; or

41 (B) if such person is less than 18 years of age, but 14 years of age or
42 older the person may make such written application on their own behalf
43 without the consent or written application of their parent, legal guardian

1 or any other person. Whenever a person who is 14 years of age or older
2 makes written application on their own behalf and is admitted as a vol-
3 untary patient, the head of the treatment facility shall promptly notify the
4 child's parent, legal guardian or other person known to the head of the
5 treatment facility to be interested in the care and welfare of the minor of
6 the admittance of that child; or

7 (3) if such person has a legal guardian, the legal guardian may make
8 such application ~~only after obtaining~~ *provided that if the legal guardian*
9 *is required to obtain* authority to do so pursuant to ~~K.S.A. 59-3018a~~ *sec-*
10 *tion 28*, and amendments thereto. If the legal guardian is seeking admis-
11 sion of their ward upon an order giving the guardian continuing authority
12 to admit the ward to ~~an appropriate psychiatric~~ *a treatment facility, as*
13 *defined in section 28, and amendments thereto*, the head of the treatment
14 facility may require a statement from the patient's attending physician or
15 from the local health officer of the area in which the patient resides
16 confirming that the patient is in need of psychiatric treatment in a treat-
17 ment facility before accepting the ward for admission, and shall divert
18 any such person to a less restrictive treatment alternative, as may be
19 appropriate.

20 (c) No person shall be admitted as a voluntary patient under the pro-
21 visions of this act to any treatment facility unless the head of the treatment
22 facility has informed such person or such person's parent, legal guardian,
23 or other person known to the head of the treatment facility to be inter-
24 ested in the care and welfare of a minor, in writing, of the following:

25 (1) The rules and procedures of the treatment facility relating to the
26 discharge of voluntary patients;

27 (2) the legal rights of a voluntary patient receiving treatment from a
28 treatment facility as provided for in K.S.A. 2000 Supp. 59-2978 and
29 amendments thereto; and

30 (3) in general terms, the types of treatment which are available or
31 would not be available to a voluntary patient from that treatment facility.

32 (d) Nothing in this act shall be construed as to prohibit a proposed
33 or involuntary patient with capacity to do so from making an application
34 for admission as a voluntary patient to a treatment facility. Any proposed
35 or involuntary patient desiring to do so shall be afforded an opportunity
36 to consult with their attorney prior to making any such application. If the
37 head of the treatment facility accepts the application and admits the pa-
38 tient as a voluntary patient, then the head of the treatment facility shall
39 notify, in writing, the patient's attorney, the patient's legal guardian, if the
40 patient has a legal guardian, and the district court which has jurisdiction
41 over the patient of the patient's voluntary status. When a notice of vol-
42 untary admission is received, the court shall file the same which shall
43 terminate the proceedings.

1 Sec. 62. K.S.A. 2000 Supp. 59-2951 is hereby amended to read as
2 follows: 59-2951. (a) A voluntary patient shall be entitled to be discharged
3 from a treatment facility, by the head of the treatment facility, by no later
4 than the third day, excluding Saturdays, Sundays and holidays, after re-
5 ceipt of the patient's written request for discharge. If the voluntary patient
6 is a patient in a state psychiatric hospital, that hospital shall immediately
7 give either oral or facsimile notice to the participating mental health center
8 serving the area where the patient intends to reside and shall consider
9 any recommendations from that mental health center which may be re-
10 ceived prior to the time set for discharge as specified in the notice.

11 (b) (1) If the voluntary patient is an adult admitted upon the appli-
12 cation of a legal guardian or pursuant to an order of the court issued
13 pursuant to ~~K.S.A. 59-2019a~~ section 28, and amendments thereto, any
14 request for discharge must be made, in writing, by the legal guardian.

15 (2) If the voluntary patient is a minor, the written request for dis-
16 charge shall be made by the child's parent or legal guardian except if the
17 minor was admitted upon their own written application to become a vol-
18 untary patient made pursuant to K.S.A. 2000 Supp. 59-2949 and amend-
19 ments thereto, then the minor may make the request. In the case of a
20 minor 14 or more years of age who had made written application to be-
21 come a voluntary patient on their own behalf and who has requested to
22 be discharged, the head of the treatment facility shall promptly inform
23 the child's parent, legal guardian, or other person known to the head of
24 the treatment facility to be interested in the care and welfare of the minor
25 of the minor's request for discharge.

26 Sec. 63. K.S.A. 2000 Supp. 59-2960 is hereby amended to read as
27 follows: 59-2960. (a) Upon the filing of the petition provided for in K.S.A.
28 2000 Supp. 59-2957 and amendments thereto, the district court shall
29 issue the following:

30 (1) An order fixing the time and place of the trial upon the petition.
31 Such hearing, in the court's discretion, may be conducted in a courtroom,
32 a treatment facility or at some other suitable place. The time fixed in the
33 order shall in no event be earlier than 7 days or later than 14 days after
34 the date of the filing of the petition. If a demand for a trial by jury is later
35 filed by the proposed patient, the court may continue the trial and fix a
36 new time and place of the trial at a time that may exceed beyond the 14
37 days but shall be fixed within a reasonable time not exceeding 30 days
38 from the date of the filing of the demand.

39 (2) An order that the proposed patient appear at the time and place
40 of the hearing and providing that the proposed patient's presence will be
41 required at the hearing unless the attorney for the proposed patient shall
42 make a request that the proposed patient's presence be waived and the
43 court finds that the proposed patient's presence at the hearing would be

1 injurious to the proposed patient's welfare. The order shall further pro-
2 vide that notwithstanding the foregoing provision, if the proposed patient
3 requests in writing to the court or to such person's attorney that the
4 proposed patient wishes to be present at the hearing, the proposed pa-
5 tient's presence cannot be waived.

6 (3) An order appointing an attorney to represent the proposed patient
7 at all stages of the proceedings and until all orders resulting from such
8 proceedings are terminated. The court shall give preference, in the ap-
9 pointment of this attorney, to any attorney who has represented the pro-
10 posed patient in other matters if the court has knowledge of that prior
11 representation. The proposed patient shall have the right to engage an
12 attorney of the proposed patient's own choice and, in such event, the
13 attorney appointed by the court shall be relieved of all duties by the court.

14 (4) An order that the proposed patient shall appear at a time and
15 place that is in the best interests of the patient where the proposed patient
16 will have the opportunity to consult with the proposed patient's court-
17 appointed attorney, which time shall be at least 5 days prior to the date
18 set for the trial under K.S.A. 2000 Supp. 59-2965 and amendments
19 thereto.

20 (5) An order for a mental evaluation as provided for in K.S.A. 2000
21 Supp. 59-2961 and amendments thereto.

22 (6) A notice as provided for in K.S.A. 2000 Supp. 59-2963 and amend-
23 ments thereto.

24 (7) If the petition also contains allegations as provided for in ~~K.S.A.~~
25 ~~59-2009~~ section 9, 10, 11, 12 or 13, and amendments thereto, those orders
26 necessary to make a determination of the need for a legal guardian or
27 conservator, or both, to act on behalf of the proposed patient. For these
28 purposes, the trials required by K.S.A. 2000 Supp. 59-2965 and ~~K.S.A.~~
29 ~~59-2013~~ section 18, and amendments thereto, may be consolidated.

30 (b) Nothing in this section shall prevent the court from granting an
31 order of continuance, for good cause shown, to any party for no longer
32 than 7 days, except that such limitation does not apply to a request for
33 an order of continuance made by the proposed patient or to a request
34 made by any party if the proposed patient absents him or herself such
35 that further proceedings can not be held until the proposed patient has
36 been located. The court also, upon the request of any party, may advance
37 the date of the hearing if necessary and in the best interests of all
38 concerned.

39 Sec. 64. K.S.A. 2000 Supp. 59-29b46 is hereby amended to read as
40 follows: 59-29b46. When used in the care and treatment act for persons
41 with an alcohol or substance abuse problem:

42 (a) "Discharge" means the final and complete release from treat-
43 ment, by either the head of a treatment facility acting pursuant to K.S.A.

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1 2000 Supp. 59-29b50 and amendments thereto or by an order of a court
2 issued pursuant to K.S.A. 2000 Supp. 59-29b73 and amendments thereto.

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

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

7 (d) "Other facility for care or treatment" means any mental health
8 clinic, medical care facility, nursing home, the detox units at either Osa-
9 watomie state hospital or Larned state hospital, any physician or any other
10 institution or individual authorized or licensed by law to give care or
11 treatment to any person.

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

14 (1) "Voluntary patient" means a person who is receiving treatment at
15 a treatment facility pursuant to K.S.A. 2000 Supp. 59-29b49 and amend-
16 ments thereto.

17 (2) "Proposed patient" means a person for whom a petition pursuant
18 to K.S.A. 2000 Supp. 59-29b52 or 59-29b57 and amendments thereto has
19 been filed.

20 (3) "Involuntary patient" means a person who is receiving treatment
21 under order of a court or a person admitted and detained by a treatment
22 facility pursuant to an application filed pursuant to subsection (b) or (c)
23 of K.S.A. 2000 Supp. 59-29b54 and amendments thereto.

24 (f) "Person with an alcohol or substance abuse problem" means a
25 person who: (1) Lacks self-control as to the use of alcoholic beverages or
26 any substance as defined in subsection (k); or

27 (2) uses alcoholic beverages or any substance as defined in subsection
28 (k) to the extent that the person's health may be substantially impaired
29 or endangered without treatment.

30 (g) (1) "Person with an alcohol or substance abuse problem subject
31 to involuntary commitment for care and treatment" means a person with
32 an alcohol or substance abuse problem, as defined in subsection (f), who
33 also is incapacitated by alcohol or any substance and is likely to cause
34 harm to self or others.

35 (2) "Incapacitated by alcohol or any substance" means that the per-
36 son, as the result of the use of alcohol or any substance as defined in
37 subsection (k), has impaired judgment resulting in the person: (A) Being
38 incapable of realizing and making a rational decision with respect to the
39 need for treatment; or

40 (B) lacking sufficient understanding or capability to make or com-
41 municate responsible decisions concerning either the person's well-being
42 or estate.

43 (3) "Likely to cause harm to self or others" means that the person,

1 by reason of the person's use of alcohol or any substance: (A) Is likely, in
2 the reasonably foreseeable future, to cause substantial physical injury or
3 physical abuse to self or others or substantial damage to another's prop-
4 erty, as evidenced by behavior threatening, attempting or causing such
5 injury, abuse or damage; except that if the harm threatened, attempted
6 or caused is only harm to the property of another, the harm must be of
7 such a value and extent that the state's interest in protecting the property
8 from such harm outweighs the person's interest in personal liberty; or

9 (B) is substantially unable, except for reason of indigency, to provide
10 for any of the person's basic needs, such as food, clothing, shelter, health
11 or safety, causing a substantial deterioration of the person's ability to
12 function on the person's own.

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

18 (i) "Psychologist" means a licensed psychologist, as defined by K.S.A.
19 74-5302 and amendments thereto.

20 (j) "State certified alcohol and drug abuse counselor" means a person
21 approved by the secretary of social and rehabilitation services to perform
22 assessments using the American Society of Addiction Medicine criteria
23 and employed at a state funded and designated assessment center.

24 (k) "Substance" means: (1) The same as the term "controlled sub-
25 stance" as defined in K.S.A. 65-4101 and amendments thereto; or

26 (2) fluorocarbons, toluene or volatile hydrocarbon solvents.

27 (1) "Treatment" means the broad range of emergency, outpatient,
28 intermediate and inpatient services and care, including diagnostic evalu-
29 ation, medical, psychiatric, psychological and social service care, voca-
30 tional rehabilitation and career counseling, which may be extended to
31 persons with an alcohol or substance abuse problem.

32 (m) (1) "Treatment facility" means a public or private treatment fa-
33 cility, or any facility of the United States government available to treat a
34 person for an alcohol or other substance abuse problem, but such term
35 shall not include a licensed medical care facility, a licensed adult care
36 home, a facility licensed under K.S.A. 75-3307b and amendments thereto,
37 a community-based alcohol and drug safety action program certified un-
38 der K.S.A. 8-1008 and amendments thereto, and performing only those
39 functions for which the program is certified to perform under K.S.A. 8-
40 1008 and amendments thereto, or a psychologist or physician, who may
41 treat in the usual course of the psychologist's or physician's professional
42 practice individuals incapacitated by alcohol or other substances, but who
43 are not exclusively engaged in the usual course of the individual's profes-

1 sional practice in treating such individuals, or any state institution, even
2 if detoxification services may have been obtained at such institution.

3 (2) "Private treatment facility" means a private agency providing fa-
4 cilities for the care and treatment or lodging of persons with either an
5 alcohol or other substance abuse problem and meeting the standards
6 prescribed in either K.S.A. 65-4013 or ~~K.S.A. 65-4603~~ and amendments
7 thereto, and licensed under either K.S.A. 65-4014 or ~~K.S.A. 65-4607~~ and
8 amendments thereto.

9 (3) "Public treatment facility" means a treatment facility owned and
10 operated by any political subdivision of the state of Kansas and licensed
11 under either K.S.A. 65-4014 or ~~K.S.A. 65-4603~~ and amendments thereto,
12 as an appropriate place for the care and treatment or lodging of persons
13 with an alcohol or other substance abuse problem.

14 (n) The terms defined in ~~K.S.A. 59-3002~~ section 21 and amendments
15 thereto shall have the meanings provided by that section.

16 Sec. 65. K.S.A. 2000 Supp. 59-29b48 is hereby amended to read as
17 follows: 59-29b48. (a) The fact that a person may have voluntarily ac-
18 cepted any form of treatment for an alcohol or substance abuse problem,
19 or become subject to a court order entered under authority of this act,
20 shall not be construed to mean that such person shall have lost any civil
21 right they otherwise would have as a resident or citizen, any property
22 right or their legal capacity, except as may be specified within any court
23 order or as otherwise limited by the provisions of this act or the reasonable
24 rules and regulations which the head of a treatment facility may for good
25 cause find necessary to make for the orderly operations of that facility.
26 No person held in custody under the provisions of this act shall be denied
27 the right to apply for a writ of habeas corpus.

28 (b) There shall be no implication or presumption that a patient within
29 the terms of this act is for that reason alone a disabled person as defined
30 in ~~K.S.A. 59-3002~~ in need of a guardian or a conservator, or both, as
31 provided in sections 1 through 45, and amendments thereto.

32 Sec. 66. K.S.A. 2000 Supp. 59-29b49 is hereby amended to read as
33 follows: 59-29b49. (a) A person with an alcohol or substance abuse prob-
34 lem may be admitted to a treatment facility as a voluntary patient when
35 there are available accommodations and the head of the treatment facility
36 determines such person is in need of treatment therein, and that the
37 person has the capacity to consent to treatment.

38 (b) Admission shall be made upon written application:

39 (1) If such person is 18 years of age or older the person may make
40 such application for themself; or

41 (2) (A) If such person is less than 18 years of age, a parent may make
42 such application for their child; or

43 (B) if such person is less than 18 years of age, but 14 years of age or

1 older, the person may make such written application on their own behalf
2 without the consent or written application of their parent, legal guardian
3 or any other person. Whenever a person who is 14 years of age or older
4 makes written application on their own behalf and is admitted as a vol-
5 untary patient, the head of the treatment facility shall promptly notify the
6 child's parent, legal guardian or other person known to the head of the
7 treatment facility to be interested in the care and welfare of the minor of
8 the admittance of that child; or

9 (3) if such person has a legal guardian, the legal guardian may make
10 such application ~~only after obtaining~~ *provided that if the legal guardian*
11 *is required to obtain* authority to do so pursuant to ~~K.S.A. 59-3018a~~ *a sec-*
12 *tion 28, and amendments thereto, then only in accordance with the pro-*
13 *visions thereof.* If the legal guardian is seeking admission of their ward
14 upon an order giving the guardian continuing authority to admit the ward
15 to ~~an appropriate~~ *a treatment facility as defined in section 28, and amend-*
16 *ments thereto.,* the head of the treatment facility may require a statement
17 from the patient's attending physician or from the local health officer of
18 the area in which the patient resides confirming that the patient is in need
19 of treatment for an alcohol or substance abuse problem in a treatment
20 facility before accepting the ward for admission, and shall divert any such
21 person to a less restrictive treatment alternative as may be appropriate.

