Approved: May 3, 2006
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on March 13, 2006, in Room 123-S of the Capitol.

All members were present except:
David Haley- excused
Barbara Allen arrived, 9:36 a.m.
Kay O'Connor arrived, 9:38 a.m.
Donald Betts arrived, 9:44 a.m.

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:
Eric K. Rucker, Chief of Staff, Office of the Attorney General
John G. Carney, Chairman, Kansas LIFE Project
Rocky Nichols, Executive Director, Disability Rights Center of Kansas
Jeanne Gawdun, Kansans for Life
Kevin Seck, Topeka Independent Living Resource Center
Jean Krahn, Executive Director, Kansas Guardianship Program
Nancy, former resident of the Kaufman Group Home
Lynn, former resident of the Kaufman Group Home

Others attending:
See attached list.

The Chairman distributed a draft of the eminent domain bill to which interested parties agreed for the committee to examine before working the bills at the next committee meeting (Attachment 1).

The Chairman called for final action on **HB 2663--Providing for a hardship drivers' license**.

Senator Goodwin moved, Senator Donovan seconded, to recommend **HB 2663** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2554--Effective through June 30, 2008, DNA specimens collected if arrested for person felony or drug severity level 1 or 2; after July 1, 2008, DNA collected for all felonies; probable cause for arrest; destroyed if acquitted** was opened. The Chairman reviewed the bill and indicated proposed amendments by Representative Colloton (Attachment 2) and the Kansas Bureau of Investigation (Attachment 3). Senator Journey distributed a proposed amendment and reviewed his proposed changes (Attachment 4).

Following discussion, the Chairman indicated the committee would consider each change in Representative Colloton's balloon individually. The Chairman referred to the proposed change on page 3, lines 27-34. Following discussion, Senator Bruce moved, Senator Umbarger seconded, to amend page 3, by striking lines 27 through 34. Motion carried.

Senator Donovan moved, Senator Umbarger seconded, to amend page 4, line 39-40, as recommended by Representative Colloton's balloon. Motion carried.

Senator Bruce moved, Senator Umbarger seconded, to amend page 5 as represented in Representative Colloton's balloon. Motion carried.

Senator Bruce moved, Senator Schmidt seconded, to amend page 3, line 26, after "investigation" by inserting "database". Motion carried.

Senator Goodwin moved, Senator Schmidt seconded, to amend page 5, line 19 as reflected in the KBI's

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on March 13, 2006, in Room 123-S of the Capitol.

proposed balloon. Motion carried.

Senator Donovan moved, Senator Umbarger seconded, to recommend **HB 2554** as amended favorably for passage. Motion carried.

The hearing on **SB 240--Guardians and conservators; procedures** was opened.

Eric Rucker appeared in support and provided background on the bill (Attachment 5).

John Carney spoke in support and proposed a change in language, reflected in his testimony, which would protect the interests of family caregivers, guardians, and medical professionals (Attachment 6). The Chairman indicated that a report provided by the Kansas Judicial Council on a study regarding **HB 2307** which at the time of the study was identical to **SB 240** had been distributed to the committee (Attachment 7).

Rocky Nichols appeared as a proponent commenting on the National Guardianship Association's 2002 Standards of Practice regarding conflict of interest of an un-related, non-family member guardian/conservator (Attachment 8). Mr. Nichols provided data regarding flaws in Kansas guardianship laws and a case example.

Jeanne Gawdun spoke as a proponent stating current law denies due process to wards with respect to end of life issues (Attachment 9).

Kevin Seck appeared in support of the bill which will hold guardians to the highest standard of accountability (Attachment 10).

Jean Krahn spoke as a proponent regarding consideration of conflict of interest prameters when courts appoint non-family guardians or conservators (Attachment 11).

Lynn, a former resident of the Kaufman group home provided her personal story and requested protection from future abuses (Attachment 12).

Nancy, a former resident of the Kaufman group home provided her personal story and request that no one ever be subject to the abuse she suffered (Attachment 13).

There being no further conferees, the hearing on **SB 240** was closed.

The meeting adjourned at 10:32 a.m. The next scheduled meeting is March 14, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-13-06

NAME	REPRESENTING
[illegible]	DOC
Carol Luttjohann	
Lindsey Douglas	Hein Law Firm
Con Olson	Jefferson Co.
Luke Thompson	DHPF
Tom Palace	PMCA of KS
[illegible]	KDOR
[illegible]	KDOR
Diane Albert	KDOR
Bob Keller	JCSO
Jeff Bottenberg	KS Sheriffs' Ass'n
Sandy Horton	CR Co. Sheriffs - KS Sheriffs Assn.
Rick Fleming	Securities Commission
[illegible]	KDHE
ERIC RUCKER	A.G.
Roger Werholtz	KDOC
Tim Maddin	KDOC
Kevin Siek	KLRC

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 03/13/06

NAME	REPRESENTING
Sharon Joseph	KS ADAPT
Stan Jones	John Peterson
Pat Colloton	House, Dist. 28
Dan Mermes	Public Solutions
Cindy D'Ercole	KAC
Michael White	Kearney & Assoc.

2006 Draft 3-10-06 5rs2284

PROPOSED SUBSTITUTE BILL NO. ____

By

AN ACT concerning eminent domain; relating to restriction of government authority to take property; amending K.S.A. 26-501 and 26-513 and K.S.A. 2005 Supp. 12-1773, 19-101a and 26-504 and repealing the existing sections.

WHEREAS, The Kansas and United States Supreme Courts have ruled that the taking and transferring of private property from one private party to another is a valid use of the power of eminent domain; and

WHEREAS, the people of Kansas support the protection of private property rights and seek to heighten the protection of private property rights from the level expressed by recent court rulings; and

WHEREAS, the people of Kansas agree that the use of eminent domain for the taking and transferring of private property from one private party to another should only be allowed in extraordinary and limited situations and with explicit procedural safeguards: Now therefore,

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Private property shall not be taken by eminent domain except for public use and private property shall not be taken without just compensation.

(b) The taking of private property by eminent domain for the purpose of selling, leasing or otherwise transferring such property to any other private entity is prohibited except as provided in

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sections 2 through 5, and amendments thereto.

New Sec. 2. The taking of private property by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity is authorized and not subject to the provisions of sections 4 and K.S.A. 26-513, and amendments thereto, if the taking is:

(a) By the Kansas department of transportation or a municipality and the property is deemed excess real property that was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge, public improvement projects, including, but not limited to public buildings, parks and recreation facilities, water supply, wastewater and waste disposal, storm water, flood control and drainage projects;

(b) by any privately-owned common carrier but only to the extent such property is used for the operation of facilities necessary for the provision of such privately owned common carriers services;

(c) by any municipality when the private property owner has acquiesced in writing to the taking;

(d) by any municipality for the purposes of acquiring property which has defective or unusual conditions of title including, but not limited to, clouded or defective title or unknown ownership interests in the property;

(e) by any municipality for the purposes of acquiring property which is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated;

(f) expressly authorized by the legislature on or after July 1, 2006, by enactment of law that identifies the specific parcels to be taken.

New Sec. 3. The taking of private property by eminent domain for the purpose of selling,

leasing, or otherwise transferring such property to any other private entity by a municipality is authorized subject to the provisions of K.S.A. 26-513, and amendments thereto, but is not subject to the provisions of section 5, and amendments thereto, if:

(a) Such property is situated within a blighted area pursuant to K.S.A. 12-1770a, and amendments thereto, except that agricultural land, feedlot, public livestock market or property located outside city limits shall not be deemed a "blighted area"; or

(b) a significant portion of such property, other than owner-occupied single family residential property, has been vacant for at least 50% of the preceding five calendar years, is less than three acres, and is not part of a tax increment financing project.

New Sec. 4. (a) The taking of private property by a city, by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any other private entity is prohibited if such property is a feedlot or a public livestock market and such property is located within the corporate boundaries of a city.

(b) The taking of private property by a county, by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any other private entity is prohibited if such property is agricultural land, as defined in section 7, and amendments thereto.

(c) Any taking of private property authorized by this section shall be subject to the provisions of sections 5 and K.S.A. 26-513, and amendments thereto.

New Sec. 5. (a) The taking of private property by eminent domain for the purpose of selling, leasing or otherwise transferring such property to any other private entity by a municipality is authorized if the following conditions are satisfied:

(1) The municipality demonstrates that no reasonable and prudent alternative to such taking

is available to satisfy the public purpose that the taking and transfer is intended to advance; and:

(2) The municipality has prepared an economic development project plan pursuant to subsection (b).

(b) For any proposed project undertaken pursuant to subsection (a) for which property is anticipated to be acquired by eminent domain, the municipality shall prepare an economic development project plan. The economic development project plan shall contain supporting documentation and findings that the proposed project:

(1) Is within the corporate boundaries of the municipality and will benefit the community as a whole;

(2) will provide significant job growth; and

(3) will result in new capital investment in the community that is the greater of at least 1% of the community's total assessed valuation of taxable real property or $10,000,000.

(c) No economic development project plan shall be approved unless a public hearing has been conducted concerning the proposed project plan. The governing body of the condemning authority shall adopt a resolution fixing the date for the public hearing. The date fixed for the public hearing shall be not less than 30 nor more than 70 days following the date of the adoption of the resolution fixing the date of the hearing. Copies of the resolution shall be sent by certified mail, return receipt requested, to each owner and occupant of land within the proposed economic development project area, whose address is known or can, with reasonable diligence, be ascertained, not more than 10 days following the date of the adoption of the resolution. The resolution shall be published once in a newspaper generally circulated in the proposed project area. If no newspapers are circulated in the proposed economic development area, then the resolution shall be published

once in a newspaper generally circulated in the county where the lands are situated. The resolution shall be published not less than one week and not more than two weeks preceding the date fixed for the public hearing. A sketch clearly delineating the area in sufficient detail to advise the reader of the particular land proposed to be included within the economic development project area shall be published with the resolution. No defect in any notice or in any service thereof shall invalidate any proceeding. Following the public hearing, a 2/3 majority vote of the members-elect of the municipality is required to adopt the project plan.