22 (c) No person shall be admitted as a voluntary patient under the pro-
23 visions of this act to any treatment facility unless the head of the treatment
24 facility has informed such person or such person's parent, legal guardian,
25 or other person known to the head of the treatment facility to be inter-
26 ested in the care and welfare of a minor, in writing, of the following:

27 (1) The rules and procedures of the treatment facility relating to the
28 discharge of voluntary patients;

29 (2) the legal rights of a voluntary patient receiving treatment from a
30 treatment facility as provided for in K.S.A. 2000 Supp. 59-29b78 and
31 amendments thereto; and

32 (3) in general terms, the types of treatment which are available or
33 would not be available to a voluntary patient from that treatment facility.

34 (d) Nothing in this act shall be construed as to prohibit a proposed
35 or involuntary patient with capacity to do so from making an application
36 for admission as a voluntary patient to a treatment facility. Any proposed
37 or involuntary patient desiring to do so shall be afforded an opportunity
38 to consult with their attorney prior to making any such application. If the
39 head of the treatment facility accepts the application and admits the pa-
40 tient as a voluntary patient, then the head of the treatment facility shall
41 notify, in writing, the patient's attorney, the patient's legal guardian, if the
42 patient has a legal guardian, and the district court which has jurisdiction
43 over the patient of the patient's voluntary status. When a notice of vol-

1 untary admission is received, the court shall file the same which shall
2 terminate the proceedings.

3 Sec. 67. K.S.A. 2000 Supp. 59-29b51 is hereby amended to read as
4 follows: 59-29b51. (a) A voluntary patient shall be entitled to be dis-
5 charged from a treatment facility, by the head of the treatment facility,
6 by no later than the third day, excluding Saturdays, Sundays and holidays,
7 after receipt of the patient's written request for discharge.

8 (b) (1) If the voluntary patient is an adult admitted upon the appli-
9 cation of a legal guardian or pursuant to an order of the court issued
10 pursuant to ~~K.S.A. 59-3018a~~ section 28, and amendments thereto, any
11 request for discharge must be made, in writing, by the legal guardian.

12 (2) If the voluntary patient is a minor, the written request for dis-
13 charge shall be made by the child's parent or legal guardian except if the
14 minor was admitted upon their own written application to become a vol-
15 untary patient made pursuant to K.S.A. 2000 Supp. 59-29b49 and amend-
16 ments thereto, then the minor may make the request. In the case of a
17 minor 14 or more years of age who had made written application to be-
18 come a voluntary patient on their own behalf and who has requested to
19 be discharged, the head of the treatment facility shall promptly inform
20 the child's parent, legal guardian or other person known to the head of
21 the treatment facility to be interested in the care and welfare of the minor
22 of the minor's request for discharge.

23 Sec. 68. K.S.A. 2000 Supp. 59-29b60 is hereby amended to read as
24 follows: 59-29b60. (a) Upon the filing of the petition provided for in
25 K.S.A. 2000 Supp. 59-29b57 and amendments thereto, the district court
26 shall issue the following:

27 (1) An order fixing the time and place of the trial upon the petition.
28 Such hearing, in the court's discretion, may be conducted in a courtroom,
29 a treatment facility or at some other suitable place. The time fixed in the
30 order shall in no event be earlier than seven days or later than 14 days
31 after the date of the filing of the petition. If a demand for a trial by jury
32 is later filed by the proposed patient, the court may continue the trial and
33 fix a new time and place of the trial at a time that may exceed beyond
34 the 14 days but shall be fixed within a reasonable time not exceeding 30
35 days from the date of the filing of the demand.

36 (2) An order that the proposed patient appear at the time and place
37 of the hearing and providing that the proposed patient's presence will be
38 required at the hearing unless the attorney for the proposed patient shall
39 make a request that the proposed patient's presence be waived and the
40 court finds that the proposed patient's presence at the hearing would be
41 injurious to the proposed patient's welfare. The order shall further pro-
42 vide that notwithstanding the foregoing provision, if the proposed patient
43 requests in writing to the court or to such person's attorney that the

1 proposed patient wishes to be present at the hearing, the proposed pa-
2 tient's presence cannot be waived.

3 (3) An order appointing an attorney to represent the proposed patient
4 at all stages of the proceedings and until all orders resulting from such
5 proceedings are terminated. The court shall give preference, in the ap-
6 pointment of this attorney, to any attorney who has represented the pro-
7 posed patient in other matters if the court has knowledge of that prior
8 representation. The proposed patient shall have the right to engage an
9 attorney of the proposed patient's own choice and, in such event, the
10 attorney appointed by the court shall be relieved of all duties by the court.

11 (4) An order that the proposed patient shall appear at a time and
12 place that is in the best interests of the patient where the proposed patient
13 will have the opportunity to consult with the proposed patient's court-
14 appointed attorney, which time shall be at least 5 days prior to the date
15 set for the trial under K.S.A. 2000 Supp. 59-29b65 and amendments
16 thereto.

17 (5) An order for an evaluation as provided for in K.S.A. 2000 Supp.
18 59-29b61 and amendments thereto.

19 (6) A notice as provided for in K.S.A. 2000 Supp. 59-29b63 and
20 amendments thereto.

21 (7) If the petition also contains allegations as provided for in ~~K.S.A.~~
22 ~~59-3009~~ section 9, 10, 11, 12 or 13, and amendments thereto, those orders
23 necessary to make a determination of the need for a legal guardian or
24 conservator, or both, to act on behalf of the proposed patient. For these
25 purposes, the trials required by K.S.A. 2000 Supp. 59-29b65 and ~~K.S.A.~~
26 ~~59-3013~~ section 18, and amendments thereto, may be consolidated.

27 (8) If the petitioner shall not have named a proposed treatment fa-
28 cility to which the proposed patient may be sent as provided for subsec-
29 tion (b)(8) of K.S.A. 2000 Supp. 59-29b57 and amendments thereto, but
30 instead stated that the secretary of social and rehabilitation services has
31 been notified and requested to determine which treatment facility the
32 proposed patient should be sent to, then the court shall issue an order
33 requiring the secretary, or the secretary's designee, to make that deter-
34 mination and to notify the court of the name and address of that treatment
35 facility by such time as the court shall specify in the court's order.

36 (b) Nothing in this section shall prevent the court from granting an
37 order of continuance, for good cause shown, to any party for no longer
38 than seven days, except that such limitation does not apply to a request
39 for an order of continuance made by the proposed patient or to a request
40 made by any party if the proposed patient is absent such that further
41 proceedings can not be held until the proposed patient has been located.
42 The court also, upon the request of any party, may advance the date of
43 the hearing if necessary and in the best interests of all concerned.

1 Sec. 69. K.S.A. 2000 Supp. 60-304 is hereby amended to read as
2 follows: 60-304. As used in this section, "serving" means making service
3 by any of the methods described in K.S.A. 60-303, and amendments
4 thereto, unless a specific method of making service is prescribed in this
5 section. Except for service by publication under K.S.A. 60-307, and
6 amendments thereto, service of process under this article shall be made
7 as follows:

8 (a) *Individual.* Upon an individual other than a minor or a disabled
9 person, by serving the individual or by serving an agent authorized by
10 appointment or by law to receive service of process, but if the agent is
11 one designated by statute to receive service, such further notice as the
12 statute requires shall be given. Service by certified mail shall be addressed
13 to an individual at the individual's dwelling house or usual place of abode
14 and to an authorized agent at the agent's usual or designated address. If
15 service by certified mail to the individual's dwelling house or usual place
16 of abode is refused or unclaimed, the sheriff, party or party's attorney
17 seeking service may complete service by certified mail, restricted delivery,
18 by serving the individual at a business address after filing a return on
19 service stating the certified mailing to the individual at such individual's
20 dwelling house or usual place of abode has been refused or unclaimed
21 and a business address is known for such individual.

22 (b) *Minor.* Upon a minor, by serving the minor and also either the
23 minor's guardian or conservator if the minor has one within the state or
24 the minor's father or mother or other person having the minor's care or
25 control or with whom such minor resides, or if service cannot be made
26 upon any of them, then as provided by order of the judge. Service by
27 certified mail shall be addressed to an individual at the individual's dwell-
28 ing house or usual place of abode and to a corporate guardian or conser-
29 vator at such guardian or conservator's usual place of business.

30 (c) *Disabled person.* Upon a disabled person, as defined in K.S.A.
31 ~~59-3002~~ 77-201, and amendments thereto, by serving (1) such person's
32 guardian, conservator or a competent adult member of such person's
33 family with whom the person resides, or if such person is living in an
34 institution, then the director or chief executive officer of the institution
35 or, if service cannot be made upon any of them, then as provided by order
36 of the judge, and (2) unless the judge otherwise orders, the disabled
37 person. Service by certified mail shall be addressed to a director or chief
38 executive officer of an institution at the institution, to any other individual
39 at the individual's dwelling house or usual place of abode, and to a cor-
40 porate guardian or conservator at such guardian or conservator's usual
41 place of business.

42 (d) *Governmental bodies.* (1) Upon a county, by serving one of the
43 county commissioners or the county clerk or the county treasurer; (2)

1 upon a township, by serving the clerk or the trustee; (3) upon a city, by
2 serving the clerk or the mayor; (4) upon any other public corporation,
3 body politic, district or authority by serving the clerk or secretary or, if
4 not to be found, to any officer, director or manager thereof; and (5) upon
5 the state or any governmental agency of the state, when subject to suit,
6 by serving the attorney general or an assistant attorney general. Service
7 by certified mail shall be addressed to the appropriate official at the of-
8 ficial's governmental office. Income withholding orders for support and
9 orders of garnishment of earnings of state officers and employees shall
10 be served upon the state or governmental agency of the state in the man-
11 ner provided by K.S.A. 60-723 and amendments thereto.

12 (e) *Corporations, domestic or foreign limited liability company, do-*
13 *mestic or foreign limited partnership, domestic or foreign limited liability*
14 *partnership, and partnerships.* Upon a domestic or foreign corporation,
15 domestic or foreign limited liability company, domestic or foreign limited
16 partnership, domestic or foreign limited liability partnership or upon a
17 partnership or other unincorporated association, when by law it may be
18 sued as such, (1) by serving an officer, manager, partner or a resident,
19 managing or general agent, or (2) by leaving a copy of the summons and
20 petition at any business office of the defendant with the person having
21 charge thereof, or (3) by serving any agent authorized by appointment or
22 required by law to receive service of process, and if the agent is one
23 authorized by law to receive service and the law so requires, by also
24 mailing a copy to the defendant. Service by certified mail on an officer,
25 partner or agent shall be addressed to such person at the person's usual
26 place of business.

27 (f) *Corporation, limited liability company, limited partnership or*
28 *limited liability partnership resident agent.* Whenever any domestic cor-
29 poration, domestic limited liability company, domestic limited partner-
30 ship, or any foreign corporation, foreign limited liability company, or for-
31 eign limited partnership authorized to transact business or transacting
32 business without authority in this state, fails to appoint or maintain in this
33 state a resident agent upon whom service of legal process or service of
34 any such notice or demand may be had, whenever the resident agent of
35 such corporation, limited liability company or limited partnership cannot
36 with reasonable diligence be found at the registered office in this state,
37 the secretary of state shall be irrevocably authorized as the agent and
38 representative of the corporation, limited liability company or limited
39 partnership to accept service of any process or service of any notice or
40 demand required or permitted by law to be served upon the corporation,
41 limited liability company or limited partnership. Service on the secretary
42 of state of any process, notice or demand against the corporation, limited
43 liability company or limited partnership shall be made by delivering to

1 the secretary of state by personal service or by certified mail, the original
 2 and two copies of the process and two copies of the petition, notice or
 3 demand, or the clerk of the court may send the original process and two
 4 copies of both the process and the petition, notice or demand directly to
 5 the secretary of state by certified mail. In the event that any process,
 6 notice or demand is served on the secretary of state, the secretary shall
 7 immediately cause a copy of such process, notice or demand to be for-
 8 warded by certified mail, addressed to the corporation, limited liability
 9 company or limited partnership at its principal office as it appears in the
 10 records of the secretary of state, or to the registered or principal office
 11 of the corporation, limited liability company or limited partnership in the
 12 state of its incorporation or formation. The secretary of state shall keep
 13 a record of all processes, notices and demands served upon the secretary
 14 under this subsection, and shall record in the record the time of the
 15 service and the action of the secretary with reference to it. A fee of \$40
 16 shall be paid to the secretary of state by the party requesting the service
 17 of process, to cover the cost of such service of process, except the sec-
 18 retary of state may waive the fee for state agencies. That fee shall not be
 19 included within or paid from any deposit as security for any costs or
 20 docket fee required by K.S.A. 60-2001 or ~~61-2501~~ K.S.A. 2000 Supp. 61-
 21 4001, and amendments thereto.

22 (g) *Insurance companies or associations.* Service of summons or other
 23 process may also be made on any insurance company or association, or-
 24 ganized under the laws of the state of Kansas by service on the commis-
 25 sioner of insurance in the same manner as that provided for service on
 26 foreign insurance companies. All the requirements of law relating to serv-
 27 ice on foreign insurance companies so far as applicable shall also apply
 28 to domestic insurance companies.

29 (h) *Service upon an employee.* If the plaintiff or the plaintiff's agent
 30 or attorney files an affidavit that to the best of the affiant's knowledge
 31 and belief the defendant is a nonresident who is employed in this state,
 32 or that the place of residence of the defendant is unknown, the affiant
 33 may direct that the service of summons or other process be made by the
 34 sheriff or other duly authorized person by directing an officer, partner,
 35 managing or general agent, or the person having charge of the office or
 36 place of employment at which the defendant is employed, to make the
 37 defendant available for the purpose of permitting the sheriff or other duly
 38 authorized person to serve the summons or other process.

39 Sec. 70. K.S.A. 2000 Supp. 61-3004 is hereby amended to read as
 40 follows: 61-3004. (a) Service shall be made promptly and, in any event,
 41 in time to make a timely return of service as required by K.S.A. 2000
 42 Supp. 61-3005, and amendments thereto.

43 (b) If the defendant is a nonresident who is employed in this state,

1 or if the place of residence of the defendant is unknown, the plaintiff may
2 direct that the service of summons or other process shall be made by
3 directing an officer, partner, managing or general agent, or the person
4 having charge of the office or place of employment at which the defendant
5 is employed, to make the defendant available for the purpose of permit-
6 ting the summons or other process to be served on the defendant at the
7 defendant's place of employment.

8 (c) As used in this section, "serving" means making service by any of
9 the methods described in K.S.A. 2000 Supp. 61-3003, and amendments
10 thereto, unless a specific method of making service is prescribed in this
11 section. Except for service by publication, service of process shall be made
12 as follows:

13 (1) Service upon an individual other than a minor or disabled person
14 shall be made by serving the individual or by serving an agent authorized
15 by appointment or by law to receive service of process, but if the agent
16 is one designated by statute to receive service, such further notice as the
17 statute requires shall be given. Service by certified mail or first-class mail
18 shall be addressed to an individual at the individual's dwelling house or
19 usual place of abode and to an authorized agent at the agent's usual or
20 designated address.

21 (2) Service upon a minor, disabled person as defined by K.S.A. ~~59-~~
22 ~~3002~~ 77-201, and amendments thereto, foreign or domestic corporations,
23 partnerships, insurance companies or associations shall be made in ac-
24 cordance with the applicable provisions of K.S.A. 60-304, and amend-
25 ments thereto.

26 (3) Service upon a governmental entity shall be made in accordance
27 with the applicable provisions of K.S.A. 60-304, and amendments thereto.

28 Sec. 71. K.S.A. 2000 Supp. 65-516 is hereby amended to read as
29 follows: 65-516. (a) No person shall knowingly maintain a child care fa-
30 cility or maintain a family day care home if, in the child care facility or
31 family day care home, there resides, works or regularly volunteers any
32 person who:

33 (1) (A) Has a felony conviction for a crime against persons, (B) has
34 a felony conviction under the uniform controlled substances act, (C) has
35 a conviction of any act which is described in articles 34, 35 or 36 of chapter
36 21 of the Kansas Statutes Annotated ~~and acts amendatory thereof or sup-~~
37 ~~plemental, and amendments~~ thereto or a conviction of an attempt under
38 K.S.A. 21-3301 and amendments thereto to commit any such act, or (D)
39 has been convicted of any act which is described in K.S.A. 21-4301 or 21-
40 4301a and amendments thereto or similar statutes of other states or the
41 federal government;

42 (2) has been adjudicated a juvenile offender because of having com-
43 mitted an act which if done by an adult would constitute the commission

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1 of a felony and which is a crime against persons, is any act described in
2 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated ~~and~~
3 ~~acts amendatory thereof or supplemental, and amendments~~ thereto, or is
4 any act described in K.S.A. 21-4301 or 21-4301a and amendments thereto
5 or similar statutes of other states or the federal government;

6 (3) has committed an act of physical, mental or emotional abuse or
7 neglect or sexual abuse as validated by the department of social and re-
8 habilitation services pursuant to K.S.A. 38-1523 and amendments thereto
9 and (A) the person has failed to successfully complete a corrective action
10 plan which had been deemed appropriate and approved by the depart-
11 ment of social and rehabilitation services, or (B) the record has not been
12 expunged pursuant to rules and regulations adopted by the secretary of
13 social and rehabilitation services;

14 (4) has had a child declared in a court order in this or any other state
15 to be deprived of a child in need of care based on an allegation of physical,
16 mental or emotional abuse or neglect or sexual abuse;

17 (5) has had parental rights terminated pursuant to the Kansas juvenile
18 code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a
19 similar statute of other states;

20 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*
21 *seq.*, and amendments thereto, or an immediate intervention agreement
22 pursuant to K.S.A. 38-1635 and amendments thereto involving a charge
23 of child abuse or a sexual offense; or

24 (7) has an infectious or contagious disease.

25 (b) No person shall maintain a child care facility or a family day care
26 home if such person has been found to be a ~~disabled~~ person in need of
27 a guardian or a conservator, or both, *as provided in sections 1 through*
28 *45, and amendments thereto.*

29 (c) Any person who resides in a child care facility or family day care
30 home and who has been found to be a ~~disabled person~~ in need of a
31 guardian or a conservator, or both, shall be counted in the total number
32 of children allowed in care.

33 (d) In accordance with the provisions of this subsection (d), the sec-
34 retary shall have access to any court orders or adjudications of any court
35 of record, any records of such orders or adjudications, criminal history
36 record information in the possession of the Kansas bureau of investigation
37 and any report of investigations as authorized by subsection (e) of K.S.A.
38 38-1523 and amendments thereto in the possession of the department of
39 social and rehabilitation services or court of this state concerning persons
40 working, regularly volunteering or residing in a child care facility or a
41 family day care home. The secretary shall have access to these records
42 for the purpose of determining whether or not the home meets the
43 requirements of K.S.A. 65-516 and 65-519 and amendments thereto.

1 (e) No child care facility or family day care home or the employees
2 thereof, shall be liable for civil damages to any person refused employ-
3 ment or discharged from employment by reason of such facility's or
4 home's compliance with the provisions of this section if such home acts
5 in good faith to comply with this section.

6 (f) For the purpose of subsection (a)(3), an act of abuse or neglect
7 shall not be considered to have been validated by the department of social
8 and rehabilitation services unless the alleged perpetrator has: (1) Had an
9 opportunity to be interviewed and present information during the inves-
10 tigation of the alleged act of abuse or neglect; and (2) been given notice
11 of the agency decision and an opportunity to appeal such decision to the
12 secretary and to the courts pursuant to the act for judicial review and civil
13 enforcement of agency actions.

14 Sec. 72. K.S.A. 2000 Supp. 65-5117 is hereby amended to read as
15 follows: 65-5117. (a) (1) On and after July 1, 1998, no person shall know-
16 ingly operate a home health agency if, for the home health agency, there
17 works any person who has been convicted of or has been adjudicated a
18 juvenile offender because of having committed an act which if done by
19 an adult would constitute the commission of capital murder, pursuant to
20 K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant
21 to K.S.A. 21-3401 and amendments thereto, second degree murder, pur-
22 suant to subsection (a) of K.S.A. 21-3402 and amendments thereto, vol-
23 untary manslaughter, pursuant to K.S.A. 21-3403 and amendments
24 thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments
25 thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437
26 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amend-
27 ments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503
28 and amendments thereto, aggravated indecent liberties with a child, pur-
29 suant to K.S.A. 21-3504 and amendments thereto, aggravated criminal
30 sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent
31 solicitation of a child, pursuant to K.S.A. 21-3510 and amendments
32 thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-
33 3511 and amendments thereto, sexual exploitation of a child, pursuant to
34 K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to
35 K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery,
36 pursuant to K.S.A. 21-3518 and amendments thereto, or similar statutes
37 of other states or the federal government.

38 (2) On and after July 1, 1998, a person operating a home health
39 agency may employ an applicant who has been convicted of any of the
40 following if five or more years have elapsed since the applicant satisfied
41 the sentence imposed or was discharged from probation, a community
42 correctional services program, parole, postrelease supervision, conditional
43 release or a suspended sentence; or if five or more years have elapsed

1 since the applicant has been finally discharged from the custody of the
2 commissioner of juvenile justice or from probation or has been adjudi-
3 cated a juvenile offender, whichever time is longer: A felony conviction
4 for a crime which is described in: (A) article 34 of the Kansas Statutes
5 Annotated and amendments thereto, except those crimes listed in sub-
6 section (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes
7 Annotated and amendments thereto, except those crimes listed in sub-
8 section (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) a con-
9 viction of an attempt under K.S.A. 21-3301 and amendments thereto to
10 commit any act listed in this subsection or subsection (a)(1); or (D) similar
11 statutes of other states or the federal government.

12 (b) No person shall operate a home health agency if such person has
13 been found to be a ~~disabled~~ person in need of a guardian or a conservator,
14 or both, *as provided in sections 1 through 45, and amendments thereto.*

15 (c) The secretary of health and environment shall have access to any
16 criminal history record information in the possession of the Kansas bureau
17 of investigation concerning persons working for a home health agency.
18 The secretary shall have access to these records for the purpose of de-
19 termining whether or not the home health agency meets the require-
20 ments of this section. The Kansas bureau of investigation may charge to
21 the department of health and environment a reasonable fee for providing
22 criminal history record information under this subsection.

23 (d) For the purpose of complying with this section, the operator of a
24 home health agency shall request from the department of health and
25 environment information obtained by the secretary of health and envi-
26 ronment which relates to a person who works for the home health agency
27 or is being considered for employment by the home health agency, for
28 the purpose of determining whether such person is subject to the pro-
29 visions of this section. For the purpose of complying with this section,
30 information relating to convictions and adjudications by the federal gov-
31 ernment or to convictions and adjudications in states other than Kansas
32 shall not be required until such time as the secretary of health and en-
33 vironment determines the search for such information could reasonably
34 be performed and the information obtained within a two-week period.
35 For the purpose of complying with this section, a person who operates a
36 home health agency may hire an applicant for employment on a condi-
37 tional basis pending the results from the department of health and en-
38 vironment of a request for information under this subsection. No home
39 health agency, the operator or employees of a home health agency or an
40 employment agency, or the operator or employees of an employment
41 agency, which provides employees to work for the home health agency
42 shall be liable for civil damages resulting from any decision to employ, to
43 refuse to employ or to discharge from employment any person based on

1 such home health agency's compliance with the provisions of this section
2 if such home health agency or employment agency acts in good faith to
3 comply with this section.

4 (e) The secretary of health and environment shall charge each person
5 requesting information under this section a fee equal to cost, not to ex-
6 ceed \$10, for each name about which an information request has been
7 submitted under this section.

8 (f) No person who works for a home health agency and who is cur-
9 rently licensed or registered by an agency of this state to provide profes-
10 sional services in this state and who provides such services as part of the
11 work which such person performs for the home health agency shall be
12 subject to the provisions of this section.

13 (g) A person who volunteers to assist a home health agency shall not
14 be subject to the provisions of this section because of such volunteer
15 activity.

16 (h) No person who has been employed by the same home health
17 agency for five consecutive years immediately prior to the effective date
18 of this act shall be subject to the requirements of this section while em-
19 ployed by such home health agency.

20 (i) The operator of a home health agency shall not be required under
21 this section to conduct a background check on an applicant for employ-
22 ment with the home health agency if the applicant has been the subject
23 of a background check under this act within one year prior to the appli-
24 cation for employment with the home health agency. The operator of a
25 home health agency where the applicant was the subject of such back-
26 ground check may release a copy of such background check to the op-
27 erator of a home health agency where the applicant is currently applying.

28 (j) This section shall be part of and supplemental to the provisions of
29 article 51 of chapter 65 of the Kansas Statutes Annotated and acts amen-
30 datory thereof or supplemental thereto.

31 Sec. 73. K.S.A. 73-507 is hereby amended to read as follows: 73-507.
32 Upon the filing of a petition for the appointment of a curator, under the
33 provisions of this act, the court shall cause such notice to be given as
34 provided by the act for obtaining a guardian or conservator, or both
35 (~~K.S.A. 59-2001 et seq. sections 1 through 45, and amendments thereto~~).

36 Sec. 74. K.S.A. 2000 Supp. 76-729 is hereby amended to read as
37 follows: 76-729. (a) Persons enrolling at the state educational institutions
38 under the control and supervision of the state board of regents who, if
39 such persons are adults, have been domiciliary residents of the state of
40 Kansas or, if such persons are minors, whose parents have been domicil-
41 iary residents of the state of Kansas for at least 12 months prior to en-
42 rollment for any term or session at a state educational institution are
43 residents for fee purposes. A person who has been a resident of the state

1 of Kansas for fee purposes and who leaves the state of Kansas to become
2 a resident of another state or country shall retain status as a resident of
3 the state of Kansas for fee purposes if the person returns to domiciliary
4 residency in the state of Kansas within 12 months of departure. All other
5 persons are nonresidents of the state of Kansas for fee purposes.

6 (b) The state board of regents may authorize the following persons,
7 or any class or classes thereof, and their spouses and dependents to pay
8 an amount equal to resident fees:

- 9 (1) Persons who are employees of a state educational institution;
- 10 (2) persons who are in military service;
- 11 (3) persons who are domiciliary residents of the state, who were in
12 active military service prior to becoming domiciliary residents of the state,
13 who were present in the state for a period of not less than two years
14 during their tenure in active military service, whose domiciliary residence
15 was established in the state within 30 days of discharge or retirement
16 from active military service under honorable conditions, but whose dom-
17 iciliary residence was not timely enough established to meet the residence
18 duration requirement of subsection (a);
- 19 (4) persons having special domestic relations circumstances;
- 20 (5) persons who have lost their resident status within six months of
21 enrollment;
- 22 (6) persons who are not domiciliary residents of the state, who have
23 graduated from a high school accredited by the state board of education
24 within six months of enrollment, who were domiciliary residents of the
25 state at the time of graduation from high school or within 12 months prior
26 to graduation from high school, and who are entitled to admission at a
27 state educational institution pursuant to K.S.A. 72-116, and amendments
28 thereto;
- 29 (7) persons who are domiciliary residents of the state, whose domi-
30 ciliary residence was established in the state for the purpose of accepting,
31 upon recruitment by an employer, or retaining, upon transfer required
32 by an employer, a position of full-time employment at a place of employ-
33 ment in Kansas, but the domiciliary residence of whom was not timely
34 enough established to meet the residence duration requirement of sub-
35 section (a), and who are not otherwise eligible for authorization to pay an
36 amount equal to resident fees under this subsection; and
- 37 (8) persons who have graduated from a high school accredited by the
38 state board of education within six months of enrollment and who, at the
39 time of graduation from such a high school or while enrolled and in at-
40 tendance at such a high school prior to graduation therefrom, were de-
41 pendents of a person in military service within the state; if the person,
42 whose dependent is eligible for authorization to pay an amount equal to
43 resident fees under this provision, does not establish domiciliary resi-

1 dence in the state upon retirement from military service, eligibility of the
2 dependent for authorization to pay an amount equal to resident fees shall
3 lapse.

4 (c) As used in this section:

5 (1) "Parents" means and includes natural parents, adoptive parents,
6 stepparents, guardians and custodians.

7 (2) "Guardian" has the meaning ascribed thereto by ~~K.S.A. 50-3002~~
8 *section 2*, and amendments thereto.

9 (3) "Custodian" means a person, agency or association granted legal
10 custody of a minor under the Kansas code for care of children.

11 (4) "Domiciliary resident" means a person who has present and fixed
12 residence in Kansas where the person intends to remain for an indefinite
13 period and to which the person intends to return following absence.

14 (5) "Full-time employment" means employment requiring at least
15 1,500 hours of work per year.

16 Sec. 75. K.S.A. 76-12b04 is hereby amended to read as follows: 76-
17 12b04. If in the opinion of the superintendent an applicant for admission
18 meets the definition of ~~"disabled person" as set forth in K.S.A. 50-3002~~
19 *a person in need of a guardian or a conservator, or both, as provided in*
20 *sections 1 through 45, and amendments thereto, the person shall not be*
21 *admitted to an institution except for the purposes of conducting a court*
22 *ordered evaluation pursuant to ~~subsection (a)(6) of K.S.A. 50-3010~~ section*
23 *15, and amendments thereto until a court has determined the legal status*
24 *of the person under the act for obtaining a guardian or conservator, or*
25 *both. The provisions of this paragraph shall not be applicable if a court*
26 *has already determined the legal status of the applicant under the act.*

27 Sec. 76. K.S.A. 77-201 is hereby amended to read as follows: 77-201.
28 In the construction of the statutes of this state the following rules shall
29 be observed, unless the construction would be inconsistent with the man-
30 ifest intent of the legislature or repugnant to the context of the statute:

31 *First.* The repeal of a statute does not revive a statute previously re-
32 pealed, nor does the repeal affect any right which accrued, any duty im-
33 posed, any penalty incurred or any proceeding commenced, under or by
34 virtue of the statute repealed. The provisions of any statute, so far as they
35 are the same as those of any prior statute, shall be construed as a contin-
36 uation of the prior provisions and not as a new enactment.

37 *Second.* Words and phrases shall be construed according to the context
38 and the approved usage of the language, but technical words and phrases,
39 and other words and phrases that have acquired a peculiar and appropri-
40 ate meaning in law, shall be construed according to their peculiar and
41 appropriate meanings.

42 *Third.* Words importing the singular number only may be extended to
43 several persons or things, and words importing the plural number only

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1 may be applied to one person or thing. Words importing the masculine
 2 gender only may be extended to females.

3 *Fourth.* Words giving a joint authority to three or more public officers
 4 or other persons shall be construed as given that authority to a majority
 5 of them, unless it is otherwise expressed in the act giving the authority.

6 *Fifth.* "Highway" and "road" include public bridges and may be con-
 7 strued to be equivalent to "county way," "county road," "common road,"
 8 "state road" and "territorial road."

9 *Sixth.* "Incompetent person" includes disabled ~~person as defined in~~
 10 ~~K.S.A. 59-3002 and amendments thereto~~ *persons and incapacitated per-*
 11 *sons as defined herein.*

12 *Seventh.* "Issue," as applied to the descent of estates, includes all the
 13 lawful lineal descendants of the ancestor.

14 *Eighth.* "Land," "real estate" and "real property" include lands, tene-
 15 ments and hereditaments, and all rights to them and interest in them,
 16 equitable as well as legal.