(d) After approval of the economic development project plan, a 2/3 majority vote of the members-elect of the governing body of the municipality is required to authorize the use of eminent domain to acquire land for the project. The municipality shall prepare a detailed report establishing that the municipality, after good-faith negotiation with the property owner, was unable to acquire the property.

(e) The taking of private property for selling, leasing or otherwise transferring such property to any other private entity made pursuant to this section is subject to the provisions of section 10, and amendments thereto, unless otherwise provided for in this act.

New Sec. 6. The provisions of this act shall not apply to the exercise of eminent domain, pursuant to the provisions of K.S.A. 12-1773, and amendments thereto, within a redevelopment district created pursuant to K.S.A. 12-1771, and amendments thereto, if such redevelopment district was created prior to the effective date of this act.

New Sec. 7. (a) "Agricultural land" means any interest in real property that is privately owned and satisfies any one of the following criteria:

(1) Is classified pursuant to article 11, section 1 of the Kansas constitution as devoted to

agricultural use;

(2) is a feedlot, confined feeding facility, or public livestock market;

(3) is a farm home; or

(4) is a grain handling facility, grain warehouse, or a farm implement retailer.

(b) "Confined feeding facility" means any lot, pen, pool or pond: (a) Which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; (b) which is not normally used for raising crops; and (c) in which no vegetation intended for animal food is growing.

(c) "Corporate boundary" means the jurisdictional boundary of the municipality, specifically the city limits or county line, and does not include an urban growth area or area designated by a planning or zoning commission in accordance with K.S.A. 12-754, and amendments thereto.

(d) "Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. The fair market value shall be determined by use of the comparable sales, cost or capitalization of income appraisal methods or any combination of such methods.

(e) "Farm home" means any tract of land containing a single family residence adjacent to agricultural land, occupied by an individual or individuals engaged in farming operations.

(f) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit, sod, or other horticultural crops, grazing or the production of livestock.

(g) "Feedlot" means a lot, yard, corral, confined feeding facility or other area in which livestock fed for slaughter are confined and such additional acreage as is necessary for the operation

of the feedlot.

(h) "Livestock" means cattle, sheep, swine, horses, mules, asses, goats, aquatic animals, domesticated deer, all creatures of the ratite family that are not indigenous to this state, including, but not limited to ostriches, emus and rheas, and any other animal which can or may be used in and for the preparation of meat or meat product.

(i) "Municipality" means city, county or unified government.

(j) Privately owned common carrier" means a commercial enterprise that holds itself out to the public as offering to transport products, freight, persons, information, or other such services for a fee. This term shall include electric transmission lines, pipelines, railroads, data transmission lines, communication towers.

(k) "Public livestock market" means any place, establishment or facility commonly known as a "livestock market", "livestock auction market", "sale ring", "stockyard", "community sale" which includes any business conducted or operated for compensation or profit as a public market for livestock, consisting of pens, or other enclosures and their appurtenances, in which livestock are received, held, sold or kept for sale or shipment.

(l) "Taking" means the use by any municipality of the power of eminent domain to acquire any interest in private real property.

Sec. 8. K.S.A. 2005 Supp. 12-1773 is hereby amended to read as follows: 12-1773. (a) Any city which has adopted a redevelopment project plan in accordance with the provisions of this act may purchase or otherwise acquire real property in connection with such project plan. Upon a 2/3 vote of the members of the governing body thereof a city may acquire by condemnation any interest in real property, including a fee simple title thereto, which it deems necessary for or in connection

with any project plan of an area located within the redevelopment district. Prior to the exercise of such eminent domain power, the city shall offer to the owner of any property which will be subject to condemnation with respect to any redevelopment project, other than one which includes an auto race track facility or a special bond project, compensation in an amount equal to the highest appraised valuation amount determined for property tax purposes by the county appraiser for any of the three most recent years next preceding the year of condemnation, except that, if in the year next preceding the year of condemnation any such property had been damaged or destroyed by fire, flood, tornado, lightning, explosion or other catastrophic event, the amount offered should be equal to the appraised valuation of the property which would have been determined taking into account such damage or destruction unless such property has been restored, renovated or otherwise improved. However no city shall exercise such eminent domain power to acquire real property in a conservation area. Any such city may exercise the power of eminent domain in the manner provided by K.S.A. 26-501 et seq., and amendments thereto. In addition to the compensation or damage amount finally awarded thereunder with respect to any property subject to proceedings thereunder as a result of the construction of an auto race track facility or a special bond project, such city shall provide for the payment of an amount equal to 25% of such compensation or damage amount. In addition to any compensation or damages allowed under the eminent domain procedure act, such city shall also provide for the payment of relocation assistance as provided in K.S.A. 12-1777, and amendments thereto.

(b) Any property acquired by a city under the provisions of this act may be sold, transferred or leased to a developer, in accordance with the redevelopment project plan and under such other conditions as may be agreed upon.

(c) The provisions of this section shall not apply to redevelopment districts created on or after July 1, 2006.

Sec. 9. K.S.A. 2005 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271–74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15, 139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments

thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-1,178 through 65-1,199, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2005 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) Counties may not exempt from or effect changes in the wireless enhanced 911 act or in the provisions of K.S.A. 12-5301 through 12-5308, and amendments thereto.

(34) Counties may not exempt from or effect changes in K.S.A. 2005 Supp. 26-601, and amendments thereto.

(35) (A) From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas liquor control act except as provided by paragraph (B).

(B) From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas liquor control act.

(36) (A) From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas cereal malt beverage act except as provided by paragraph (B).

(B) From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas cereal malt beverage act.

(37) Counties may not exempt from or effect changes in sections 1 through 14 of this act, and amendments thereto.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection

(a) is null and void.

Sec. 10. K.S.A. 26-501 is hereby amended to read as follows: 26-501. (a) The procedure for exercising eminent domain as set forth in K.S.A. 26-501 to ~~26-516~~ 26-518 and sections 1 through 7, inclusive, and amendments thereto, shall be followed in all proceedings.

(b) The proceedings shall be brought by filing a verified petition in the district court of the county in which the real estate is situated, except if it be an entire tract situated in two ~~(2)~~ or more counties, the proceedings may be brought in any county in which any tract or parts thereof is situated.

Sec. 11. K.S.A. 2005 Supp. 26-504 is hereby amended to read as follows: 26-504. ~~If the judge to whom the proceeding has been assigned finds from the petition:~~ (a) In an eminent domain proceeding, the court shall determine whether the decision by the municipality, based upon substantial competent evidence meets the following factors:

(1) The plaintiff has the power of eminent domain; ~~and~~

(2) the taking is necessary to the lawful corporate purposes of the plaintiff~~;~~;

(3) the decision to condemn property was reasonable, was made in good faith and was not made fraudulently; and

(4) the taking was made in compliance with this act.

(b) If the court has made the findings pursuant to subsection (a), then the judge shall entertain suggestions from any party in interest relating to the appointment of appraisers and the judge shall enter an order appointing three disinterested residents of the county in which the petition is filed, at least two of the three of whom shall have experience in the valuation of real estate, to view and appraise the value of the lots and parcels of land found to be necessary, and to determine the damages and compensation to the interested parties resulting from the taking. Such order shall

also fix the time for the filing of the appraisers' report at a time not later than 45 days after the entry of such order except for good cause shown, the court may extend the time for filing by a subsequent order. The granting of an order determining that the plaintiff has the power of eminent domain and that the taking is necessary to the lawful corporate purposes of the plaintiff shall not be considered a final order for the purpose of appeal to the supreme court, but an order denying the petition shall be considered such a final order.

(c) Appeals to the supreme court may be taken from any final order under the provisions of this act. Such appeals shall be prosecuted in like manner as other appeals and shall take precedence over other cases, except cases of a like character and other cases in which preference is granted by statute.

Sec. 12. K.S.A. 26-513 is hereby amended to read as follows: 26-513. (a) *Necessity.* Private property shall not be taken or damaged for public use without just compensation.

(b) *Taking entire tract.* (1) Except when property is taken pursuant to sections 3, 4 or 5, and amendments thereto, if the entire tract of land or interest in such land is taken, the ~~measure of~~ compensation ~~is~~ shall be the fair market value of the property or interest at the time of the taking.

(2) When an entire tract of property is taken pursuant to sections 3, 4 or 5, and amendments thereto, the compensation shall be calculated as follows: (A) When the owner from whom the land is being taken has owned the property less than five years, compensation shall be 125% of the fair market value of the property or interest at the time of the taking;

(B) when the owner from whom the land is being taken has owned the property at least five years, but less than 10 years, compensation shall be 150% of the fair market value of the property or interest at the time of the taking;

(C) when the owner from whom the land is being taken has owned the property at least 10 years, but less than 15 years, compensation shall be 175% of the fair market value of the property or interest at the time of the taking; or

(D) when the owner from whom the land is being taken has owned the property at least 15 years, compensation shall be 200% of the fair market value of the property or interest at the time of the taking.

(c) *Partial taking.* (1) Except when property is taken pursuant to sections 3, 4 or 5, and amendments thereto, if only a part of a tract of land or interest is taken, compensation ~~is~~ shall be the difference between the fair market value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(2) When only a part of a tract of property or interest is taken pursuant to sections 3, 4 or 5, and amendments thereto, compensation shall be the difference between the fair market value of the entire property or interest immediately before the taking, and the fair market value of that portion of the tract or interest remaining immediately after the taking multiplied by: (A) 125% when the owner from whom the land is being taken has owned the property less than five years;

(B) 150% when the owner from whom the land is being taken has owned the property at least five years, but less than 10 years;

(C) 175% when the owner from whom the land is being taken has owned the property at least 10 years, but less than 15 years;

(D) 200% when the owner from whom the land is being taken has owned the property at least 15 years.

(d) Nothing in this section shall preclude the parties from negotiating a greater percentage

of compensation.

(e) *Factors to be considered.* In ascertaining the amount of compensation and damages, the following nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section. Such factors are: (1) The most advantageous use to which the property is reasonably adaptable.

(2) Access to the property remaining.

(3) Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.

(4) Productivity, convenience, use to be made of the property taken, or use of the property remaining.

(5) View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.

(6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.

(7) Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.

(8) Cost of new fences or loss of fences and the cost of replacing them with fences of like

quality, to the extent that such loss affects the value of the property remaining.

(9) Destruction of a legal nonconforming use.

(10) Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.

(11) Proximity of new improvement to improvements remaining on condemnee's land.

(12) Loss of or damage to growing crops.

(13) That the property could be or had been adapted to a use which was profitably carried on.

(14) Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.

(15) Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

New Sec. 13. The provisions of sections 1 through 7 shall be part of and supplemental to the eminent domain procedure act.

Sec. 14. K.S.A. 26-501 and 26-513 and K.S.A. 2005 Supp. 12-1773, 19-101a and 26-504 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Proposed amendment
Representative Colloton
March 6, 2006

Senate Judiciary
3-13-06
Attachment 2

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2554

By Representatives Colloton, Mays, Huntington and Wolf and Beamer, Goico, Hill, Horst, Hutchins, E. Johnson, Kelsey, Kiegerl, Light, Mast, McLeland, O'Malley, Oharah, Otto, Pottorff, Roth, Schwab, S. Sharp, Sloan and Yoder

12-21

AN ACT concerning criminal procedure; relating to the collection of DNA specimens; creating the DNA database fund; amending K.S.A. 2005 Supp. 21-2511 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2005 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any felony; a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto when the victim is less than 18 years of age; a violation of K.S.A. 21-3507, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, and amendments thereto; including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood ~~and saliva *an oral sample*~~ **or an oral or other biological sample authorized by the Kansas bureau of investigation** to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted as an adult or adjudicated as a juvenile offender because

of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* shall be ordered by the court to have ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample*, at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation. Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, ~~the specimens of blood and saliva *an oral*~~ **such specimen or** *sample* will be obtained as soon as practical upon arrival at the correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, ~~the specimens of blood and saliva *an oral*~~ **such specimen or** *sample* will be obtained as soon as practical upon arrival.

(d) Any person required by paragraph (a)(3) to provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.

(e) (1) On and after ~~July 1, 2006~~ **January 1, 2007** *through June 30, 2008, any adult arrested* **or charged** *or juvenile placed in custody for* **or charged with** *the commission or attempted commission of any person felony or drug severity level 1 or 2 felony shall be required to submit ~~an oral sample~~* **such specimen or sample** *at the same time such person is fingerprinted pursuant to the booking procedure.*

(2) On and after July 1, 2008, except as provided further, any adult arrested **or charged** *or juvenile placed in custody for* **or charged with**

the commission or attempted commission of any felony shall be required to submit ~~an oral sample~~ **such specimen or sample** *at the same time such person is fingerprinted pursuant to the booking procedure. ~~The provisions of this paragraph shall not apply to the violations of the felony provisions of K.S.A. 8-1567, and amendments thereto.~~*

(3) Prior to taking such samples, the arresting, **charging** *or custodial law enforcement agency shall search the Kansas criminal history files through the Kansas criminal justice information system to determine if such person's sample is currently ~~in the database~~* **on file with the Kansas bureau of investigation**. *In the event that it cannot reasonably be established that a DNA sample for such person is on file at the ~~bureau~~* **Kansas bureau of investigation**, *the arresting,* **charging** *or custodial law enforcement agency shall cause a sample to be collected. If such person's sample is ~~in the database~~* **on file with the Kansas bureau of investigation**, *the law enforcement agency is not required to take the sample.*

~~(4) After a determination by the court that probable cause exists for the arrest or placement in custody, the samples shall be submitted to the Kansas bureau of investigation for placement in the DNA database. The court shall ensure, upon the person's first appearance, that the person has submitted such samples.~~ **If a court later determines that there was not probable cause for the arrest, charge or placement in custody, the court shall send a copy of such determination to the Kansas bureau of investigation. The Kansas bureau of investigation shall forthwith remove such specimen or sample from the Kansas bureau of investigation records.**

~~**(5) The clerk of the district court shall notify the Kansas bureau of investigation of final disposition of the criminal proceedings. If the charge for which the specimen was taken is dismissed or the defendant is acquitted at trial, the Kansas bureau of investigation shall destroy the specimen and all records thereof, provided there is no other pending qualifying warrant for an arrest, charges or other conviction that would otherwise require the specimen remain in the database.**~~

(f) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of oral or other biological samples. No person authorized by this section to collect oral or other biological samples, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to rules and regulations promulgated by the Kansas bureau of investigation. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau

shall analyze the samples to the extent allowed by funding available for this purpose.

~~(e)~~ ~~(f)~~ **(g)** The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood ~~and saliva~~ ~~*oral*~~ samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood ~~and collect saliva~~ ~~*an oral sample*~~, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau shall analyze the samples to the extent allowed by funding available for this purpose.

~~(f)~~ ~~(g)~~ **(h)** The DNA (deoxyribonucleic acid) records and DNA samples shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated DNA databank and DNA database capable of, but not limited to, searching, matching and storing DNA records. The DNA database as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation shall participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

~~(g)~~ ~~(h)~~ **(i)** The DNA records obtained pursuant to this act shall be confidential and shall be released only to authorized criminal justice agencies. *The DNA records shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.*

~~(h)~~ ~~(i)~~ **(j)** *(1)* The Kansas bureau of investigation shall be the state central repository for all DNA records and DNA samples obtained pursuant to this act. The Kansas bureau of investigation shall promulgate rules and regulations for: ~~*(A)* The~~ **the** form and manner of the collection; ~~*and;*~~ maintenance ~~and expungement~~ **and expungement** of DNA samples; ~~*(B) a procedure which allows the defendant to request the DNA samples be expunged and destroyed in the event of a dismissal of charges or*~~

: (A)

and

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~~acquittal at trial;~~ and

~~(C)~~ other procedures for the operation of this act.

(2) These rules and regulations also shall require compliance with national quality assurance standards to ensure that the DNA records satisfy standards of acceptance of such records into the national DNA identification index.

(3) The provisions of the Kansas administrative procedure act shall apply to all actions taken under the rules and regulations so promulgated.

~~(j)~~ **(k)** *The Kansas bureau of investigation is authorized to contract with third parties for the purposes of implementing this section. Any other party contracting to carry out the functions of this section shall be subject to the same restrictions and requirements of this section, insofar as applicable, as the bureau, as well as any additional restrictions imposed by the bureau.*

~~(k)~~ **(l)** ~~*The detention, arrest or conviction of a person based upon a database match or database information is not invalidated if it is determined that the specimen was obtain or placed in the database by mistake or not removed from the database as required by law.*~~

~~(l)~~ *Any person who is subject to the requirements of this section, and who, after receiving notification of the requirement to provide a DNA specimen, knowingly refuses to provide such DNA specimen, shall be guilty of a class A nonperson misdemeanor.*

New Sec. 2. (a) Any person required to submit a sample upon arrest, **the charging** or being taken into custody pursuant to section 1, and amendments thereto, upon conviction shall pay a separate court cost of $100 as a Kansas bureau of investigation DNA database fee.

(b) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

(c) Disbursements from the Kansas bureau of investigation DNA database fee deposited into the DNA database fee fund of the Kansas bureau of investigation shall be made for the following:

(1) Providing DNA laboratory services;

(2) the purchase and maintenance of equipment for use by the laboratory in performing DNA analysis; and

(3) education, training and scientific development of Kansas bureau of investigation personnel regarding DNA analysis.

(d) Expenditures from the DNA database fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.

(e) All fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire

;

(B) a procedure which allows the defendant to request the DNA samples be expunged and destroyed in the event of a dismissal of charges or acquittal at trial; and

(C)

amount in the state treasury to the credit of the DNA database fund, which is hereby established in the state treasury.

(f) Fees received into this fund shall be supplemental to regular appropriations to the Kansas bureau of investigation.

Sec. 3. K.S.A. 2005 Supp. 21-2511 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Proposed amendment
KBI, March 8, 2006

Senate Judiciary
3-13-06
Attachment 3

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2554

By Representatives Colloton, Mays, Huntington and Wolf and Beamer, Goico, Hill, Horst, Hutchins, E. Johnson, Kelsey, Kiegerl, Light, Mast, McLeland, O'Malley, Oharah, Otto, Pottorff, Roth, Schwab, S. Sharp, Sloan and Yoder

12-21

AN ACT concerning criminal procedure; relating to the collection of DNA specimens; creating the DNA database fund; amending K.S.A. 2005 Supp. 21-2511 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2005 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any felony; a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto when the victim is less than 18 years of age; a violation of K.S.A. 21-3507, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, and amendments thereto; including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood ~~and saliva *an oral sample*~~ **or an oral or other biological sample authorized by the Kansas bureau of investigation** to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted as an adult or adjudicated as a juvenile offender because

of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* shall be ordered by the court to have ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample*, at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation. Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, ~~the specimens of blood and saliva *an oral*~~ **such specimen or** *sample* will be obtained as soon as practical upon arrival at the correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, ~~the specimens of blood and saliva *an oral*~~ **such specimen or** *sample* will be obtained as soon as practical upon arrival.

(d) Any person required by paragraph (a)(3) to provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.