17 *Ninth.* "Personal property" includes money, goods, chattels, evidences
 18 of debt and things in action.

19 *Tenth.* "Property" includes personal and real property.

20 *Eleventh.* "Month" means a calendar month, unless otherwise ex-
 21 pressed. "Year" alone, and also the abbreviation "A.D.," is equivalent to
 22 the expression "year of our Lord."

23 *Twelfth.* "Oath" includes an affirmation in all cases where an affirma-
 24 tion may be substituted for an oath, and in similar cases "swear" includes
 25 affirm.

26 *Thirteenth.* "Person" may be extended to bodies politic and corporate.

27 *Fourteenth.* If the seal of a court or public office or officer is required
 28 by law to be affixed to any paper, "seal" includes an impression of the
 29 seal upon the paper alone, as well as upon wax or a wafer affixed to the
 30 paper. "Seal" also includes both a rubber stamp seal used with permanent
 31 ink and the word "seal" printed on court documents produced by com-
 32 puter systems, so that the seal may be legibly reproduced by photographic
 33 process.

34 *Fifteenth.* "State," when applied to the different parts of the United
 35 States, includes the District of Columbia and the territories. "United
 36 States" may include that district and those territories.

37 *Sixteenth.* "Town" may mean a civil township, unless a different mean-
 38 ing is plainly intended.

39 *Seventeenth.* "Will" includes codicils.

40 *Eighteenth.* "Written" and "in writing" may include printing, engrav-
 41 ing, lithography and any other mode of representing words and letters,
 42 excepting those cases where the written signature or the mark of any
 43 person is required by law.

1 Nineteenth. "Sheriff" may be extended to any person performing the
2 duties of the sheriff, either generally or in special cases.

3 Twentieth. "Deed" is applied to an instrument conveying lands but
4 does not imply a sealed instrument. "Bond" and "indenture" do not nec-
5 essarily imply a seal but in other respects mean the same kind of instru-
6 ments as above. "Undertaking" means a promise or security in any form
7 where required by law.

8 Twenty-first. "Executor" includes an administrator where the subject-
9 matter applies to an administrator.

10 Twenty-second. Roman numerals and Arabic figures are to be taken as
11 a part of the English language.

12 Twenty-third. "Residence" means the place which is adopted by a per-
13 son as the person's place of habitation and to which, whenever the person
14 is absent, the person has the intention of returning. When a person eats
15 at one place and sleeps at another, the place where the person sleeps
16 shall be considered the person's residence.

17 Twenty-fourth. "Usual place of residence" and "usual place of abode,"
18 when applied to the service of any process or notice, means the place
19 usually occupied by a person. If a person has no family, or does not have
20 family with the person, the person's office or place of business or, if the
21 person has no place of business, the room or place where the person
22 usually sleeps shall be construed to be the person's place of residence or
23 abode.

24 Twenty-fifth. "Householder" means a person who is 18 or more years
25 of age and who owns or occupies a house as a place of residence and not
26 as a boarder or lodger.

27 Twenty-sixth. "General election" refers to the election required to be
28 held on the Tuesday following the first Monday in November of each
29 even-numbered year.

30 Twenty-seventh. "Under legal disability" includes persons who are
31 within the period of minority, or who are incapacitated, in competent or
32 imprisoned.

33 Twenty-eighth. When a person is required to be disinterested or in-
34 different in acting on any question or matter affecting other parties, re-
35 lationship within the degree of second cousin, inclusive, shall disqualify
36 the person from acting, except by consent of parties.

37 Twenty-ninth. "Head of a family" shall include any person who has
38 charge of children, relatives or others living with the person.

39 Thirtieth. "Mentally ill person" means a mentally ill person as defined
40 in K.S.A. 49-2000 Supp. 59-2946 and amendments thereto.

41 Thirty-first. "Incapacitated person" means ~~disabled person as defined~~
42 ~~in K.S.A. 59-2002 and amendments thereto~~ an individual whose ability
43 to receive and evaluate relevant information, or to effectively communi-

1 *cate decisions, or both, even with the use of assistive technologies or other*
2 *supports, is impaired to the degree that the person lacks the capacity to*
3 *manage the person's estate, or to meet essential needs for their physical*
4 *health, safety or welfare, as defined in section 2, and amendments thereto,*
5 *whether or not a guardian or a conservator has been appointed for that*
6 *person.*

7 *Thirty-second. "Guardian" means an individual or a nonprofit corpo-*
8 *ration certified in accordance with K.S.A. 59-3037 section 21, and amend-*
9 *ments thereto which has been appointed by a court to act on behalf of a*
10 *ward and possessed of some or all of the powers and duties set out in*
11 *K.S.A. 59-3018 section 26, and amendments thereto. "Guardian" does*
12 *not mean natural guardian unless specified.*

13 *Thirty-third. "Natural guardian" means both the biological or adoptive*
14 *mother and father and mother of a minor if neither parent has been found*
15 *to be a disabled person an adult with an impairment in need of a guardian*
16 *or has had parental rights terminated by a court of competent jurisdiction.*
17 *If either parent of a minor dies, is found to be a disabled person is de-*
18 *ceased, or has been found to be an adult with an impairment in need of*
19 *a guardian, as provided for in sections 1 through 45, and amendments*
20 *thereto or has had parental rights terminated by a court of competent*
21 *jurisdiction, then the other parent shall be the natural guardian, unless*
22 *also deceased, or found to be an adult with an impairment in need of a*
23 *guardian, or has had parental rights terminated by a court of competent*
24 *jurisdiction, in which case no person shall qualify as the natural guardian.*

25 *Thirty-fourth. "Conservator" means an individual or corporation ap-*
26 *pointed by the court to act on behalf of a conservatee and possessed of*
27 *some or all of the powers and duties set out in K.S.A. 59-3019 section 29,*
28 *and amendments thereto.*

29 *Thirty-fifth. "Minor" means any person defined by K.S.A. 38-101 and*
30 *amendments thereto as being within the period of minority.*

31 *Thirty-sixth. "Proposed ward" means a person for whom an application*
32 *a petition for the appointment of a guardian pursuant to K.S.A. 59-3006*
33 *section 9, 10, 11 or 12, and amendments thereto has been filed.*

34 *Thirty-seventh. "Proposed conservatee" means a person for whom a*
35 *petition for the appointment of a conservator pursuant to K.S.A. 59-3006*
36 *section 9, 10, 11 or 12, and amendments thereto has been filed.*

37 *Thirty-eighth. "Ward" means a person who has a guardian.*

38 *Thirty-ninth. "Conservatee" means a person who has a conservator.*

39 *Fortieth. "Manufactured home" means a structure which:*
40 *(1) Is transportable in one or more sections which, in the traveling*
41 *mode, is 8 body feet or more in width or 40 body feet or more in length,*
42 *or, when erected on site, is 320 or more square feet, and which is built*
43 *on a permanent chassis and designed to be used as a dwelling, with or*

1 without permanent foundation, when connected to the required utilities,
2 and includes the plumbing, heating, air conditioning and electrical sys-
3 tems contained therein; and

4 (2) is subject to the federal manufactured home construction and
5 safety standards established pursuant to 42 U.S.C. § 5403.

6 *Forty-first.* "Mobile home" means a structure which:

7 (1) Is transportable in one or more sections which, in the traveling
8 mode, is 8 body feet or more in width and 36 body feet or more in length
9 and is built on a permanent chassis and designed to be used as a dwelling,
10 with or without a permanent foundation, when connected to the required
11 utilities, and includes the plumbing, heating, air conditioning and elec-
12 trical systems contained therein; and

13 (2) is not subject to the federal manufactured home construction and
14 safety standards established pursuant to 42 U.S.C. § 5403.

15 *Forty-second.* "Disabled person" includes incapacitated persons and
16 incompetent persons as defined herein.

17 New Sec. 77. If any provision of this act for obtaining a guardian or
18 a conservator, or both, or the application thereof to any person or cir-
19 cumstances is held invalid, the invalidity shall not affect other provisions
20 or applications of this act which can be given effect with the invalid pro-
21 vision or application, and to this end the provisions of this act are
22 severable.

23 Sec. 78. K.S.A. 17-2263, 17-2264, 17-5828, 17-5829, 38-1505, 39-
24 789, 39-970, 44-513a, 58-629, 59-1701, 59-3001, 59-3003, 59-3004, 59-
25 3006, 59-3007, 59-3008, 59-3011, 59-3012, 59-3015, 59-3016, 59-3017,
26 59-3018, 59-3019, 59-3020, 59-3021, 59-3022, 59-3023, 59-3024, 59-
27 3025, 59-3027, 59-3028, 59-3030, 59-3031, 59-3032, 59-3034, 59-3035,
28 59-3037, 59-3038, 73-507, 76-12b04 and 77-201 and K.S.A. 2000 Supp.
29 9-1215, 9-1216, 58-24a15, 59-2946, 59-2948, 59-2949, 59-2951, 59-2960,
30 59-29b46, 59-29b48, 59-29b49, 59-29b51, 59-29b60, 59-3002, 59-3009,
31 59-3010, 59-3013, 59-3014, 59-3018a, 59-3026, 59-3029, 50-3036, 59-
32 3039, 60-304, 60-304a, 61-3004, 65-516, 65-5117 and 76-729 are hereby
33 repealed.

34 Sec. 79. This act shall take effect and be in force from and after its
35 publication in the statute book.

59-2203. Venue. Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of such decedent's death if the decedent owned an interest in real property in such county, or, if the decedent did not own an interest in real property in the decedent's county of residence at the time of such decedent's death, in such county of the residence of the decedent at the time of such decedent's death or in any county where the decedent owned an interest in real property; if the decedent was not a resident of this state, proceedings may be had in any county where such decedent left any estate to be administered as provided in K.S.A. 59-805 and amendments thereto. ~~Proceedings for the appointment of a guardian may be had in the county of the proposed ward's residence or where the proposed ward may be found. Proceedings for the appointment of a conservator shall be had in the county of the proposed conservatee's residence; if the proposed conservatee resides without this state, proceedings may be had in any county in which any of the proposed conservatee's property is situated.~~ Proceedings for the administration of a partnership estate by the surviving partner shall be had in the county of the residence of the deceased partner at the time. If the deceased partner is a nonresident of the state the proceedings may be had in any county in which any of the partnership property is situated. Such proceedings first legally commenced shall extend to all of the property of the decedent or proposed conservatee in this state.

If the proceedings are instituted in more than one county, they shall be stayed except in the county where first commenced until final determination of venue. If the proper venue is determined to be in another county, the district court, after making and retaining a true copy of the entire file, shall transmit the original to the proper county.

59-2401. Appealable orders, when; bond. (a) An appeal may be taken within 30 days from the date of entry of any of the following orders, judgments, decrees and decisions:

- (1) An order admitting or refusing to admit a will to probate.
- (2) An order appointing, refusing to appoint, removing or refusing to remove a fiduciary other than a special administrator.
- (3) An order setting apart or refusing to set apart a homestead or other property, or making or refusing to make an allowance of exempt property to the spouse and minor children.
- (4) An order determining, refusing to determine, transferring or refusing to transfer venue.
- (5) An order allowing or disallowing a demand, in whole or in part, when the amount in controversy exceeds \$500.
- (6) An order authorizing, refusing to authorize, confirming or refusing to confirm the sale, lease or mortgage of real estate.
- (7) Judgments for waste.
- (8) An order directing or refusing to direct a conveyance or lease of real estate under contract.
- (9) An order directing or refusing to direct the payment of a legacy or distributive share.
- (10) An order allowing or refusing to allow an account of a fiduciary or any part thereof.
- (11) A judgment or decree of partial or final distribution.
- (12) An order compelling or refusing to compel a legatee or distributee to refund.
- (13) An order directing or refusing to direct an allowance for the expenses of administration.
- (14) An order vacating or refusing to vacate a previous appealable order, judgment, decree or decision.
- (15) A decree determining or refusing to determine the heirs, devisees and legatees.

- (16) An order adjudging a person in contempt.
- (17) An order adjudging or refusing to adjudge a person an ~~incapacitated~~ ^{impaired} person.
- (18) The granting or refusing to grant an order for treatment.
- (19) An order granting or denying restoration to capacity.
- (20) An order granting or denying discharge.
- (21) An order finding or refusing to find that there is a valid consent to a will.
- (22) An order finding or refusing to find that there is a valid settlement agreement.
- (23) An order decreeing or refusing to decree an adoption.
- (24) A final order, decision or judgment in any probate proceeding.

(b) Notwithstanding the provisions of K.S.A. 60-2103 and amendments thereto relating to bonds, the appellant, other than the state or municipality or a fiduciary appealing on behalf of the estate, shall file in the court from which the appeal is taken a bond in such sum and with such sureties as may be fixed and approved by the court, conditioned that the appellant will without unnecessary delay prosecute the appeal and pay all sums, damages and costs that may be adjudged against the appellant.

(c) Except as otherwise provided in this section, appeals taken pursuant to this section shall be taken in the manner provided by chapter 60 of the Kansas Statutes Annotated for other civil cases.

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**Explanatory comments regarding the Judicial
Council's proposed amendments to 2001 HB 2469
(Revised Guardianship and Conservatorship Act)**

Based upon the comments and suggestions offered by the Christian Science Committee on Publication in Kansas, and by the Topeka Independent Living Resource Center, and by others, the committee urges several amendments to New Section 2.

New Section 2 is a re-write of the definitions for the act currently found at K.S.A. 59-3002. Those definitions have been reordered to appear in alphabetical order and re-written so as to be placed in "person first" language and to reflect the two part: (1) impairment and (2) need, structure of the guardianship/conservatorship issue. The primary definition is the first one in subsection (a): "Adult with an impairment in need of a guardian or a conservator, or both."

Inadvertently, the draft of the committee's work that became HB 2469 left out the paragraph providing protection for adherents of Christian Science and others who rely upon prayer alone for healing, which the committee had included in its earlier proposals concerning the Care and Treatment Act for Mentally Ill Persons, and the Care and Treatment Act for Persons With an Alcohol or Substance Abuse Problem, both of which have been enacted into law in recent years. The committee regrets this error. The committee recommends language similar to that which was enacted in those codes and which appear in the Kansas Statutes Annotated near to the guardianship/conservatorship act. (See the committee's balloon attachment.) The committee notes that it did include language supplemental of this concern in New Section 19, subsection (c).

Secondly, the committee recommends adding a new definition for the phrase "appropriate alternative," as appears in subsections (e) and (f). The committee agrees with the comments of the Topeka Independent Living Resource Center that this is a key concept to the proposed code. The committee recommends language similar to what was proposed. (See the committee's balloon attachment.)

The committee notes that the Topeka Independent Living Resource Center suggests the

addition of a definition for the term "impairment." While the committee notes that the term "impaired" appears several times in the code, the committee believes that a separate definition for that term is unnecessary. The committee believes that the term is in effect defined in subsection (a) within the definition of an "adult with an impairment" by the use of the language: "whose ability to receive and evaluate relevant information, or to effectively communicate decisions, or both, even with the use of assistive technologies or other supports, is impaired." It was the committee's intent is that this language is what defines who an impaired adult is. The additional defined phrases that include persons who "lack the capacity to manage such person's estate" and "to meet essential needs for physical health, safety or welfare" appearing in that subsection (a) and in subsections (g) and (h) complete the definition. Nothing further is needed.

Additionally, a clause which completes the definition of a "person in need of an ancillary conservator," appearing in subsection (m), was left out of the draft that became HB 2469. The committee urges its inclusion by amendment.

Finally, consistent with the amendments the committee urges to new section 21, concerning corporate guardians, the committee urges technical amendments to the definitions of "conservator" and "guardian." (See the committee's balloon attachment.)

The committee recommends no changes to New Section 6.