(e) (1) On and after ~~July 1, 2006~~ **January 1, 2007** *through June 30, 2008, any adult arrested* **or charged** *or juvenile placed in custody for* **or charged with** *the commission or attempted commission of any person felony or drug severity level 1 or 2 felony shall be required to submit ~~an oral sample~~* **such specimen or sample** *at the same time such person is fingerprinted pursuant to the booking procedure.*

(2) On and after July 1, 2008, except as provided further, any adult arrested **or charged** *or juvenile placed in custody for* **or charged with**

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the commission or attempted commission of any felony shall be required to submit ~~an oral sample~~ **such specimen or sample** *at the same time such person is fingerprinted pursuant to the booking procedure. ~~The provisions of this paragraph shall not apply to the violations of the felony provisions of K.S.A. 8-1567, and amendments thereto.~~*

(3) Prior to taking such samples, the arresting, **charging** *or custodial law enforcement agency shall search the Kansas criminal history files through the Kansas criminal justice information system to determine if such person's sample is currently ~~in the database~~* **on file with the Kansas bureau of investigation***. In the event that it cannot reasonably be established that a DNA sample for such person is on file at the ~~bureau~~* **Kansas bureau of investigation***, the arresting,* **charging** *or custodial law enforcement agency shall cause a sample to be collected. If such person's sample is ~~in the database~~* **on file with the Kansas bureau of investigation***, the law enforcement agency is not required to take the sample.*

(4) ~~After a determination by the court that probable cause exists for the arrest or placement in custody, the samples shall be submitted to the Kansas bureau of investigation for placement in the DNA database. The court shall ensure, upon the person's first appearance, that the person has submitted such samples.~~ **If a court later determines that there was not probable cause for the arrest, charge or placement in custody, the court shall send a copy of such determination to the Kansas bureau of investigation. The Kansas bureau of investigation shall forthwith remove such specimen or sample from the Kansas bureau of investigation records.**

database

(per Representative Colloton's balloon)

~~(5) The clerk of the district court shall notify the Kansas bureau of investigation of final disposition of the criminal proceedings. If the charge for which the specimen was taken is dismissed or the defendant is acquitted at trial, the Kansas bureau of investigation shall destroy the specimen and all records thereof, provided there is no other pending qualifying warrant for an arrest, charges or other conviction that would otherwise require the specimen remain in the database.~~

(f) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of oral or other biological samples. No person authorized by this section to collect oral or other biological samples, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to rules and regulations promulgated by the Kansas bureau of investigation. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau

ll analyze the samples to the extent allowed by funding availa- for this purpose.

~~(e)~~ ~~(f)~~ (g) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood ~~and saliva~~ ~~*oral*~~ samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood ~~and collect saliva~~ ~~*an oral sample*~~, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau shall analyze the samples to the extent allowed by funding available for this purpose.

~~(f)~~ ~~(g)~~ (h) The DNA (deoxyribonucleic acid) records and DNA samples shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated DNA databank and DNA database capable of, but not limited to, searching, matching and storing DNA records. The DNA database as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation shall participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

~~(g)~~ ~~(h)~~ (i) The DNA records obtained pursuant to this act shall be confidential and shall be released only to authorized criminal justice agencies. *The DNA records shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.*

~~(h)~~ ~~(i)~~ (j) *(1)* The Kansas bureau of investigation shall be the state central repository for all DNA records and DNA samples obtained pursuant to this act. The Kansas bureau of investigation shall promulgate rules and regulations for: ~~*(A)* The~~ **the** form and manner of the collection~~, *and*~~, maintenance ~~and expungement~~ **and expungement** of DNA samples~~;~~

~~*(B) a procedure which allows the defendant to request the DNA samples be expunged and destroyed in the event of a dismissal of charges or*~~

7-3

~~acquittal at trial;~~ and

~~(C)~~ other procedures for the operation of this act.

(2) These rules and regulations also shall require compliance with national quality assurance standards to ensure that the DNA records satisfy standards of acceptance of such records into the national DNA identification index.

(3) The provisions of the Kansas administrative procedure act shall apply to all actions taken under the rules and regulations so promulgated.

~~(j)~~ **(k)** *The Kansas bureau of investigation is authorized to contract with third parties for the purposes of implementing this section. Any other party contracting to carry out the functions of this section shall be subject to the same restrictions and requirements of this section, insofar as applicable, as the bureau, as well as any additional restrictions imposed by the bureau.*

~~(k)~~ **(l)** ~~*The detention, arrest or conviction of a person based upon a database match or database information is not invalidated if it is determined that the specimen was obtain or placed in the database by mistake or not removed from the database as required by law.*~~

~~(l)~~ *Any person who is subject to the requirements of this section, and who, after receiving notification of the requirement to provide a DNA specimen, knowingly refuses to provide such DNA specimen, shall be guilty of a class A nonperson misdemeanor.*

In the event that a person's DNA sample is lost or not adequate for any reason, the person shall provide another sample for analysis.

New Sec. 2. (a) Any person required to submit a sample upon arrest, **the charging** or being taken into custody pursuant to section 1, and amendments thereto, upon conviction shall pay a separate court cost of $100 as a Kansas bureau of investigation DNA database fee.

(b) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

(c) Disbursements from the Kansas bureau of investigation DNA database fee deposited into the DNA database fee fund of the Kansas bureau of investigation shall be made for the following:

(1) Providing DNA laboratory services;

(2) the purchase and maintenance of equipment for use by the laboratory in performing DNA analysis; and

(3) education, training and scientific development of Kansas bureau of investigation personnel regarding DNA analysis.

(d) Expenditures from the DNA database fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.

(e) All fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire

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amount in the state treasury to the credit of the DNA database fund, which is hereby established in the state treasury.

(f) Fees received into this fund shall be supplemental to regular appropriations to the Kansas bureau of investigation.

Sec. 3. K.S.A. 2005 Supp. 21-2511 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

3-1

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2554

By Representatives Colloton, Mays, Huntington and Wolf and Beamer, Goico, Hill, Horst, Hutchins, E. Johnson, Kelsey, Kiegerl, Light, Mast, McLeland, O'Malley, Oharah, Otto, Pottorff, Roth, Schwab, S. Sharp, Sloan and Yoder

12-21

AN ACT concerning criminal procedure; relating to the collection of DNA specimens; creating the DNA database fund; amending K.S.A. 2005 Supp. 21-2511 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2005 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any felony; a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto when the victim is less than 18 years of age; a violation of K.S.A. 21-3507, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, and amendments thereto; including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood ~~and saliva *an oral sample*~~ **or an oral or other biological sample authorized by the Kansas bureau of investigation** to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted as an adult or adjudicated as a juvenile offender because

PROPOSED AMENDMENT
Senator Journey
March 12, 2006

Senate Judiciary
3-13-06
Attachment 4

of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* shall be ordered by the court to have ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample*, at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation. Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall ~~be punishable as contempt of court and~~ constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, ~~the specimens of blood and saliva *an oral*~~ **such specimen or** *sample* will be obtained as soon as practical upon arrival at the correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, ~~the specimens of blood and saliva *an oral*~~ **such specimen or** *sample* will be obtained as soon as practical upon arrival.

(d) Any person required by paragraph (a)(3) to provide ~~specimens of blood and saliva *an oral*~~ **such specimen or** *sample* shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.

(e) (1) On and after ~~July 1, 2006~~ **January 1, 2007** *through June 30, 2008, any adult arrested* **or charged** *or juvenile placed in custody for* **or charged with** *the commission or attempted commission of any person felony or drug severity level 1 or 2 felony shall be required to submit ~~an oral sample~~* **such specimen or sample** ~~*at the same time such person is fingerprinted pursuant to the booking procedure*~~.

after a court determination that probable cause exists for the arrest or placement into custody

(2) On and after July 1, 2008, except as provided further, any adult arrested **or charged** *or juvenile placed in custody for* **or charged with**

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the commission or attempted commission of any felony shall be required to submit ~~an oral sample~~ **such specimen or sample** *~~at the same time such person is fingerprinted pursuant to the booking procedure. The provisions of this paragraph shall not apply to the violations of the felony provisions of K.S.A. 8-1567, and amendments thereto.~~*

(3) Prior to taking such samples, the arresting, **charging** *or custodial law enforcement agency shall search the Kansas criminal history files through the Kansas criminal justice information system to determine if such person's sample is currently ~~in the database~~* **on file with the Kansas bureau of investigation**. *In the event that it cannot reasonably be established that a DNA sample for such person is on file at the ~~bureau~~* **Kansas bureau of investigation**, *the arresting,* **charging** *or custodial law enforcement agency shall cause a sample to be collected. If such person's sample is ~~in the database~~* **on file with the Kansas bureau of investigation**, *the law enforcement agency is not required to take the sample.*

(4) ~~After a determination by the court that probable cause exists for the arrest or placement in custody, the samples shall be submitted to the Kansas bureau of investigation for placement in the DNA database. The court shall ensure, upon the person's first appearance, that the person has submitted such samples.~~ **If a court later determines that there was not probable cause for the arrest, charge or placement in custody, the court shall send a copy of such determination to the Kansas bureau of investigation. The Kansas bureau of investigation shall forthwith remove such specimen or sample from the Kansas bureau of investigation records.**

(5) The clerk of the district court shall notify the Kansas bureau of investigation of final disposition of the criminal proceedings. If the charge for which the specimen was taken is dismissed or the defendant is acquitted at trial, the Kansas bureau of investigation shall destroy the specimen and all records thereof, provided there is no other pending qualifying warrant for an arrest, charges or other conviction that would otherwise require the specimen remain in the database.

(f) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of oral or other biological samples. No person authorized by this section to collect oral or other biological samples, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to rules and regulations promulgated by the Kansas bureau of investigation. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau

after a court determination that probable cause exists for the arrest or placement into custody

Such DNA samples shall be submitted to the Kansas bureau of investigation for placement into the DNA data base. The court shall insure, upon the person's first appearance, that such DNA samples have been taken and submitted to the Kansas bureau of investigation.

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shall analyze the samples to the extent allowed by funding available for this purpose.

~~(e)~~ ~~(f)~~ **(g)** The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood ~~and saliva~~ ~~*oral*~~ samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood ~~and collect saliva~~ ~~*an oral sample*~~, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau shall analyze the samples to the extent allowed by funding available for this purpose.

~~(f)~~ ~~(g)~~ **(h)** The DNA (deoxyribonucleic acid) records and DNA samples shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated DNA databank and DNA database capable of, but not limited to, searching, matching and storing DNA records. The DNA database as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation shall participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

~~(g)~~ ~~*(h)*~~ **(i)** The DNA records obtained pursuant to this act shall be confidential and shall be released only to authorized criminal justice agencies. *The DNA records shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.*

~~(h)~~ ~~*(i)*~~ **(j)** *(1)* The Kansas bureau of investigation shall be the state central repository for all DNA records and DNA samples obtained pursuant to this act. The Kansas bureau of investigation shall promulgate rules and regulations for: ~~*(A)* The~~ **the** form and manner of the collection; ~~*and*~~, maintenance ~~and expungement~~ **and expungement** of DNA samples; ~~*(B) a procedure which allows the defendant to request the DNA samples be expunged and destroyed in the event of a dismissal of charges or*~~

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~~*acquittal at trial;*~~ and

~~*(C)*~~ other procedures for the operation of this act.

(2) These rules and regulations also shall require compliance with national quality assurance standards to ensure that the DNA records satisfy standards of acceptance of such records into the national DNA identification index.

(3) The provisions of the Kansas administrative procedure act shall apply to all actions taken under the rules and regulations so promulgated.

~~*(j)*~~ **(k)** *The Kansas bureau of investigation is authorized to contract with third parties for the purposes of implementing this section. Any other party contracting to carry out the functions of this section shall be subject to the same restrictions and requirements of this section, insofar as applicable, as the bureau, as well as any additional restrictions imposed by the bureau.*

~~*(k)*~~ **(l)** ~~*The detention, arrest or conviction of a person based upon a database match or database information is not invalidated if it is determined that the specimen was obtain or placed in the database by mistake or not removed from the database as required by law.*~~

~~*(l)*~~ *Any person who is subject to the requirements of this section, and who, after receiving notification of the requirement to provide a DNA specimen,* ~~*knowingly refuses to provide such DNA specimen, shall be guilty of a class A nonperson misdemeanor*~~.

New Sec. 2. (a) Any person required to submit a sample ~~upon arrest, the charging~~ or being taken into custody pursuant to section 1, and amendments thereto, upon conviction shall pay a separate court cost of $100 as a Kansas bureau of investigation DNA database fee.

(b) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

(c) Disbursements from the Kansas bureau of investigation DNA database fee deposited into the DNA database fee fund of the Kansas bureau of investigation shall be made for the following:

(1) Providing DNA laboratory services;

(2) the purchase and maintenance of equipment for use by the laboratory in performing DNA analysis; and

(3) education, training and scientific development of Kansas bureau of investigation personnel regarding DNA analysis.

(d) Expenditures from the DNA database fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.

(e) All fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire

refuses to provide a DNA specimen or fails to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court

DNA

after a court determination that probable cause exists for the arrest or placement into custody

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amount in the state treasury to the credit of the DNA database fund, which is hereby established in the state treasury.

(f) Fees received into this fund shall be supplemental to regular appropriations to the Kansas bureau of investigation.

Sec. 3. K.S.A. 2005 Supp. 21-2511 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

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STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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March 13, 2006

SENATE JUDICIARY COMMITTEE

Testimony in Support of
Senate Bill No. 240
by
Eric K. Rucker
Office of the Attorney General

Dear Chairman Vratil and Members of the Committee:

Thank you for allowing me to appear before you on behalf of Attorney General Phill Kline and offer testimony in support of SB 240. This bill was introduced at the request of the Attorney General and the Disability Rights Center for Kansas. SB 240 seeks to provide an increased level of protection under the law for persons with disabilities. Simply put, the bill is intended to provide a higher level of protection for people who have the least ability to protect themselves. The very public news coverage and criminal prosecution of the Kaufman House case has brought these issues needed attention and SB 240 is one step in preventing future cases of abuse, manipulation and degradation of vulnerable Kansans.

Section 1 of the bill amends KSA 2004 Supp. 59-3068 with new language at subsection (b)(2) designed to prevent conflicts of interest when an unrelated, non-family member is appointed by the court to serve as a guardian/conservator for a ward. This amendment to the statute has been worded in a manner that brings Kansas law substantially into conformity with the National Guardianship Association's 2002 Standards of Practice regarding conflicts of interest for guardian/conservator's. The proposed bill language would prevent the court from appointing an unrelated person, institution, association or corporation to be the guardian of an incapacitated person if one of the listed direct or potential conflicts of interest exists. [See Section 1. KSA 2004 Supp. 59-3068(b)(2) (A) thru (E)].

Section 2 of the bill amends KSA 2004 Supp. 59-3075 to provide that a guardian who is not a family member shall not provide direct services for a fee or for anything of benefit to the ward and the bill requires "The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward." The new language added by the bill strives to instruct and require guardians to not place

Senate Judiciary
3-13-06
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themselves in a position where they will be directly engaged in the provision or services to the ward (such as an attorney serving as a guardian providing legal advice to the ward for a fee), or where they will appear to be engaged in the provision of services to the ward (such as hiring a friends or family members to care for the ward.) The bill seeks to confirm that guardians are at all times to be advocates and protectors of their wards - not profiteers.

A third subject area of the bill seeks to address another serious issue affecting the relationship between certain guardian/conservators and their wards. The language proposed in this section would impose significant new restrictions on the ability to withhold/withdraw medical care (including food and water) from persons with disabilities. The proposed changes to current law would also increase the focus on the individual person's own wishes in regard to continued medical care. Under current law subsection (e)(7)(C) allows for the withholding or withdrawing of medical care without formal inquiry into the intent of the person with a disability whose life will end when these decisions are made. The bill would shift that focus in large part back to the wishes of the ward, and force an analysis of the wishes and desires of the ward before medical care could be terminated.

A society may be judged by the manner in which it protects the rights of the weakest and least powerful of its members. SB 240 seeks to serve the best interests of the disabled and incapacitated of our State by strengthening Kansas laws regarding the guardian/ward relationship. On behalf of Attorney General Phill Kline, I encourage the Committee to support SB 240 and to recommend the bill favorably for passage.

Respectfully,

Eric K. Rucker
Senior Deputy Attorney General
Chief of Staff

[illegible]TE JUDCIARY COMMITTEE
[illegible]LIC TESTIMONY
SENATE BILL 240
JOHN G. CARNEY, CHAIRMAN OF THE LIFE PROJECT PUBLIC POLICY TASK FORCE
MONDAY, MARCH 13, 2006
STATE CAPITOL, ROOM S-123

Chairman Vratil and members of the committee, thank you for the opportunity to testify on Senate Bill 240 dealing with the protections for wards of the courts and the powers of guardians in serving their interests.

Just over a year ago, on March 8, 2005 an identical measure to the one you consider today was heard in the House Judiciary Committee (HB2307). At that time, the LIFE Project provided testimony taking no position on the sections related to the additional proposed protections dealing with conflicts of interests of guardians. Our testimony was limited to the specific section (c) (7) (C) of 59-3075 KSA dealing with changes proposed on the powers of guardians in making decisions related to withholding and withdrawal of artificial nutrition and hydration. We asked that the provision be referred to the Kansas Judicial Council for further study and a recommendation prior to the 2006 session convening. Representative O'Neal's committee complied.

By December of 2005, the HB2307 Committee of the Kansas Judicial Council, as it came to be known, completed its five months of work and forwarded its recommendation[1] to the full Council where it was subsequently adopted. The Council then made its recommendation available to the legislature. Your committee, Chairman Vratil, is the first legislative committee to consider the recommendation in this session.

While the LIFE Project is sensitive to and supportive of the efforts to address protections for those whose end of life wishes are unknown or unknowable, the proposed language of this measure fails to represent and protect the important interests of both family caregiver guardians and the medical professionals who are obligated to provide the best clinical care possible to patients who face the complexities of end of life.

In place of the proposed language in Senate Bill 240 on this provision, we ask you to adopt the the recommendation of the Kansas Judicial Council for this section [K.S.A. 2004 Supp. 59-3075(e)(7)(C)] as it appears below.

> **(C) in the circumstances where the ward's treating physician shall certify in writing to the guardian that the ward is ~~in a persistent vegetative state or is~~ suffering from an illness or other medical condition for which further treatment, other than for the relief of pain, would not likely prolong the life of the ward other than by artificial means, ~~nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward currently possesses~~, and which opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the health care provider has access established for the purposes of reviewing such circumstances and the appropriateness of any type of physician's order which would have the effect of withholding or withdrawing life-saving or life sustaining medical care, treatment, services or procedures. Such written certification shall by approved by an order-issued by the court *if the court determines, by clear and convincing evidence, that the ward meets the conditions set forth in the certificate. The determination shall be made after a hearing with notice to all interested parties, unless the court determines, based upon evidence presented to the court, that such notice and hearing are not necessary.***

If the above language cannot be adopted, we ask that the section stand as in current statute. Thank you for consideration of our request.

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[1] A detailed 7 page report on the HB2307 Committee's five months of deliberations is available from the Kansas J
http://www.kscourts.org/council/hb2307_rpt.pdf. Members of the committee represented the disability communit
legal, legislative, healthcare ethics, end-of-life and long term care professions.

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3-13-06
Attachment 6

KANSAS JUDICIAL COUNCIL

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March 10, 2006

Sen. John Vratil
Statehouse, Rm 281 E
Topeka, KS 66612

Re: SB 240

Dear John,

I noticed in the Senate Calendar that you have scheduled SB 240 for hearing on Monday, March 13, 2006. This bill was introduced by the Disability Rights Center of Kansas. Section 2 of SB 240 also appears as section 2 of SB 92 and SB 240 is identical to HB 2307. I mention this because the Judicial Council studied HB 2307.

Enclosed is the report of the Judicial Council HB 2307 Advisory Committee which considered the proposed amendment to K.S.A. 2004 Supp 59-3075 (e)(7)(C) contained in 2005 HB 2307. The proposed amendment considered by this Committee relates to the guardian's authority to consent to the withholding or withdrawing of life-saving or life sustaining medical care, treatment, services and procedures from a ward.

Also enclosed is the report of the Judicial Council Guardianship and Conservatorship Advisory Committee which considered the proposed amendment to K.S.A. 2004 Supp. 59-3068 contained in 2005 HB 2307. This proposed amendment relates to conflicts of interests between guardians and conservators and their wards.

Very Truly Yours,

Randy

Randy M. Hearrell

Senate Judiciary
3-13-06
Attachment 7

Approved 12/2/05

REPORT OF THE JUDICIAL COUNCIL
HB 2307 ADVISORY COMMITTEE

BACKGROUND

In February of 2005, House Judiciary Chair Michael R. O'Neal requested that the Judicial Council study 2005 House Bill No. 2307 relating to the appointment of guardians and conservators. HB 2307 proposes to amend K.S.A. 2004 Supp. 59-3068, which currently relates to the priority of nominees and their qualifications when a guardian is appointed and K.S.A. 2004 Supp. 59-3075, which currently relates to a guardian's duties, responsibilities, powers and authority. A copy of HB 2307 is attached to this report at page 7.