New Section 6 is a re-write of current K.S.A. 59-3015. It is moved to this proposed location to follow New Sections 4 and 5 (currently K.S.A. 59-3003 and 59-3304) because it and those sections deal with matters not specifically involving a guardianship or conservatorship. New Section 6 is divided in subsections (a), (b) and (c). Subsection (a) provides for avoidance of a conservatorship for a minor for a relatively small estate by the use of a restricted account. Subsection (b) allows the payment directly to a minor of a relatively small estate, or alternatively, payment of a small estate to a minor's representative, including the minor's parent, "in trust" for the minor, but without the expense and formality of a conservatorship. Subsection (c) provides for the avoidance of a conservatorship for a small estate by the use of a restricted account for either a minor or an adult. In each instance, the use of these avoidance provisions is discretionary with the court. The committee anticipates that the court would exercise this discretion based upon the court's judgements concerning (1) whether or not access to the funds is thought to be regularly needed, (2) when the circumstances of the minor, the minor's representative, or the adult are thought to be fairly stable, and (3) when the use of these provisions is thought to provide adequate safeguards for the funds involved. The intent of these provisions is to allow maximum flexibility to the court in dealing with small estates, where the costs of creating and administering a formal conservatorship would outweigh the benefits of formal proceedings.

Each of the subsections of New Section 6 corresponds to provisions contained in 59-3015, but now reorganized to set separate matters into distinct subsections. The increase in the amount at which the limit is set in subsections (b) and (c), from \$5,000 to \$10,000, is done based upon the inflationary increases which have occurred in the Consumer Price Index since 59-3015

was enacted in 1965 and amended last in 1984. The limit figure in subsection (a) of \$50,000 was selected because the committee felt that an appropriate demarcation between what sum of money could appropriately be conserved in a restricted account, and what sum of money deserved a more diversified or intense management. Estates in excess of \$50,000 were thought to universally fall within the second category.

Based upon the recommendations of the Kansas Bar Association, the committee recommends one minor change to New Section 15.

New Section 15 is a substantial re-write of current K.S.A. 59-3010(a)(6). It is given its own section in this proposal owing to the importance of an examination and evaluation in a guardianship/conservatorship proceeding. It is often the only evidence the court receives concerning the extent and nature of the proposed ward's/conservatee's impairment.

The committee was made aware that under the current law, it has been very difficult to get a meaningful medical report prepared within the statutorily allowed time frame. This has resulted in one of three things occurring: (1) the report being very brief and of not much use to the court in knowing exactly what the nature of the person's impairment is, (2) the trial of the case having to be postponed until a report can be prepared, leaving the legal status of the person and their ability to manage their affairs and estate up in the air for that extended time, or (3) the report being post-dated, creating a certain dis-respect for the law. None of these alternatives seemed desirable to the committee.

The committee further observed that the professional selected to perform the statutorily required examination and evaluation was almost universally the person's personal physician or another qualified professional already familiar with the person. What the committee intended, by allowing for the report of the examination and evaluation to be prepared ahead of the filing of the petition, was to encourage the preparer of the report to, at the time this examination is conducted, take into account and utilize the information from existing data and files. While the purpose of the required report is to focus on the specific questions at issue in the guardianship/conservatorship, the report may well be largely be a compilation of existing information. By allowing, essentially, all the time that is needed to prepare this report, the committee hopes to get better

reports. The committee intends to publish forms and supportive documents which should be of assistance to the professionals preparing these reports.

The committee also assumes that if this report is attached to the petition, then when it is served on those family members and others upon whom service is required, that many of their questions concerning the nature and extent of the person's impairment will be answered. This would allow the focus of the court proceedings to shift to what services or other assistance the proposed ward/conservatee really needs. Of course, if the nature or extent of the person's impairment is at issue, particularly if contested by the proposed ward/conservatee, then having the medical report attached to the petition constitutes better notice as to exactly what it is that is being alleged.

Another benefit that the committee envisions to these more detailed and focused reports is that such information will be more assistive to the court in judging the appropriateness of the guardianship plans and conservatorship plans the committee intends to be centerpieces in these cases in the future. Courts have not had the time or expertise to develop detailed orders providing for what wards or conservatees should or should not be allowed to do on a day to day basis. Under this bill as proposed, allowance is made for the shifting of this burden to the guardian or conservator. (See New Sections 27 and 30.) Oversight of these plans is reserved to the courts. The committee envisions that these more detailed and focused medical reports will provide, at least initially, a foundation upon which judgements concerning those plans can be based.

Finally, the committee made acceptance by the court of these pre-prepared reports discretionary, and provided to the proposed ward/conservatee opportunity to obtain a "2nd opinion" report. The committee felt these provisions more than adequately protected the

interests of the proposed ward/conservatee.

The committee does agree with the Bar Association that the examiner's statement should be limited to what information the examiner is actually aware of, and so the minor amendment on page 19 of the Bill is urged to clarify that the examiner's conclusions should be limited to the circumstances the examiner is actually aware of. Usually, the examiner's knowledge will center upon the impairment portion of the equation, and may not include much knowledge as to the need portion, which other witnesses may be more knowledgeable of. (See the committee's balloon attachment.)

Based upon one of the comments and a suggestion offered by the Topeka Independent Living Resource Center, the committee urges an amendment to New Section 19.

New Section 19 is a re-write of current K.S.A. 59-3014. Subsection (a) lists sources of nominations of individuals whom the court might appoint as the guardian or conservator. Both the Topeka Independent Living Resource Center and the Kansas Bar Association suggest that the list should indicate a hierarchy from which the court makes its selection in an order of priority. The committee considered this alternative, but, just as the suggested language of the Topeka Independent Living Resource Center necessarily must end with provisions that allow the court to jump over individuals who might occupy a higher priority on the list, but who would be inappropriate to be appointed in a particular case for one reason or another, the committee determined that the list must necessarily be a list only of individuals who should be considered for appointment. The committee elected to recommend that the list be designated only as a list from which the court should "give consideration," rather than designating it as one of priorities, which then can be ignored.

From among this group of possible nominees, subsections (b) and (c) then list further considerations which the court should weigh in selecting who to appoint. The committee's main consideration was that the court should select someone compatible with the ward/conservatee.

The committee does find the additional consideration of avoiding a conflict of interest between the ward and the guardian, or the conservatee and the conservator, or between the guardian's or conservator's other interests and their duties and responsibilities in the case in which they are being considered for appointment, to be a valid concern, and so recommends the addition of language to draw that issue to the court's attention. (See the committee's balloon attachment.)

The committee recommends several clarifying amendments to New Section 20.

New Section 20 is a substantial re-write of current K.S.A. 59-3014(d). It is given its own section because of the importance of the subjects it covers: oaths, bonds, the appointment of resident agents and the letters issued by the court. An objection to New Section 20 is raised by the Kansas Guardianship Program, and concerns who should act as surety on bonds required of KGP volunteers. Current law provides that the Secretary of SRS is required to act as surety. That law was adopted in 1986 when the Kansas guardianship program was a contracted for service funded by the Department of Social and Rehabilitation Services. The purpose of this provision was to reduce the costs of the program by eliminating the costs of purchasing individual bonds, and to address the problem of being able to find underwriters willing to issue those small bonds. By and large, the bonds involved were very small, often being in an amount of no more than \$500.00 or \$1,000.00. They were required by law, but actually covered the cases of persons meeting SRS income qualifying requirements. The Secretary was assigned the duty in 1986 of acting as surety for two reasons, (1) because the persons being protected were generally clients of SRS (at that time, usually persons residing in one of SRS's institutions), and (2), because SRS, as the agency writing the contract, was in a position to supervise the guardianship program. Those factors are no longer true. The Kansas Guardianship Program is no longer a contract program of SRS, subject to either SRS supervision or control as to how KGP operates. It is independently established by law (K.S.A. 74-9601, et. seq.). SRS has no formal role to play in who is recruited to be KGP volunteers, no formal role to play in training those volunteers, no formal role to play in matching those volunteers with the persons for whom they are appointed, and no formal role to play in supervising those volunteers as they perform their duties. SRS is left only with responsibility for paying the bond, if and when a KGP volunteer misappropriates

their charge's funds. Secondly, the vast majority of the persons KGP now serves live in community settings not under the jurisdiction of SRS. The committee could see no justification for continuing SRS's responsibility.

KGP's primary concern with the proposal to make KGP responsible for being surety on their own volunteers' bonds is the cost of either buying the hundreds of small bonds that might be involved, or buying a liability policy for KGP itself. The committee believes that this concern is unfounded or inappropriate. KGP volunteers are still used nearly exclusively in cases involving persons found to be in need of a guardian by SRS's adult services social workers. Their estates tend to be very small, because if the opposite is true, the estate of that person is looked to to pay for the costs of their guardianship or conservatorship, including the fees of any court appointed guardian or conservator, and KGP is, therefore, not involved. The committee noted that SRS does not, and never has, purchased individual bonds. Rather, SRS acts as a self-insurer. Over the years, the actual sums paid out annually upon orders of the courts forfeiting KGP volunteer bonds has been less than \$50,000, and often much less. Many years, it has been zero. The committee assumes that KGP could also self-insure. Certainly, self-insurance would be far less costly than trying to purchase individual bonds. In order to do so, KGP may need to request an initial appropriation to be set aside for this purpose, and then will need to request and justify future appropriations to replace any funds expended upon forfeiture because of misdeeds by one of their volunteers. That is what SRS does.

A further consideration of the committee was the provisions added throughout the code that would allow guardians to administer small estates without formal bonds being required. While that fact would not relieve a KGP guardian of liability for any funds misappropriated, and may constitute a source of liability for KGP when one of their volunteers misappropriates funds,

the committee believes that those provisions will dispense with the need for formal bonds in most of the cases that KGP is involved with. The committee sees nothing wrong in making KGP liable for its volunteers misdeeds, and assumes that fact will cause KGP to use care in whom it recruits, and how it trains and supervises those volunteers.

For all of these reasons, the committee felt that it was time for KGP to be responsible for its own program. The committee also notes that if KGP self-insures, that is essentially the same thing as SRS self-insuring, at least from the standpoint of the fact that in either case it is the state treasury that ultimately makes up the loss. Whether KGP or SRS acts as the surety, when that agency's funds are paid out upon order of the court, those funds have to be replaced the next year by being tacked on to the next year's appropriation to that agency.

All of that being said, the committee understands that because SRS is so much larger than KGP, that its ability to comply with any unforeseen large order of forfeiture is undeniably easier. In the rare case that a KGP volunteer becomes involved in a matter where the estate is large, and takes advantage of that situation to steal a large sum of money, a self-insuring SRS would be much more likely to be able to deal with that matter in the short run than would the much smaller KGP. The question becomes one of policy and a judgement concerning risk. If the Legislature should balance this policy and risk question differently than the committee recommends, then the amendment required would be to simply substitute back in the words "Secretary of Social and Rehabilitation Services" in place of "Kansas Guardianship Program" in subsection (g).

The amendments urged to new section 20 are recommended after discussions with the Kansas Bar Association, and are intended to clarify or make consistent language having to do with when bonds are required. (See the committee's balloon attachment.)

Based upon the recommendations of the Kansas Bar Association, and after review of the U.S. District Court's decision in *Grant v. Johnson*, 757 F.Supp 1127 (D. Or. 1991), the committee recommends several amendments to New Section 24.

New Section 24 is a substantial re-write of current K.S.A. 59-3036 (a). It is given its own section and is substantially enlarged owing to the importance and complexity of dealing with emergency situations. The only objection to the provisions of New Section 24 that were initially raised were those by the Kansas Bar Association. The Bar Association stated that it was concerned that the ex parte provisions may be utilized by one faction of a family or interested party to gain a "leg up" on other persons who may be interested in the matter. That was the fact situation in the *Grant* case. The committee understands this concern, but believes the utility of being able to immediately address emergency situations outweighs this concern. To a certain extent, whoever first files a court action has a "leg up." The committee drafted several provisions to mitigate against this natural fact from acting as undue influence. First, the committee drafted the standard at which these ex parte provisions can be invoked to be quite high: "imminent danger." The committee also specially allowed emergency proceedings to be initiated by someone other than the original petitioner, so as to negate the automatic "leg up" factor from always applying. The committee also provided several options for the court to postpone matters or to eliminate the need to ex parte proceedings, by having the option to set matters for a full due process hearing, and by allowing for either the proposed ward/conservatee or that person's spouse, whom the committee assumed would have the greatest interest in these matters, to request and receive a speedy full due process hearing to re-consider any ex parte orders entered. Finally, the committee has provided that only limited authorities can be given to the temporary guardian or temporary conservator.

However, after further discussions with the Bar Association, and after a careful analysis of the *Grant* case, the committee now urges further provisions to insure the due process concerns of the Bar and that were at issue in the *Grant* case. The committee believes with all of the draft's earlier provisions and these new amendments, the section's provisions will more than adequately protect all parties interests.

The committee notes the Bar Association's preference for an advancement of the trial of the case over any ex parte proceedings, and notes that it included provisions for such as an alternative to temporary proceedings. (See New Section 16, subsection (a)(4).)

(See the committee's balloon attachment.)

The committee urges several amendments to New Section 26, on pages 40 and 41, and two technical amendments on page 42. Otherwise, the committee recommends no substantive changes to New Section 26.

New Section 26 is a substantial re-write of current K.S.A. 59-3018. It concerns the duties, responsibilities, powers and authorities of a guardian and is reorganized to be easier to reference to, particularly by a guardian once appointed by a court. It is principally divided into five subsections. The first includes a general requirement that a guardian should get to know their ward and encourage and allow their ward to be as independent as he or she is capable of being. Along with the provisions of New Section 27, which provides for the development and implementation of a guardianship plan, these sections in combination are intended to allow for a workable alternative to the current law's provisions for "limited guardianship." The committee could find no instances itself where the current law was actually being utilized, and understands that to be so because generally courts are unfamiliar with the day to day abilities which a ward typically exhibits, and so do not feel like they are in a position to enter orders to carry out those provisions. The committee envisions that by shifting to the guardian the burden for finding workable solutions to the issues of when and how much autonomy to give to a ward, with only court oversight, a more workable, practical balance will likely be found. The committee was aware that in real cases, this most approximates what does happen now when these goals are attempted.

Subsection (b) provides, with a broad brush, for those certain specific areas of general duties, responsibilities, powers and authorities a guardian must necessarily have. Subsections (c) and (d) state the limits of a guardian's personal liability and demarcates the line between the where a guardianship ends and the guardian's personal liability is protected.

Finally, subsection (e) provides for those matters where a guardian should not be given just generalized authority. In some of those circumstances, the prohibition on the guardian's authority to make certain decisions is absolute, such as the prohibition against the guardian being able to interfere in a ward's decision to marry or divorce (assuming the ward is otherwise competent to make such decisions.) In most cases, however, these prohibitions must necessarily be tempered with exceptions for when a guardian should be given the authority to act on their ward's behalf, with court approval or under certain specified circumstances or conditions. Examples of those situations often involve serious medical questions, even of a life-ending nature. Only if the pre-set conditions exist, and only if certain other parties agree, is the guardian to be given these authorities.

Over the summer, the committee was contacted by counsel for a major medical facility in Wichita and heard from Kansas LIFE (Living Initiatives For End of Life). That attorney suggested two amendments the committee now urges on pages 40 and 41. The attorney's concern in this matter was not so much substantive, as it was to suggest clearer language. In the two sections concerning life-ending authority, the committee's draft of the bill used the term "illness" twice. The attorney suggested that use of the word "illness" may connote the necessity of having an active, progressive disease. Neither that attorney understood, nor did the committee intend, that the use of the term "illness" in this context was intended to exclude other possibilities. The phrase "illness or other medical condition" was suggested by the attorney to clarify that chronic conditions involving the failure of bodily systems would also be included. The committee concurs with the suggested amendments as being more clear of the committee's intent.

Kansas LIFE urged the committee to recommend amendments that would combine the

subsections the committee originally drafted having to do with life-saving and life-ending procedures. Kansas LIFE was concerned that mis-interpretations of the intent of separating these sections could lead to decisions being made not to try certain medical options for fear that would put the guardian in the position of not being able to consent to the termination of those procedures if they were unsuccessful. While the committee doubts such would be the case, the committee was convinced that no good reason existed for drawing a distinction where none likely exists in reality. The committee was concerned that doing so could cause unnecessary confusion. The committee, therefore, recommends the combination of the draft sections into one. With these amendments on pages 40 and 41, the committee believes the conservative balances the committee has struck in these situations adequately protects the rights of the ward, and meets the needs of modern circumstances.