At the June, 2005 meeting of the Judicial Council, the Council agreed to undertake the study of HB 2307 requested by Representative O'Neal. The Council assigned the study of the proposed amendment to K.S.A. 2004 Supp. 59-3068, which relates to conflicts of interests between guardians and conservators and their wards to the Judicial Council Guardianship and Conservatorship Advisory Committee. The Council formed a new advisory committee to study the proposed amendment to K.S.A. 2004 Supp. 59-3075, which relates to the guardian's authority to consent to the withholding or withdrawing of life-saving or life sustaining medical care, treatment, services or procedures from a ward.

COMMITTEE MEMBERSHIP

The Judicial Council created the HB 2307 Advisory Committee and appointed the following persons to the Committee:

Gerald L. Goodell, Chair, Topeka, practicing lawyer and member of Kansas Judicial Council.

Terry Bruce, Hutchinson, State Senator from the 34th district, vice-chair of the Senate Judiciary Committee and practicing lawyer.

Sam K. Bruner, Overland Park, Retired District Judge from the 10th Judicial District and Chair of the Judicial Council Guardianship and Conservatorship Advisory Committee.

John G. Carney, Kansas City, Vice-President of Aging and End of Life at the Center for Practical Bioethics, specializing in the ethical dimensions of decision making at the end of life.

William H. Colby, Prairie Village, Lawyer, represented the family of Nancy Cruzan, author of Long Goodbye: The Deaths of Nancy Cruzan and fellow at the Center for Practical Biothics in Kansas City, Missouri.

Lance Kinzer, Olathe, State Representative from the 14th District and practicing lawyer.

Sandy Kuhlman, Phillipsburg, State Chair of the Kansas Hospice and Palliative Care Organization.

Rud Turnbull, Lawrence, Professor of Special Education and Co-director of the Beach Center on Disability at the University of Kansas.

Tom Welk, Wichita, Catholic priest with a doctorate in medical ethics and Director of Professional Education and Pastoral Care at Harry Hynes Memorial Hospice.

Charles W. Wurth, Wichita, Chairman of the Board of Kansas Health Ethics, owner and operator of nursing homes and former Executive Director of the Institute of Logopedics.

Craig H. Yorke, Topeka, physician, with a speciality in neurosurgery.

METHOD AND STUDY

The Judicial Council appointed a Committee whose members bring knowledge, experience and a variety of points of view to the study and which met four times between July and November of 2005. The Committee discussed the assignment and related issues and considered a number of relevant articles, memoranda, reports, written testimony, position papers and court opinions. A list of the materials considered by the Committee is attached to this report at page 14 and a copy of the materials are available in the Judicial Council office.

In addition, four persons appeared before the Committee to discuss issues and answer the Committee's questions. The Litigation Director of the Disability Rights Center of Kansas, sponsor of the proposed amendments; the Executive Director of the Kansas Guardianship Program, which oversees 1500 guardianships; and two District Court Judges, each of whom had considered several petitions under K.S.A. 75-3075(e)(7)(C), appeared before the Committee.

THE ISSUE

The issue before the Committee is whether K.S.A. 2004 Supp. 59-3075(e)(7)(C) should be amended, and if it should be amended, how should the amendment be phrased. A copy of K.S.A. 2004 Supp. 59-3075 is included with the report at page 17.

Currently subsection (e)(7)(C) of K.S.A. 59-3075 reads as follows:

> "(C) in the circumstances where the ward's treating physician shall certify in writing to the guardian that the ward is in a persistent vegetative state or is suffering from an illness or other medical condition for which further treatment, other than for the relief of pain,

would not likely prolong the life of the ward other than by artificial means, nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward currently possesses, and which opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the health care provider has access established for the purposes of reviewing such circumstances and the appropriateness of any type of physician's order which would have the effect of withholding or withdrawing life-saving or life sustaining medical care, treatment, services or procedures. Such written certification shall be approved by an order issued by the court;"

2005 HB 2307 proposes the subsection be amended to read as follows:

"(C) when the guardian can prove beyond a reasonable doubt the ward's intent, after full informed consent, to withhold or withdraw health care or food and water in the current circumstances. The ward shall be afforded full and complete due process including, but not limited to, the right to court appointed counsel, notice, hearing, subpoena power, discovery, payment of costs for experts if such ward is deemed indigent and right to a jury trial. In making this determination, there shall be a presumption in favor of the continued treatment of the ward. If the ward is not able to communicate or give informed consent, the court appointed counsel shall make decisions on behalf of the ward in order to zealously represent the ward and protect such ward's constitutional rights. If the ward, or court appointed attorney on behalf of a non-communicative ward, elects a jury trial, the panel shall consist of 12 members and render a unanimous verdict. The court should appoint an attorney from the protection and advocacy system for the state of Kansas if they are able to serve. Health care shall not include food and water. Food and water shall not be withheld or withdrawn without express written intent of the ward. Non-terminal physical or mental disability alone shall not be a rational reason for withholding or withdrawing medical treatment. People with non-terminal physical or mental disabilities who express an interest in withholding or withdrawing medical care should be treated the same as people without disabilities and be referred for appropriate support and services;"

Consideration of the issue is complicated by the fact that the same change that is proposed in 2005 HB 2307 has been amended into 2005 SB 92, which has passed both the Senate and the House, and is currently in the Senate Health and Welfare Committee, as a result of being determined

to be materially changed. Also, 2005 SB 240 is identical to HB 2307 and is currently in the Senate Judiciary Committee.

COMMITTEE FINDINGS

Despite the Committee's diverse backgrounds, experiences and initial opinions about what K.S.A. 59-3075 should accomplish, there were several matters on which the Committee reached agreement and those serve as a basis for its recommendation.

The following are findings of the Committee, followed by a brief explanation.

1. **The Kansas statute relating to end-of-life decisions for wards [K.S.A. 2004 Supp. 59-3075(e)(7)(C)] is not frequently used.**

Although there is a great deal of interest both locally and nationally, and much is written about end of life decisions, the Kansas statute relating to end-of-life decisions for wards is not frequently used.

The 2000 U.S. Census found the population of Kansas to be 2.7 million persons. It is estimated that approximately 20,000 persons in Kansas are under a guardianship or a combination guardianship and conservatorship. However, research by the Judicial Council staff found that, in slightly over three years since the new Guardianship and Conservatorship Act was enacted, thirteen petitions under K.S.A. 59-3075(e)(7)(C) have been filed in Johnson, Shawnee, Sedgwick and Wyandotte Counties. Because these four counties account for approximately 40% of all guardianship and conservatorship filings and terminations, it is estimated that, on the average, less than one such petition is filed in the state each month.

2. **The Committee is not aware of any cases in which the existing statute has led to abuse.**

Despite the broad contacts of the Committee members in the academic, bio-ethical, disabled advocacy, hospice, legal, legislative, medical, nursing home and political communities, no Committee member is aware of any cases in which the existing statute has led to abuse.

Neither of the district judges who appeared before the Committee, nor the Executive Director of the Kansas Guardianship Program were aware of any abuses of the current statute. In addition, the Litigation Director of the Disability Rights Center of Kansas, which is a federally funded program established by Congress to create a protection and advocacy system for the disabled and has many contacts in the disabled community, stated he was not aware of any abuse of a ward under the current statute. However, he did tell the Committee that because there is no reporting system for such cases, there is the possibility there have been abuses of which no one is aware.

3. **The last sentence of the existing statute which reads as follows: "Such written certification shall be approved by an order issued by the court." could be more clearly drafted to give clear directions to the courts.**

In 2002, when the revised Kansas Guardianship and Conservatorship Act was considered by the Legislature, the last sentence of K.S.A. 59-3075(e)(7)(C) was not a part of the bill the Judicial Council recommended. The bill proposed by the Judicial Council considered end of life decisions under the subsection to be medical decisions which should be made without court involvement. The existing language was a compromise between those who sought more court involvement and those who believed the decision should be a medical decision.

An example of why the last sentence of the statute could be more clearly drafted can be found in comparing the comment under Judicial Council Probate Form No. 2743, which is the initial petition in the series of forms relating to the withholding of lifesaving treatment, with the testimony of the two District Judges that appeared before the Committee.

In form 2743 of the Kansas Judicial Council Probate Forms, a paragraph in the comment reads as follows:

> "It is important to note that the last sentence of (e)(7)(C) states that the court *shall* approve the written certificate by order. The court is not approving the withholding or the withdrawing of life-saving or life sustaining care, treatment, services or procedures; it is approving the written certificate of the treating physician. The court is limited to determining whether or not the certified written statement conforms with (e)(7)(C)."

The Judicial Council forms are widely used, and provide guidance in preparing filings for withholding lifesaving treatment. While the comment to the forms suggests how the statute should be interpreted, it was clear from the testimony of the District Judges before the Committee that the Judges interpret the word "shall" as "may".

It was also clear from the testimony of the District Court Judges to the Committee that the statute is interpreted differently in different courts and there may be differences in how these cases are handled in the various jurisdictions of the state.

RECOMMENDED AMENDMENT

After extensive discussion, it was agreed by the Committee to recommend that the proposed amendment to K.S.A. 2004 Supp. 59-3075 (e)(7)(C) contained in 2005 HB 2307 not be enacted and the subsection instead be amended to read as follows:

> "(C) in the circumstances where the ward's treating physician shall certify in writing to the guardian that the ward is ~~in a persistent vegetative state or is~~ suffering from an illness or other medical

condition for which further treatment, other than for the relief of pain, would not likely prolong the life of the ward other than by artificial means, ~~nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward currently possesses;~~ and which opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the health care provider has access established for the purposes of reviewing such circumstances and the appropriateness of any type of physician's order which would have the effect of withholding or withdrawing life-saving or life sustaining medical care, treatment, services or procedures. Such written certification shall by approved by an order issued by the court if the court determines, by clear and convincing evidence, that the ward meets the conditions set forth in the certificate. The determination shall be made after a hearing with notice to all interested parties, unless the court determines, based upon evidence presented to the court, that such notice and hearing are not necessary.