In the next to final example, found at subsection (e)(9), on page 41 of the bill, the committee recommends that a guardian, while not normally given any authority to control or administer a ward's estate, could be given such authority in order to administer a small estate, with court approval and under certain conditions. The committee recommends a value of \$10,000.00 as being the maximum size of an estate which could initially be thus administered, because that figure is consistent with the provisions of New Section 6, and is the amount of funds, based on the inflation adjusted figure from current K.S.A. 59-3005a, which the committee believes does not generally justify the expense of a formal conservatorship. While these provisions excuse a formal conservatorship, they do not excuse the fiduciary nature of the relationship. Provisions are included for the requirement of a bond, for annual reports, for the court to require the guardian to develop and implement what would otherwise be a conservatorship plan, as provided for in New Section 30, and for court imposed requirements

concerning what should happen if the estate grows to more than \$10,000.00.

The Kansas Bar Association expresses concern that these provisions allowing for a guardian to administer small estates may be too confusing and inappropriately blurs the distinction between guardianships and conservatorships. The committee strongly disagrees and believes that it has struck the correct balance between when the expense and formalities of a conservatorship can be dispensed with, and when those should not. The committee noted that in these small estate cases, almost universally, the person appointed as the conservator is the same person appointed as the guardian. The committee felt little was gained in these cases in forcing such a person to wear two "hats" when one will suffice. In fact, the committee believes this simplified structure will be considerably less confusing to those family members who are normally appointed in these cases than the current "two-hat" formula. The committee, however, has specifically recommended that whether or not to allow such small estates to be so administered should be discretionary with the court, so that in those cases where, even though the estate may be small, the protections afforded by a formal conservatorship seem warranted, the court may require such.

(See the committee's balloon attachment.)

The committee recommends no changes to New Section 27.

New Section 27 is an entirely new section and concept. The committee envisions that once courts and guardians become familiar with this section, it will become a powerful tool for helping guardians organize their approach to being a guardian, and will provide a workable alternative to the current law's allowance for "limited guardianship," something the committee found that sounds good, is well meaning, but which, because of practical problems associated with its implementation, is just not utilized.

The primary concept behind these provisions for guardianship plans is that guardians should be allowed, often encouraged, to propose that their ward be given certain autonomies which they either remain or later become capable of handling. Allowing for such autonomies are also the reason for the current law provisions at K.S.A. 59-3013 and 59-3018(c) providing for "limited guardianships." The problem the committee found with those provisions is that they are very seldom, if ever, used because they call upon the court to make determinations about what abilities a proposed ward has at the time of the trial, held generally just 14 days after the filing of the case. At this very early point in time of the court's involvement, the court often has little knowledge about the ward, the ward's abilities and limitations, little time to devote to learning about the ward, and can often rely on little assistance from the newly appointed guardian to resolve these questions. The result is that the opportunity for granting these autonomies to the ward is often simply lost.

The committee's intent with New Section 27 is to provide a mechanism whereby either the guardian can take it upon him or herself to consider and suggest accommodations by filing a plan and then having an opportunity for asking if anyone has objections or sees any problems with those proposals, before implementing that plan, or whereby the court could require that

process to occur. In the first instance, the guardian can propose certain autonomies for their ward, and then can ask the court to set a hearing for the purposes of reviewing that plan, or any other interested person can ask for that hearing, or the court can set that hearing on its own motion, all in advance of the guardian actually permitting such autonomies, and in that way build in for them self some protections against liability should the plan later prove to be unworkable. It is hoped that this will encourage guardians to develop ways of giving more independence to their wards than the try it and risk it approach is providing today.

In the second instance, the court should be in a better position to direct and control a guardianship if the court can ask certain questions of the guardian, ask for information relevant to the issue, and then ask of the guardian how the guardian intends to handle the situation. With more specific information, the court will be in a better position to make specific directive orders, including those types of orders that grant autonomies to the ward.

While the committee understands and expected the concerns that have been raised by the various advocacy groups on behalf of potential wards, and is sensitive to the concern that the committee's proposal at first glance might appear to be a step back from current law, the committee really sees its proposal as a giant leap forward. The concept of guardianship plans (and conservatorship plans as provided for in New Section 30) appears regularly in the literature concerning disability rights. Many states are considering how to implement the concept. The committee believes that Kansas can take a leadership role in this area through this proposal.

The committee urges two amendments to New Section 28, on pages 43 and 46, to add a reference to the definitions subsection of this particular section, for ease of use, and to correct an error in the bill draft. Otherwise, the committee recommends no substantive changes to New Section 28.

New Section 28 is a substantial re-write of current K.S.A. 59-3018a. It provides for the court granting special authority to a guardian to admit their ward to certain inpatient treatment facilities, either for mental illness treatment or for treatment and services associated with mental retardation or other developmental disabilities. Among the general powers and authorities granted to a guardian in New Section 26 (and consistent with current law in K.S.A. 59-3018), the authority to admit “voluntary by guardian” their ward to these types of residential facilities is not given. Before such authority can be given, the guardian is required to request such, to show that the ward meets the statutory criteria for admission to such facilities (see K.S.A. 59-2946(e), K.S.A. 76-12b03 and K.S.A. 39-1803), to show that other alternatives to such an admission are not appropriate, and provide to the ward full due process proceedings. No objections to any of these provisions were made by any of the conferees.

The only objections raised were by Kansas Advocacy and Protective Services, Inc., which made two objections. One was their objection to the provisions adopted in Chapter 167 of the Session Laws of 1996 (current K.S.A. 59-3018a(c)) providing for continuing authority, and for the expiration of that authority, in these cases. KAPS opposed these provisions when they were enacted in 1996 and re-states their continuing objection now. The committee carried these provisions over into New Section 28 because they provide a practical solution to a common problem; what to do with a ward who exhibits a cyclical pattern of illness. The alternative is a repeating series of formalized proceedings each time the ward’s condition deteriorates to the

point of needing to be re-hospitalized. The Legislature in 1996 found that alternative unnecessary, burdensome and expensive, and passed the amendments to the guardianship code the committee has carried over into this re-draft. The committee recommends these current provisions be retained.

The second objection made by KAPS is that the definition which determines which treatment facilities these provisions apply to does not include nursing facilities for the mentally ill. The committee does understand KAPS argument that to be fully consistent, NFMHs ought to be included in this list and the committee considered making that inclusion, but decided against that for two reasons.

First, the committee noted that NFMH is primarily a programmatic description. An NFMH is a special type of nursing home. All nursing homes, including all NFMHs, are licensed under a single statutory scheme. (See K.S.A. 39-923, et. seq.) The committee was concerned that requiring special authority on the part of the guardian to admit their ward to certain, but not all, nursing homes could be confusing. The committee would vigorously be opposed to any suggestion that any and all nursing home placements be made subject to these provisions because, unlike the intermittent nature of the admissions that are normally involved in the types of cases New Section 28 is aimed at, a nursing home placement is often for long term duration and at the core of the reasons a guardianship for an adult is often sought. It also is specifically and directly related to the authorities which are generally granted a guardian. (See New Section 26, subsection (b), granting to guardians the general duty and responsibility to “take charge of the ... ward, and ... provide for the ward’s care [and] treatment ... and ... provide on behalf of the ward necessary or required consents”)

Secondly, and as significantly, the committee felt that more than adequate protections

exist to guard against the abuse of such authority by a guardian. First, New Section 26, subsection (b) provides that it shall be the guardian's duty to "assure that the ward resides in the least restrictive setting appropriate to the needs of the ward" Secondly, provisions are included in New Section 35 and in New Section 39 which would allow interested persons to challenge any decisions of a guardian that such person believes are not made in the best interests of the ward. Thirdly, New Section 27, subsection (a), allows the court to require a guardian to file a proposed guardianship plan if there is any issue with regard to "where the ward will reside, including any proposal to admit the ward to any nursing facility." The court can order a hearing on that issue, or any interested person can request a hearing on that issue. Fourthly, at the conclusion of any hearing held under New Section 27, or any hearing held under New Section 35 or New Section 39, the court can exercise its authority, provided for in New Section 26, subsection (a), that "a guardian shall at all times be subject to the control and direction of the court," and prohibit the proposed admission, or enter other orders providing for limitations or other conditions on the guardian's authority. Finally, the committee noted the provisions of K.S.A. 39-968 which requires pre-admission and annual screenings for all nursing home admissions and the programs of the Departments of Aging and Social and Rehabilitation Services designed to prevent and divert inappropriate nursing home placements.

For all of these reasons, the committee, in its re-draft of K.S.A. 59-3018a into New Section 28, has retained, and recommends retention of, the provision that this extra authority requirement be restricted to the non-nursing home, residential facilities the definition in subsection (h) encompasses.

(See the committee's balloon attachment.)

Based upon the comments offered by the Kansas Bar Association, the committee urges an amendment to New Section 29.

New Section 29 is a substantial re-drafting and combining of current K.S.A.s 59-3019, 59-3020, 59-3021, 59-3022, 59-3023, 59-2024, 59-3025 and 59-3039. All of these sections were combined into New Section 29 because each of them concerns the duties, responsibilities, powers and authorities of a conservator. New Section 29 was drafted to mirror in substantial part New Section 26, which concerns the duties, responsibilities, powers and authorities of a guardian. New Section 29 is principally divided into six subsections. The first includes a general requirement that a conservator should become familiar with their conservatee's needs, responsibilities and desires. Included is a general requirement that a conservator should encourage and allow the conservatee as much independence in handling those of their financial affairs as he or she is capable of doing. Along with the provisions of New Section 30, which provides for the development and implementation of a conservatorship plan, these sections in combination are intended to allow for workable "limited conservatorships."

Subsection (b) provides, with a broad brush, for those certain specific areas of general duties, responsibilities, powers and authorities a conservator must necessarily have. Subsections (c) and (d) state the limits of a conservator's personal liability and demarcates the line between where a conservatorship ends and the conservator's personal liability is protected. Subsection (e) provides for and allows a conservator to stand in the shoes of their conservatee whenever necessary to receive and handle certain assets. Finally, subsection (f) provides for those matters where a conservator should not be given just generalized authority. Generally, these prohibitions must necessarily be tempered with exceptions for when a conservator should be given authority to act on their conservatee's behalf, with court approval or under certain specified circumstances

or conditions.

The Kansas Bar Association objects to the draft concerning one of these excepted situations. The committee, based upon the objections made and after review of the matter, concurs that an amendment is appropriate to the provisions concerning a conservator's authority to make certain gifts on behalf of their conservatee out of the assets of the conservatee's estate. Subsection (f)(9) generally withholds from a conservator the authority to give away their conservatee's funds or assets. An exception is created for when the conservatee can show the court, and the court agrees, that certain circumstances are present. Two of those circumstances which must exist prior to the conservator being given gifting authority involve requirements that, first, sufficient funds and assets will remain after the gift is given such that the needs of the conservatee can and will still be met, and secondly, a requirement that certain interested persons must either agree to the gifting or have had an opportunity to appear before the court and express their objections. No objections to these two conditions are made.

The third condition which must be shown is that the conservatee has either made such gifts as a habit in the past, or has declared an intent to make such a gift. Again, no objection to those two alternative pre-conditions existing is made. The objection that the Bar Association makes is that a third alternative circumstance, which is provided for in current K.S.A. 59-3039, was left out of the draft that is included in New Section 29. That condition involves a determination being made that, even though the conservatee never made such a gift before, and no evidence exists that the conservatee ever made a declaration that he or she wanted to make such a gift, the conservatee, if competent now, would make the decision to give the gift under consideration. The committee initially felt that such matters were inherently too speculative to form the basis for granting this authority. However, upon reconsideration, the committee notes

that this condition was approved by the Legislature, as a statement of public policy, just recently in an amendment adopted in 1998. Further, the committee is now convinced that such a circumstance might well be provable. For example, a conservatee who had during the time they were competent to handle their estate had always followed the advise of their tax advisor, would now find their estate placed in a position of being unable to follow certain estate planning advise without this exception. Another example might involve a conservatee who had never been in a position to make a gift to a close family member, perhaps an adult child now facing an unexpected financial need, and who had therefore never been placed in a situation where the making of a declaration would have been appropriate, but whose estate now has been increased multi-fold owing perhaps to a settlement or verdict resulting from the conservatee's injury, then in such a case it may well be that a court could be convinced of the appropriateness of such a gift.

Finally, the committee notes that in all of these cases the granting of the authority is discretionary with the court, and that due process proceedings are required. The committee is, therefore, convinced of the appropriateness of including in this re-draft the unaccounted for circumstance from current law, and accordingly, the committee urges that amendment. (See the committee's balloon attachment.)

In response to the concerns raised by the Kansas Bar Association and the Topeka Independent Living Resource Center, the committee has reviewed its bill draft and now urges a clarifying amendment to New Section 32.

New Section 32 is an entirely new section and concept. The committee heard of many case examples, and heard even more stories of concerns that were raised by family members and concerned conservators, about minors who, upon reaching 18 years of age, but being unprepared to assume sole responsibility for the management of large estates, squandered those assets or were taken advantage of by unscrupulous individuals. In some cases, estates which had been carefully built up and managed over a lifetime were lost in a matter of days. In too many of those cases, the minor, now just barely 18 years old, would return to the courthouse where jurisdiction over their estate had rested just weeks ago and ask for "the rest of their money" only to be told that there was no more. For many, their response was "How could you let this happen to me?"

The committee saw a great need to respond to this situation and has drafted New Section 32 as its answer. In essence, the section provides a mechanism for a conservator, after his or her conservatee has reached 17 years of age, but before 30 days prior to the conservatee's 18th birthday, to petition the court for approval of a plan for how the minor's estate will be paid over to them, probably in installments, between the minor's 18th birthday and their 25th birthday. The minor is provided full due process rights with regard to this proposed plan, and approval of it is discretionary with the court. Once approved, the plan can be modified only to pay the assets of the estate over to the minor sooner than the plan calls for, never later. Any plan approved must adequately provide for meeting any expected needs of the minor from the minor's 18th birthday until the final distribution of the last of the estate.

Though the Topeka Independent Living Resource Center expresses a view that these

provisions are desirable, both the Center and the Bar Association question the provisions on the basis that they believe they are unconstitutional. The committee agrees that there is room for debate on this issue, and that, if enacted, these provisions will likely have to be passed upon by our appellate courts. However, the committee feels strongly that the provisions have such merit that had to be proposed. The committee is further convinced that the provisions as they have been drafted and recommended do meet any constitutional requirements and will withstand any challenge. These provisions are drafted so that all actions and determinations with regard to the need for, and the approval of, such a plan are scheduled to occur during the minority of the conservatee. Adequate due process procedures are included. The standard for when the court should approval such a proposal is sufficiently clear and is based upon the traditional "best interests" standard applicable to minors. The committee feels this standard is made even clearer by the amendment it proposes. (See the committee's balloon attachment.) Rights once adjudicated during a conservatee's minority can not be revised except in a manner beneficial to the minor once they have become 18. If unexpected events occur, an opportunity is provided, through the provisions of New Section 42, for the minor, after becoming an adult, to petition the court to terminate the remaining portion of any plan and immediately pay out the balance of the estate. Finally, the committee notes that there are other examples of when the law modifies the usual rule of when an adult is an adult, and those have always been held constitutional. Examples include the legal age for consuming alcohol (See K.S.A. 41-727), and for being eligible to be licensed in certain professions (See K.S.A. 75-7b04). Another is the extension of the jurisdiction of the juvenile court over a minor who becomes 18. (See K.S.A. 38-1503.) While these examples all utilize an age requirement or limitation of 21 years of age, the committee is not convinced other reasonable, rational age limitations could not be employed by the Legislature.