The Committee struck the phrase "in a persistent vegetative state or is" for several reasons. The phrase "persistent vegetative state" is considered by some to be pejorative language, especially by those in the disabled community who equate the language to a person being called a vegetable; in the aftermath of the Schiavo case, the term evokes a negative emotional reaction in many persons and the Committee is of the opinion that the remaining language "is suffering from an illness or other medical condition for which further treatment, other than for the relief of pain, would not likely prolong the life of the ward other than by artificial means" is broad enough to include persons in a persistent vegetative state. However, the Committee is aware that the term "persistent vegetative state" is a medical diagnosis and, though it may no longer appear in the statute, it may still be the diagnosis and be used in such cases.

The Committee struck the phrase "nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward currently posses", because the standard is not an objective standard and is not necessary to include in the statute.

The new language at the end of the paragraph requires notice and hearing prior to the judge's determination, by a clear and convincing evidence standard, that the ward meets the conditions set forth in the certificate. The section also provides that the notice and hearing are not required if, based on evidence presented to the court, the judge finds that the notice and hearing are not necessary.

(Note: Committee member, William H. Colby, was unable to participate in the final Committee deliberations in which this amendment was drafted and does not endorse the amendment.)

OTHER ISSUES

The subject of artificial nutrition and hydration was discussed by the Committee several times during this study. A question raised in these discussions was whether such artificial nutrition and hydration should be considered medical treatment. The Committee did not attempt to answer that question and is aware that other groups are, or will be, studying the issue. The Committee is also aware that any general policy adopted by the Legislature will apply to wards.

Approved by the Judicial Council
December 2, 2005

REPORT OF THE JUDICIAL COUNCIL
GUARDIANSHIP AND CONSERVATORSHIP ADVISORY COMMITTEE
ON 2005 HB 2307

BACKGROUND

In February of 2005, House Judiciary Chair Michael R. O'Neal requested that the Judicial Council study 2005 House Bill No. 2307 relating to the appointment of guardians and conservators. HB 2307 proposes to amend K.S.A. 2004 Supp. 59-3068, which currently relates to the priority of nominees and their qualifications when a guardian is appointed and K.S.A. 2004 Supp. 59-3075, which currently relates to a guardian's duties, responsibilities, powers and authority.

At the June, 2005 meeting of the Judicial Council, the Council agreed to undertake the study of HB 2307 requested by Representative O'Neal. The Council assigned the study of the proposed amendments to K.S.A. 2004 Supp. 59-3068(b) and 59-3075(a)(2), which relate to conflicts of interests between guardians and conservators and their wards, to the Judicial Council Guardianship and Conservatorship Advisory Committee. The Council formed a new advisory committee to study the proposed amendment to K.S.A. 2004 Supp. 59-3075(e)(7)(C), which relates to the guardian's authority to consent to the withholding or withdrawing of life-saving or life sustaining medical care, treatment, services or procedures from a ward.

This report is the Judicial Council Guardianship and Conservatorship Committee's response to its assignment to study 2005 HB 2307. However, it should be noted that 2005 SB 240 is identical to the bill reviewed herein and is currently in the Senate Judiciary Committee.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Guardianship and Conservatorship Advisory Committee are:

Hon. Sam K. Bruner, Chairman, retired District Court Judge, Overland Park

Tim Emert, practicing attorney and former State Senator, Independence

Hon. Thomas H. Graber, District Court Judge, Wellington

John H. House, Attorney, Kansas Department of Social & Rehabilitative Services, Topeka

Jean Krahn, Kansas Guardianship Program - Executive Director, Manhattan

Hon. Philip T. Kyle, Magistrate Judge in 24th Judicial District, Jetmore

Hon. Hal B. Malone, retired District Court Judge in 18th Judicial District, Wichita

H. Philip Martin, practicing attorney, Larned

Hon. David P. Mikesic, District Court Judge in 29th Judicial District, Kansas City

Robert I. Nicholson, Jr., practicing attorney, Paola

Dr. Jane Rhys, Kansas Council on Developmental Disabilities - Executive Director, Topeka

STATUTORY AMENDMENTS PROPOSED IN 2005 SB 2307

The issue before the Committee is whether K.S.A. 59-3068(b) and 59-3075(a)(2) should be amended, and if so, how the amendment should be phrased.

2005 HB 2307 proposes the following additions to K.S.A. 59-3068(b):

(b) (1) The court, in appointing a guardian or conservator, shall consider the workload, capabilities and potential conflicts of interest of the proposed 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 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.

(2) The court shall not appoint an unrelated person, institution, association, or corporation to be the guardian of an incapacitated person if the unrelated person, institution, association, or corporation:

(A) provides, or is likely to provide during the guardianship, goods or services for a fee or anything of benefit to the incapacitated person in the professional or business capacity;

(B) is or is likely to become during the guardianship period a creditor of the incapacitated person;

(C) has or is likely to have during the guardianship period interests that may conflict with interests of the incapacitated person;

(D) is an employee of a treatment or residential facility where a ward is an inpatient in or resident of the facility; or

(E) is employed by an unrelated person, institution, association, or corporation who or which would be disqualified under paragraphs (A) through (D).

2005 HB 2307 proposes the following additions to K.S.A. 59-3075(a)(2):

(2) A guardian shall 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. A guardian who is not a family member shall not provide direct services for a fee or for anything of

benefit to the ward. The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest occurs where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the ward. The guardian shall be independent from all providers of services to the ward to ensure that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the ward. The guardian shall not concurrently represent both the ward and the service provider. The guardian shall not employ such guardian's friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court. A guardian who is also an attorney shall not provide legal services to the ward for a fee. The guardian shall petition or assist the ward to petition the court for limitation or termination of the guardianship when the ward is no longer a person with a disability in need of a guardian, or when there are effective alternatives available. The guardian shall assist the ward in preparing and filing a petition for restoration upon request.

COMMITTEE FINDINGS

The Committee is unanimously opposed to the 2005 HB 2307's proposed amendments to K.S.A. 2004 Supp. 59-3068(b) and 59-3075(a)(2). The following findings set forth the basis for the Committee's position and recommendation.

1. **The prohibitions set forth in proposed K.S.A. 59-3068(b)(2) are limited to "unrelated" guardians.**

2005 HB 2307 proposes a new subsection (b)(2) be added to K.S.A. 59-3068 which prohibits appointment of "unrelated" guardians in certain situations. The presupposition that potential conflicts of interest are not a concern for guardians who are related to the ward cannot be reconciled with reality. Family members who are guardians can have a myriad of conflicts. Financial conflicts of interest are particularly common in familial guardian/ward relationships.

2. **The proposed additions to K.S.A. 59-3068 are not artfully drafted and would be difficult to apply.**

As summarized below, there are several serious flaws in the language of the proposed additions to K.S.A. 59-3068:

a) "Incapacitated person" is a term of art that is no longer in use in Kansas.

b) The language "likely to provide," "likely to become," and "likely to have" requires courts to be able to foretell the future in order to apply the statute.

c) The provision is directed at guardians who are "unrelated," a term that is not defined.

3. The proposed amendment to K.S.A. 59-3068 would absolutely prohibit the selection of potential appointees who could be otherwise appointed with proper disclosures.

The provision that would be added to K.S.A. 59-3068 would prohibit many qualified, competent people from serving as guardians. An employee of the provider of any services to the ward could not serve as the guardian, even if the employee worked in a different location or had nothing at all to do with the actual delivery of services to the ward. In reality, this category of people is a valuable resource in the community as potential guardians. This provision, if enacted, would needlessly disqualify countless guardians currently serving in a competent and professional fashion.

4. The proposed amendment to K.S.A. 59-3075 employs a "laundry list" approach to attempt to define conflict of interest.

K.S.A. 59-3075(a)(2) currently contains broad directives regarding a guardian's duties and responsibilities. The language that is proposed in 2005 HB 2307 as an addition to that subsection contains a list of very specific things a guardian "shall" or "shall not" do. It appears to attempt to define situations that would constitute a conflict of interest. Laundry list approaches should be used with caution, especially in statutes. Such lists inevitably lead to questions regarding a situation that is not listed. Was it intentionally omitted, or was it forgotten or not considered? Despite the

apparent attempt to be specific about what constitutes a conflict of interest, the proposed language includes terms that are not defined. For example, there is no definition of "friends or family" to accompany the provision that "The guardian shall not employ such guardian's friends or family to provide services . . ."

5. The amendments proposed in 2005 HB 2307 are unnecessary because the act already contains provisions that adequately deal with existing and potential conflicts of interest.

There is no need for these amendments. The act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 *et seq.*, thoroughly addresses the potential for conflicts of interest in guardianships and conservatorships. The court is directed to consider potential conflicts at the time of appointment. K.S.A. 59-3068(b) states:

> "The court, in appointing a guardian or conservator, shall consider the workload, capabilities and potential conflicts of interest of the proposed guardian or conservator, or both, before making such appointment . . ." (Emphasis added).

The act also provides guidance for guardians. The last sentence of existing K.S.A. 59-3075(a)(2), immediately preceding the proposed laundry list addition, clearly states that "A guardian shall at all times act in the best interests of the ward and shall exercise reasonable care, diligence and prudence." It is not necessary to then list situations in which a guardian would not be acting in the ward's best interests.

The act also has built-in opportunities to bring a conflict of interest to the attention of the court. Anyone can file a verified petition pursuant to K.S.A. 59-3088 requesting the removal of a guardian or conservator, or both. The court can even raise the issue in the absence of a petition and set the matter for hearing "at any time when the court has reason to believe that removal of a

guardian or conservator, or both, may be necessary." K.S.A. 60-3088(c). In addition, K.S.A. 60-3089(a) states as follows:

> "At any time the court has reason to believe that the guardian or conservator, or both, has failed to faithfully or diligently carry out such person's duties or responsibilities or to properly exercise such person's powers or authorities in a manner consistent with the provisions of K.S.A. Supp. 59-3075 or 59-3078, and amendments thereto, or with any prior order of the court, the court may issue to the guardian or conservator, or both, an order to appear before the court at a specified date, time and place to show just cause why the court should not find that such person has failed to faithfully or diligently carry out such person's duties or responsibilities or to properly exercise such person's powers or authorities."