The committee urges one technical amendment to New Section 41, on page 70, to correct a typographical error in the bill draft. (See the committee's balloon attachment.)

Otherwise, the committee recommends no substantive changes to New Section 41.

New Section 41 is a substantial re-write of current K.S.A.59-3028. Current K.S.A. 59-3028 was split into two sections in this re-drafting because that current section tries to deal with two separate matters. The committee drafted New Section 41 to deal solely with the restoration of a ward to capacity, and New Section 42 to deal with the termination of a guardianship or conservatorship. This splitting of the separate topics into separate sections is intended to avoid the confusion and the blurring of the issues involved in each of these matters that currently exists. In fact, the comments from the Topeka Independent Living Resource Center shows some confusion in understanding the difference in these two separate matters and probably derives from the current law. While a restoration action would naturally lead to the termination of a guardianship or a conservatorship, it would not necessarily follow that the same degree of restoration based on improvements in a persons impairments would lead to the termination of both a guardianship and a conservatorship. Someone's impairment might be improved to the extent that they would no longer be in need of a guardian, but still may be impaired to the extent that they require a conservator. Similarly, there exist reasons why a guardianship or conservatorship might be appropriately terminated that would not involve any restoration to capacity. For example, the fact that all of an individual's estate has been used up and therefore there is no further need for a conservatorship would be grounds for terminating a conservatorship, but would be wholly independent of whether the impairment of the conservatee was any more or less than it had been when the conservatorship was instituted. Guardianships must be terminated upon the death of the ward, but that fact certainly does not involve any restoration to capacity!

The Topeka Independent Living Resource Center, Kansas Advocacy and Protective Services, Inc. and Living Independently in Northwest Kansas, have all objected to the process set out in New Section 41 concerning how restoration proceedings should be initiated. The questions are how, how often and by whom should restoration proceedings be initiated? While the advocates would naturally prefer that restoration proceedings could be initiated as often as the ward or conservatee would like to have that issue heard, and initiated by as simple a request as possible, including an oral request to their guardian or conservator, or even to the court, that their case be set for another hearing, the committee had to be concerned about the abuse of this procedure. There are undoubtedly many wards who simply don't understand the extent of their impairment and who would want to constantly re-litigate their guardianship or conservatorship if they could. Sorting out which of these requests to "just let me run my own affairs" are legitimate restoration cases and which would involve only a rehashing of the same facts is the key. The committee believes it has struck a correct balance. While certain factual allegations are required to be made in a petition for restoration, the committee intends to draft and make available a simple, fill in the blanks, form which a ward or conservatee should be able to complete on their own or with minimal assistance. The committee included provisions that allow the court to send a petitioning ward or conservatee for an examination and evaluation if they have raised sufficient reasons to believe that they may have improved in their condition enough to warrant consideration of restoration, even though the ward or conservatee was unable to obtain and attach medical evidence to their petition. The committee drafted New Section 41 so that restoration proceedings are handled as informally and efficiently as are consistent with due process requirements. However, the committee strongly believes that any procedures that do not provide for determinations of probable cause to weed out non-meritorious petitions, or procedures that

become too informal, such as allowances that mere oral requests are sufficient to initiate proceedings, will likely inundate the courts.

KBA Suggested Amendments. Based upon the comments and suggestions offered by the Kansas Bar Association, and presented to the committee on December 7, 2001, the committee has agreed to a series of clarifying and consistency of language amendments in several sections of the Bill, and which the committee now urges. They appear in **New Sections 15, 20, 22, 24, 29, 37, 38, 39, 40, 42 and 44.** Based upon the KBA's suggestion of using clarifying and referencing language when a section deals with an unusual topic, the committee now also urges a clarifying and referencing amendment in **New Section 28.**

The KBA and the committee also agreed to one substantive concept which results in a series of amendments to **New Section 21.** That section provides for corporate guardians. Current law restricts corporate guardians to being private, non-profit corporations, and the committee's original draft of the bill simply carried that forward. Neither the KBA, nor now the committee sees any reason why this restriction should be continued. There are unlikely to be many for-profit, private or public corporations wanting to get into the guardianship business, but given the limitations created by Kansas' lack of any professional, public guardians program, we agreed that opening the door to possible exploration in this area might be beneficial. The committee does urge amendments that would make a corporate guardian with a conflict of interest ineligible for appointment. We believe this adequately protects the ward in what could be a fairly impersonal arrangement.

After further review of the Bill, the committee now urges the adoption of one new section, to be inserted in the Bill between existing sections 42 and 43.

(New) New Section 43 is added as largely a re-write of existing section 59-3028. That section allows the court to summarily close certain guardianships and conservatorships. While the provisions of new section 42 (termination proceedings) would be applicable to all of the cases provided for in this new section 43, section 42 is most applicable to cases where there may be a question as to the appropriateness of the closure of a case. The committee envisions that these new section 43 summary closures would be utilized when the court becomes aware of circumstances existing that make closure of the case a forgone conclusion. This summary closure might be utilized by the court to save the parties involved the time and expense of more formal closure proceedings, or in cases where the need to close the case was so obvious that the parties all just went their own ways without notifying the court of that, leaving the court with an open case on its docket that serves no useful purpose. A requirement is included in subsections dealing with the closure of any conservatorship to ensure that appropriate orders are entered to make sure any remaining assets in the conservatorship are disposed of appropriately.

Adoption of this amendment would necessitate the correction of the citation within the Bill to any section appearing after the insertion of this amendment and the renumbering of the remaining sections. This occurs within sections 16, 26, 29, 41 and 42 with citations to the costs and expenses section, appearing in existing section 44 of the Bill (which would be renumbered as section 45) and in all sections after section 42, which will all need to be renumbered.



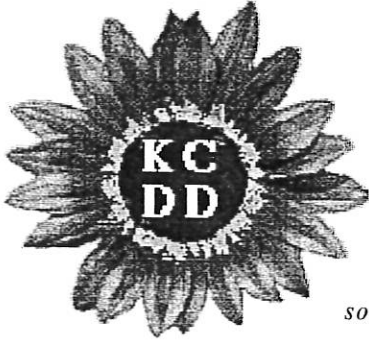
Living Initiatives For End-Of-Life Care

The LIFE Project works to help all Kansans live with dignity, comfort and peace at the end of life. More than 70 organizations and hundreds of individuals across the state are a part of the LIFE Project, which was formed in 1998.

The Public Policy Task Group of the LIFE Project has followed with interest the work of the Kansas Judicial Council and the Guardianship and Conservatory Advisory Committee in the process of proposing the amendments to 2001 HB 2469 Revised Guardianship and Conservatorship Act. On December 7, 2001, we shared with the advisory committee our feedback of support for the amendments and we offered our testimony for additional ways of strengthening Kansas's public policy to most fully support the wards of the state as guardians serve them.

I come today to thank the Judicial Council and the Guardianship and Conservatory Advisory Committee for the careful attention they have paid to carefully considering the needs of these most vulnerable of Kansans – those at the end of life who cannot speak for themselves. We thank all involved for the openness and inclusiveness with which these amendments have been developed and the opportunity to share in the deliberations. We believe that the suggested amendments related to the needs of these Kansans help to create a stronger and safer place for these wards of the state.

Donna Bales
President/CEO
The Kansas LIFE Project
February 5, 2002



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 5, 2002

Testimony in Regard to House Bill 2469. An act concerning guardians and conservators.

Mr. Chairman, Members of the Committee, I regret that I am unable to appear today in person to testify 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, and what leisure activities they wish to do.

For the past three 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 well as the legal side. This Task Force met the first Friday of each month and spent many hours carefully deliberating each aspect of this Act. In addition, we had individuals with expertise attend our meetings who presented different viewpoints. As a result, we tried very hard to balance sometimes opposing views and to find compromise on major issues. The end product provides clarification and changes that 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 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.
- Timelines have been clarified of timelines 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. We support the efforts of the Guardianship Task Force and believe that the resulting Bill reflects best practices and is a great improvement in the statute.

As always, we greatly appreciate the opportunity of providing and I would be happy to answer any questions you may have via e-mail or in person when I return.

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February 5, 2002

H.B. 2469 Guardianship and Conservatorship

Written Testimony-in support

Representative O'Neal and members of the House Judiciary Committee, the Kansas State Nurses Association is pleased to support H.B. 2469 with the changes incorporated in the Guardianship and Conservatorship Committee recommendations. In particular we are pleased with the proposed addition of:

- the word "*or withdrawl*" following withholding (page 40 lines 5, and 15)
- the term "*or life-sustaining*" following the term life-saving (page 40 lines 5, and 15)
- the language recommended for additions to line 23 (page 40) that include "*persistent vegetative state or is suffering from an illness or other medical condition*" to modify the description of certain circumstances that an individual may be in.

Clearly a lot of work, by a number of professional organizations, interested parties and public officials have gone into the proposed changes being considered by the House Judiciary Committee. We support these recommended changes, believing them to be improvements in the original H.B. 2469 language.

Thank you for your consideration of these changes and we look forward to working with the judiciary and bar to implement these in the best interest of the clients they are intended to serve and protect.



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LEGISLATIVE TESTIMONY

February 5, 2002

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE
HOUSE JUDICIARY COMMITTEE

FROM: PAUL DAVIS, KBA LEGISLATIVE COUNSEL

RE: HOUSE BILL 2469 (GUARDIANSHIP AND
CONSERVATORSHIP ACT)

Chairman O'Neal and Members of the Committee:

My name is Paul Davis and I serve as Legislative Counsel for the Kansas Bar Association. The Kansas Bar Association commends the work of the Kansas Judicial Council with regard to the proposed recodification of Kansas guardianship and conservatorship statutes which are contained in this bill. We believe that the Judicial Council has brought a very good overall product to you. However, we do have a number of very strong concerns about several provisions of the bill.

Those of you who served on the House Judiciary Committee during the 2001 session may recall that the Kansas Bar Association voiced a number of concerns about this bill to you when a hearing was held by this committee. We, in turn, asked the committee to defer action on the bill until practitioners could have more time to digest the proposals and comment upon them. In the June/July issue of the *Journal of the Kansas Bar Association*, we published an article written by Christy Molzen of the Kansas Judicial Council in an effort to inform Kansas lawyers about the proposed act and solicit comments upon the act.

We received a number of comments from the article and appointed a special KBA committee comprised of members of our Elder Law Section and Real Estate, Probate & Trust Law Section to review the act and the comments submitted from the article. This committee was chaired by Mike Dwyer of Overland Park and comprised of John Tillotson of Leavenworth, Stacey Gunya of Olathe, Bob Collins of Wichita, Dan Lykins of Topeka and Tim O'Sullivan of Wichita. This committee spent many hours reviewing the act and the comments. As a result of this study, the committee concurred with some of the concerns that were

earlier voiced by our members and therefore recommended a number of amendments to the act. Members of the special committee met with the Judicial Council Guardianship and Conservatorship Committee in December of 2001 to present our concerns and suggest the amendments. A few of our amendments were adopted by the Judicial Council committee, however, most amendments were not adopted.

We come before you today to propose a number of amendments to House Bill 2469. The Kansas Bar Association feels strongly that these amendments are critical to creating good guardianship and conservatorship law in Kansas and urge you to adopt them. The amendments are as follows:

1) NEW SECTION 5 (PAGE 4)

This section provides that the nominated guardian or conservator shall be “strongly considered” by the Court. We believe this change from an objective standard to a subjective standard will cause the following problems: 1) law and procedure in effect since 1965 shall be made uncertain, 2) this uncertainty will lead to unnecessary litigation and expense, and 3) the right of each adult person in Kansas to name the person or persons he or she feels is best suited to handle his or her minor children’s personal affairs is severely compromised.

(c)The nominated guardian or conservator, if a fit and proper person, shall be ~~strongly considered~~ *appointed* by the district court to be appointed pursuant to section 19, and amendments thereto, if it is found, during the trial held pursuant to section 17, and amendments thereto, that a guardian or conservator, or both, should be appointed for the minor child of the testator or settlor.

2) NEW SECTION 6 (PAGE 4)

The Judicial Council suggests that parents would have control of up to \$50,000 in a child’s assets without the formal appointment of a conservator or the giving of bond. This amount is being raised from the current level of \$5,000. In our experience, we believe that this is far too high and an inflation adjusted level that makes sense is \$20,000.

(a) Any court having either control over or possession of any amount of money not exceeding ~~\$50,000~~ \$20,000, 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 a bond, and notwithstanding the authority of the natural guardian as provided for in section 4, and amendments thereto, the deposit of the money in a savings account of a bank, credit union or savings and loan association, payable either to a conservator, if one shall

be appointed for the minor, or to the minor upon attaining the age of 18 years.

The KBA also embraces the suggestions of Dan Lykins, a Topeka attorney, based upon a Shawnee County practice that a court could direct deposit monies up to \$10,000 of a child without the appointment of a conservator if the monies were destined for an interest-bearing insured account payable on the coming of age of the child or a restoration to capacity. Mr. Lykins is here to give a more detailed explanation of this proposed amendment.

(b) Any court having ~~either control over or possession~~ *custody* of any amount of money ~~not exceeding \$10,000~~, the right to which is vested in a *minor person for whom a guardian has been appointed*, 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. 59-3001 and amendments thereto*, the deposit of the money in *any investment a savings account that the Court deems proper, by the guardian of the minor child with the money deposited in said investment account so the funds cannot be withdrawn, without a court order, until the minor's 18th birthday.* ~~of a bank, credit union or savings and loan association, payable to the guardian for the benefit of the ward if authorized pursuant to K.S.A. 59-3018b(e)(9) and amendments thereto, payable to a conservator when, if one shall be appointed for the person, or payable to the disabled ward upon restoration to capacity.~~

3) NEW SECTIONS 14 AND 15 (PAGES 16-19)

Throughout these sections and in a number of other places within this bill, the Judicial Council proposes that mandatory and preliminary orders include an order for a “mental examination and evaluation”, which is a concept of greater sophistication and depth of inquiry than the present law requiring a “mental evaluation.” For reasons of cost occasioned by the delay and necessary time required for professionals to observe the proposed ward and conservatee in a controlled setting, this requirement will create an undue expense and delay in most cases. We believe the term “mental evaluation” that is contained in the old law should be retained.

4) NEW SECTION 17 (PAGES 22-23)

The Judicial Council has proposed creating the concepts of “temporary guardians and conservators.” The KBA objects to these concepts because we believe they will result in “races to the courthouse.” The priority of nominees for guardian and conservator is already addressed in the bill so the need for “temporary guardians and conservators” doesn’t exist. The KBA objects to the concept of “temporary guardians and conservators” because of the lack of notice and because and temporary guardian

(or conservator) would have the temporary powers of a full guardianship (or conservatorship), including the power to place a ward in a mental treatment facility. We believe that the concept of an advanced hearing or shortened notice provision as possible under the current law adequately protects the ward in the event of an untoward or emergency situation. Therefore, we suggest the word “temporary” be replaced by “emergency.”

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

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

To be consistent with these proposed amendments, we propose the deletion of New Section 16(b)(1).

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

The temporary guardians issue is also visited in New Section 24 (PAGE 31). We suggest the following amendments to this section:

(a) At any time after the filing of the petition provided for in K.S.A. 59-3009a, 59-3009b, 59-3009c, 59-3009d or 59-3009e, and amendments thereto, but prior to the trial provided for in K.S.A. 59-3013 and amendments thereto, *if it appears that there is an imminent danger that the physical health or safety of the proposed ward will be seriously impaired or financial resources will be depleted unless immediate action is taken* any person may file in addition to that original petition, or as a part thereof, a verified petition requesting the *emergency* appointment of a ~~temporary~~ guardian or a ~~temporary~~ conservator, or both, except if the petition alleges that the proposed conservatee is a person in need of an ancillary conservator, and requests the appointment of an ancillary conservator in Kansas, in which case the petition may request the appointment of a ~~temporary~~ ancillary conservator. The petition shall include:

- (1) The petitioner's name and address;
- (2) the proposed ward's or proposed conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the proposed ward's or proposed conservatee's permanent residence;

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

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

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

(6) *the name and addresses of those individuals entitled to notice.*

~~(6)~~ (7) 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 ~~temporary~~ *emergency* guardian or ~~temporary~~ *emergency* conservator, or both, and if the proposed ~~temporary~~ *emergency* guardian or ~~temporary~~ *emergency* conservator is under contract with the Kansas guardianship program, that fact; and

(7) *a request that the court set a hearing within 48 hours of the filing of the Petition with notice of hearing as directed by the Court.* ~~a request that the court make an ex parte determination that there exists such imminent danger, and that the court appoint a temporary guardian or a temporary conservator, or both, with such powers as the court deems necessary to protect the proposed ward or the estate of the proposed conservatee.~~

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

(c) *The hearing held pursuant to this section shall be conducted in as informal manner as may be consistent with orderly procedure. The rules governing evidentiary and procedural matters shall be applied in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of the issues with due regard for the interests of all parties. If the court enters an ex parte order appointing a temporary guardian or a temporary conservator, or both, the proposed ward or proposed conservatee, the attorney for the proposed ward or proposed conservatee, the spouse of the proposed ward or*

proposed conservatee, or in the case of a minor, the natural guardian of the minor, may request a hearing on the matter if a written request for such is filed with the court not later than the third day following the entry of the ex parte order, or of service of the ex parte order upon the proposed ward or proposed conservatee, if later. Upon receipt of such a request, the court shall fix the time and place for a hearing upon the request and shall direct how and to whom notice of such hearing shall be given.

(d) *the appointment and authority of any emergency guardian or conservator shall expire at the conclusion of the trial provided for in K.S.A. 59-3013 and amendments thereto if the petition is denied, or upon the issuance of appropriate Letters to any guardian or conservator appointed by the court at the conclusion of the trial, or as otherwise ordered by the court, but such expiration shall not affect the validity of any action taken pursuant to the authority of the emergency guardian or conservator during the time of his or her appointment. The emergency guardian or conservator shall be required to provide an accounting as directed by the court.* In lieu of entering an ex parte emergency order of appointment of a temporary guardian or a temporary conservator, or both, the court may deny the relief requested or set the time and place for a hearing to be held on the request for the appointment of a temporary guardian or a temporary conservator, or both, which hearing shall be held not later than the second day following the filing of the petition, excluding any Saturday, Sunday or legal holidays. The court may direct that notice thereof be given to the petitioner, the original petitioner, if different, the proposed ward or proposed conservatee, the spouse of the proposed ward or proposed conservatee, in the case of a minor, the natural guardian of the minor, and such other persons as the court determines appropriate. The court shall determine by whom and in what manner such notice shall be given. The court may enter an order requiring that the proposed ward or proposed conservatee appear at the time and place of the hearing unless the court makes a finding prior to the hearing that the presence of the proposed ward or proposed conservatee will be injurious to the person's health or welfare, or that the proposed ward's or proposed conservatee's impairment is such that the person could not participate in the proceedings, or that the proposed ward or proposed conservatee has filed with the court a written waiver of his or her right to appear in person. In any such case, the court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed ward or proposed conservatee at the hearing should be excused.

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

(f) If after any hearing held pursuant to subsection (c) or (d) the court determines that there is probable cause to believe that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in need of a guardian or a conservator, or both, or a person who

has been previously adjudged as impaired in another state, or a person in need of an ancillary conservator, as alleged in the original petition, and that there exists an imminent danger to the physical health or safety of the proposed ward, or that there exists an imminent danger that the estate of the proposed conservatee will be significantly depleted, the court may appoint, or continue the appointment of, a temporary guardian or a temporary conservator, or both, and the court shall specify what duties, responsibilities, powers and authorities as provided for in K.S.A. 59-3018b, 59-3018c, 59-3018d, 59-3019a or 59-3019b, and amendments thereto, the temporary guardian or temporary conservator shall have. The court may further authorize the temporary guardian or temporary conservator to seek appropriate injunctive or other immediate relief from any appropriate court or other authority. Otherwise, if the court determines that there is probable cause to believe that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in need of a guardian or a conservator, or both, or a person who has been previously adjudged as impaired in another state, or a person in need of an ancillary conservator, as alleged in the original petition, but that there is not probable cause to believe that there exists an imminent danger to the physical health or safety of the proposed ward, or that there exists an imminent danger that the estate of the proposed conservatee will be significantly depleted, the court shall deny the request for the appointment of a temporary guardian or a temporary conservator, or both, or shall terminate the earlier appointment of the temporary guardian or temporary conservator, or both, but shall continue the matter to the trial on the original petition provided for in K.S.A. 59-3013 and amendments thereto.

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

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

5) NEW SECTION 19 (PAGE 27)

The proposed change in K.S.A. 59-3014 substituting consideration for priority strips the right of all Kansans to nominate the person or persons they want to manage their financial, personal and medical affairs. It would allow parties not picked by the proposed ward and conservatee to interfere in the choice made by the ward and conservatee in their durable power of attorney. The proposed change would largely nullify or remove the safeguards of K.S.A. 58-612(b) and 58-627(b), which allow all Kansans to make their choice of who is to be their guardian and conservator if the need should arise.

- a. The court in appointing a guardian or conservator shall give *priority in the following order to consideration to the individual or corporation suggested by:*
 - i. ~~The petitioner;~~
 - ii. ~~A natural guardian if such suggestion is made pursuant to section 5, and amendments thereto, or made in any other manner;~~
 - (3)(1) The proposed ward or proposed conservatee, if such ~~nomination suggestion~~ is made within any *durable* power of attorney ~~or made in any other manner;~~
 - (2) *to the nominee of a natural guardian;*
 - (4)(3) a minor who is the proposed ward or conservatee, if over 14 years of age;
 - (5) (4) the spouse, adult child or other close family member of the proposed ward or proposed conservatee.
 - (5) *the petitioner.*

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

(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 be limited to, the appointment of an individual as guardian who is sympathetic to and willing to support this system of healing.

6) NEW SECTION 26 (PAGE 37)

This section creates mandatory duties for the guardian. Our feeling is that these responsibilities should be referred to as “goals” and not duties.

(a)(2) *The guardian shall strive to meet the following goals:* ~~A guardian shall to~~ become and remain personally acquainted with the ward, the spouse of the ward and with other interested persons associated with the ward and who are knowledgeable about the ward, the ward’s needs and the ward’s responsibilities. A guardian shall exercise authority only as necessitated by the ward’s limitations. A guardian shall encourage the ward to participate in making decisions affecting the ward. A guardian shall encourage the ward to act on the ward’s own behalf to the extent the ward is able. A guardian shall encourage the ward to develop or regain the skills and abilities necessary to meet the ward’s own essential needs and to otherwise manage the ward’s own affairs. In making decisions on behalf of the ward, a guardian shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian shall strive to assure that the personal, civil and human rights of the ward are protected. A guardian shall at all times act in the best interests of the ward and shall exercise reasonable care, diligence and prudence.

We also recommend the deletion of paragraph (e)(7)(C). We believe that there should be no exception to prohibitions on withholding or withdrawing lifesaving medical procedures except when specifically authorized by the ward or conservatee or authorized by a court upon hearing. According to this proposal, the medical care provider, even with medical ethics advice, is granted broad discretion over the withholding or withdrawing of lifesaving medical procedures.

Additionally, we recommend the same amendments to New Section 29 (PAGE 47) which concerns conservators.

7) NEW SECTION 27 (PAGE 42)

With respect to guardianship and conservatorship plans, we suggest adding the words “for good cause shown” in order to commence such a procedure. Having such a procedure without good cause shown will only be time-consuming and wasteful of judicial resources (and client assets) since, in most cases of total incapacity, such a plan has never proved to be essential to adequate treatment.

(a) At any time, the court may require the guardian *for good cause shown*, or the guardian may at any time choose, to develop and file with the court a plan for the care of the ward. This plan shall be developed consistent with the provisions of subsection (a) of Section 26, and amendments thereto. This plan may provide for, but need not be limited to providing for:....

We recommend the same amendment to New Section 30, which concerns conservators.

8) NEW SECTION 31 (PAGE 51)

This section allows the conservator to establish certain trusts on behalf of the conservatee. The premise is to allow the conservatee/ward to place assets in a trust that will allow him or her to qualify for Medicaid and SSI assistance. We have some concern that the details of this provision will cause any such trust to NOT qualify under the federal statute, and the assets in the trust will disqualify the beneficiary from Medicaid and SSI. We are working on proposed language to rectify this situation and will submit it to the committee as soon as possible.

9) NEW SECTION 32 (PAGE 53)

This section permits the extension of a conservatorship beyond the age of majority. The KBA has strong concerns about the constitutionality of this section and recommends its deletion.

10) NEW SECTION 33 (PAGE 55)

We recommend deletion of the last sentence of this section which states "The court may assess against the claimant the costs and expenses, including reasonable attorney fees, incurred by the conservator in defending against the claim if the court denies the petition." The KBA feels that this provision violates the general rule regarding attorney fees in Kansas.

11) NEW SECTION 35 (PAGE 57)

The KBA recommends deletion of subparagraph (d) which establishes the concept of a guardian administering assets of a ward's estate without the appointment of a conservator.

(d) If the court, pursuant to subsection (e)(9) of section 26, 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.

12) NEW SECTION 41 (PAGE 68)

In subparagraph (c) of this section, several references are made to a “probable cause” standard. As you know, “probable cause” is a criminal law standard. We recommend changing all references to “probable cause” to “good cause”.

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

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TO: MEMBERS OF HOUSE JUDICIARY COMMITTEE
FROM: DAN LYKINS
RE: PROTECTING CHILDREN BY AMENDING K.S.A. 59-3015(C)
DATE: February 5, 2002

Over the last 10 years, many Judges in the Shawnee County District Court of Kansas have allowed attorneys to settle personal injury claims for minors 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 was with a Court order. In January of 2001 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 so Judges can do the 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 ended up receiving \$33,168.53. This young man was forced to have a conservatorship and post a bond until his 18th birthday, and thus over the next 11 years he will have the following expenses:

1. The bond cost \$1,507.00.
2. The conservatorship cost \$359.50.
3. The young boy's mother will have to file an annual accounting over the next 11 years, and this will cost approximately \$150.00 per year for a total of \$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 will cost this young man \$3,666.50.

If K.S.A. 59-3015 was amended at the time I settled this case, then the cost to my 7 year old client over the next 11 years would have been zero expense.

One of the main reasons we started freezing assets of minors over the last ten years was because conservators would actually loot children's funds, and on many occasions these conservators were the parents of the minor. If the conservator acted improperly with the children's funds, then a bonding company would come in and repay the conservatorship and then sue the conservator which normally meant the parents were sued for not properly managing their child's conservatorship funds.

This proposed amendment is discretionary, and thus Judges do not have to follow it. By amending K.S.A. 59-3015 the Legislature will be doing the following:

1. Protecting children.
2. Saving unnecessary expenses for children.

For the sake of our children, please support this amendment.

AMENDMENT OF K.S.A. 59-3015(C)

"Any Court having control over or custody of any amount of money, the right which is vested in a minor, shall have the discretion to authorize (without the appointment of a conservatorship or the giving of a bond, and notwithstanding the provisions of K.S.A. 59-3001 and amendments thereto) the deposit of the money in any investment account that the Court deems proper, by the guardian of the minor child with the money deposited in said investment account so the funds cannot be withdrawn, without a court order, until the minor's 18th birthday."

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February 5, 2002

The Honorable Michael O'Neal
Chair, House Judiciary Committee

Re: HB 2469 Guardian & Conservator Bill

Chairman O'Neal 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, and in the least restrictive manner. 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.

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. “Manage such person’s estate” (Page 2, line 13)

A person with a disability should not be considered in need of a guardian if they have the capacity to choose a reasonable financial advisor. A person with a disability should not have to personally and directly manage all the details of their estate. If they have the capacity to direct the management, choose a proper financial advisor, and make their wishes known, then they should not be found in need of a guardian or conservator or both. If a person cannot manage or direct their estate but is able to “meet the essential need for physical health, safety, or welfare,” they should only be required to have a conservator and not a guardian.

4. 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.)

5. 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 or the availability of auxiliary aids, services, personal attendants or other mitigating measures.

6. 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.)

7. 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.

8. 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."

The legislature should make it mandatory that both courts and guardians have ruled out the least restrictive alternatives before institutionalizing a person. If a person is poor and disabled they are qualified for Medicaid. The courts and guardians should rule out the Medicaid Waiver Home and Community Based Services before institutionalizing a person. The Waivers generally are two to ten times less expensive than institutional care. Nursing facilities cost about \$40,000 a year, ICF-MRs cost about \$100,000 a year. Nursing Facilities for Mental Health and State Mental Health Institutions cost from \$100,000 to \$133,000 a year. HCBS programs cost an average of about \$9,700 a year on the Frail Elderly waiver and \$12,000 on the Physical Disability Waiver. The State spends about \$300 million dollars SGF on Medicaid. We must ensure that HCBS is used.

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.

9. 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.

10. 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.

11. 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.”

12. 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.”

13. 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,

A handwritten signature in black ink, appearing to read "Kirk W. Lowry", written over a printed name.

Kirk W. Lowry

Yours truly,

Kirk W. Lowry

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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

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

STATE OF KANSAS



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Bill Graves
Governor

Duane A. Goossen
Director

February 27, 2001

The Honorable Kenny Wilk, Chairperson
House Committee on Appropriations
Statehouse, Room 514-S
Topeka, Kansas 66612

and

The Honorable Michael O'Neal, Chairperson
House Committee on Judiciary
Statehouse, Room 170-W
Topeka, Kansas 66612

Dear Representatives:

SUBJECT: Fiscal Note for HB 2469 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2469 is respectfully submitted to your committee.

The current Guardianship and Conservatorship Act was passed in 1965. HB 2469 would recodify the statutes related to guardianship and conservatorship. The bill would repeal 25 sections of current law, add 33 new sections, and modify every other section regarding guardianship and conservatorship. Many of the changes proposed in the bill are related to language that would acknowledge the way persons with disabilities are cared for, and update the monetary amounts that would apply to these cases to reflect current economic conditions. The bill distinguishes six guardianship and conservatorship circumstances: voluntary conservatorships, adults with impairment, minors, ancillary proceedings, minors with a permanent impairment, and moving an impaired person into Kansas by a guardian appointed in another state.

HB 2469 includes the following significant provisions:

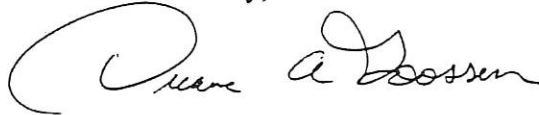
Estimated State Fiscal Effect				
	FY 2001 SGF	FY 2001 All Funds	FY 2002 SGF	FY 2002 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$130,000	\$130,000
FTE Pos.	--	--	--	--

The Office of Judicial Administration states that the bill would have an effect on the courts by increasing the amount of time judges would have to spend reviewing evidence in these cases; however, the Office is unable to estimate the exact fiscal effect until the courts have some experience implementing the provisions of the bill.

SRS indicates that the shift of responsibility for the surety would have no fiscal impact. During the past 15 years, approximately \$50,000 in claims arising from guardianships has been paid, although restitution has been made on almost every claim.

The KGP indicates that the bill would make the agency itself serve as surety on the bond for its volunteers. The agency has no funds or legal resources to allow it to serve as surety, and estimates that the cost of purchasing a blanket surety bond could cost approximately \$130,000 annually. Currently, there are 1,300 conservatorships under the KGP, and the bonding company estimated an annual premium cost of \$100 for each \$20,000 minimum bond. Currently, SRS, which is self-insured, acts as surety on the bond of any conservator in the state. Any fiscal effect resulting from the passage of HB 2469 is not accounted for in *The FY 2002 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Jerry Sloan/Ami Hyten, Judiciary
Randy Hearrell, Judicial Council
Christy Stutz, Secretary of State's Office
Lisa Becker, SRS
Chris Radeke, Guardianship Program