This statute also gives the court broad latitude to shape an appropriate remedy, depending on the court's findings at the conclusion of the hearing. These range from dismissal of the proceedings to removal of the guardian or conservator and revocation of the letters of guardianship or conservatorship, or both. K.S.A. 59-3088(c) and (d).

6. 2005 HB 2307 does not solve the perceived problem it attempts to address and instead creates new problems.

The Committee believes that 2005 HB 2307 was at least in part a reaction to the Newton case in which the owner of a group home served as guardian and provided therapy to a ward residing in the home. It is the Committee's position that the Newton case is an example of human failures and not of inadequate statutory protections. Moreover, 2005 HB 2307 is not well drafted or tailored to address the perceived issue. The bill is overly broad and contains undefined terms and vague language that are incapable of uniform application. Further, enactment of the bill would result in the outright disqualification of capable and competent persons who could otherwise be appointed as guardians.

7. The concern that influenced the introduction of 2005 HB 2307 can be addressed with less restrictive provisions.

As stated above, it is the Committee's position that current statutory provisions afford adequate protection against the appointment or retention of guardians whose interests conflict with those of the proposed ward. The Committee firmly believes that Kansas judges are capable and are in fact in the best position to evaluate individual situations and make the best decision for each proposed ward. 2005 HB 2307 takes that discretion away from judges by enacting blanket prohibitions against situations that "might" result in a conflict of interest. Although the Committee did not find that it is necessary to amend the act, it was also agreed that it would not be harmful to add a more detailed conflict analysis to K.S.A. 59-3068 that is narrowly tailored to address the concerns of the drafters of 2005 HB 2307 without undue intrusion on judicial discretion. The Committee's proposed amendment is set forth below.

COMMITTEE'S RECOMMENDATION

After careful consideration, the Committee recommends that the proposed amendments to K.S.A. 2004 Supp. 59-3068(b) and 59-3075(a)(2) contained in 2005 HB 2307 not be enacted. Although the Committee's position is that no amendments to the act are necessary, if the legislature determines that more detailed guidance on situations in which a potential guardian is a service provider or an employee of a service provider, an addition to K.S.A. 59-3068(b) should be worded as set forth below. The Committee is opposed to any amendment to K.S.A. 59-3075.

ACCEPTABLE AMENDMENT TO 59-3068(b)

59-3068. Appointment of guardian or conservator; priority of nominee; qualifications. (a) The court in appointing a guardian or conservator shall give priority in the following order to:

(1) The nominee of the proposed ward or proposed conservatee, if such nomination is made within any durable power of attorney;

(2) the nominee of a natural guardian;

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

(4) the nominee of the spouse, adult child or other close family member of the proposed ward or proposed conservatee; or

(5) the nominee of the petitioner.

(b)(1) The court, in appointing a guardian or conservator, shall consider the workload, capabilities and potential conflicts of interest of the proposed 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 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.

(2) If the proposed guardian or proposed conservator is a person who provides care or other services, or is an employee of an agency, partnership or corporation which provides care or other services, to persons with a disability similar in nature to the condition or conditions which contribute to the impairment of the ward or conservatee, then that person or employee may be appointed as the guardian or conservator only when:

(A) the person or employee is the spouse, parent, grandparent, child, grandchild, sibling, niece, nephew, aunt or uncle of the ward or conservatee, and the court is satisfied that the person or employee is aware of issues of conflict of interest and has or will receive training from an appropriate person or agency concerning the proper exercise of the duties, responsibilities, powers and authorities of a guardian or conservator in K.S.A. 59-3075 and 59-3078, and amendments thereto;

(B) the person or employee does not personally provide nor supervise the providing of care or other services to the ward or conservatee, and the person or employee is not in a position to be called upon to advocate for the agency, partnership or corporation in opposition to the interests of the ward or conservatee; or,

(C) the person or employee is the only person readily available to be appointed and the court is satisfied that the person or employee is aware of issues of conflict of interest and has or will receive training from an appropriate person or agency concerning the proper exercise of the duties, responsibilities, powers and authorities of a guardian or conservator in K.S.A. 59-3075 and 59-3078, and amendments thereto.

7-17

For purposes of this section, "employee" shall include any volunteer, student, trainee or other classification of persons providing services to any agency, partnership or corporation, whether compensated or not.

(3) Nothing in this section shall prohibit a guardian or conservator from collecting a reasonable fee, as approved by the court, for carrying out their duties and responsibilities as a guardian or conservator. Nothing in this section shall prohibit a guardian or conservator associated with the Kansas guardianship program from receiving a stipend from that program for carrying out his or her duties and responsibilities as a guardian or conservator.

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

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EQUALITY • LAW • JUSTICE

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Testimony to the Senate Judiciary Committee

Testimony in Support of SB 240 (Conflict of Interest)

March 13, 2006

Chairman Vratil and the honorable members of the committee, my name is Rocky Nichols. I am the Executive Director of the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As the state designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws, including representing persons with disabilities to amend, reduce, or terminate unnecessary guardianship and conservatorships.

Senate Bill 240 deals with two flaws in Kansas Guardianship law, conflicts of interest that are allowed under Kansas law between guardians/conservators and a fatal flaw in law on Withhold/Withdrawal issues involving guardians' power over wards. Because the Chair has asked us to focus our comments to the conflict of interest portion, we will do that. However, as the drafters of the Withhold/Withdraw portion of the bill and strong supporters of this policy change, we would answer any questions the Committee may have on this policy subject.

Preventing Conflicts of Interest that Make Kansans with Disabilities More Vulnerable:

SB 240 amends K.S.A. 59-3068 and 59-3075 to bring Kansas law into substantial conformity with the National Guardianship Association's 2002 Standards of Practice regarding conflict of interest of an un-related, non-family member guardian/conservator. This proposal will help reform the systemic and inherent problems with conflict of interest of guardians/conservators, problems that make Kansans with disabilities more vulnerable. DRC used two standards in developing its proposal to prohibit non-family guardians who have conflicts of interest.

Senate Judiciary
3-13-06
Attachment 8

The flaws of Kansas guardianship law were exposed on a national stage with tragic events of the Kaufman house in Newton, Kansas, that unfolded over 20 years. Now that Arlan and Linda Kaufman have been convicted on over 60 total counts for the abuse and neglect atrocities they committed at the Kaufman House, policymakers must learn from this case and build the capacity to better protect Kansans with disabilities.

The Kaufman House case, in Newton Ks, brought the wrong kind of national attention to Kansas. CNN, MSNBC, Fox, BBC and news outlets worldwide reported on the enslavement and sexual abuse of persons with mental illness residing at the Kaufman House, and how it went on for over 20 years. One reason why the Kaufman case dragged on for so long was because Kansas law enabled Arlan Kaufman to use his authority as guardian/conservator to abuse, neglect and threaten residents to keep them silent. Mr. Kaufman was the:
1) guardian/conservator, 2) so-called therapist, 3) landlord, and 4) service provider of a resident of the Kaufman house, our client, Barb T. These are clear conflicts of interest that put people with disabilities at risk, and they are allowed under the law. The guardian/conservator is supposed to stand up for the person with a disability and stand up to the service provider who is abusing/neglecting the ward.

These conflicts of interest allowed by Kansas law enabled Mr. Kaufman to get away with the abuse for so long, and this law failed the victims of the Kaufman house. This flaw puts people with disabilities at risk for abuse, neglect and financial exploitation. I'll show you later how we believe that Arlan Kaufman took at least $100,000 of Barb T's money. Arlan Kaufman's guardianship over the victims was used as a tool to control them. A Kansas State Board of Nursing public report states that videotape evidence, seized from Mr. Kaufman's bedroom, vividly shows Mr. Kaufman sexually touching the genitals of both male and female patients of his, including a woman with mental illness for whom he was court appointed Guardian & Conservator.

So, why is DRC and the Kansas Attorney General bringing this bill forward? Because we have seen first-hand the house of horrors that was the Kaufman house, and we have seen how Kansas law failed the victims who had to suffer at the Kaufman's hand. In fact, it was the Kansas Attorney General's (AG) office and the Disability Rights Center (DRC) who collaborated to get the first person out of the Kaufman House and to safety. By doing this, federal authorities had their first witness free from the Kaufman's influence. Thanks to that collaboration, and brilliant prosecutors at the US Attorneys Office and DOJ, Arlan and Linda Kaufman were indicted and convicted on 61 criminal charges including

involuntary slavery of persons with mentally illness, mail fraud and defrauding taxpayers by illegally billing Medicare.

DRC offers a balloon amendment that we have worked out with the Kansas Guardianship program and others that improves the bill. These amendments ensured that the version heard in the House last year had no opponents. Our comments today are regarding this balloon version of SB 240.

How SB 240 fixes flaws in the Guardianship law:

First, DRC used the National Guardianship Association standards as the model and the starting point for SB 240. The National Guardianship Association standards recommend preventing service conflict of interest focus on unrelated, non-family members (from providing direct services to the ward, etc.), which is one reason why this bill focuses on preventing conflicts of interests for unrelated, non-family guardians and conservators. The state's Kansas Guardianship Program requires its Guardians and Conservators to follow the NGA standards and DRC believes that all guardians in Kansas should be held to the same standard.

After that, DRC relied on the standards for guardians in the Kansas Administrative Regulations governing Adult Care Homes. SB 240 would provide the same protections against guardianship conflicts of interest to people with disabilities residing in community-based settings as is currently provided to those who reside in these institutional based services. K.A.R. 28-39-275 (h) states:

> (h) Power of attorney and guardianship. Anyone employed by or having a financial interest in the facility, unless the person is related by marriage or blood within the second degree to the resident, shall not accept a power of attorney, a durable power of attorney for health care decisions, a guardianship, or a conservatorship.

DRC believes that this same standard needs to apply to all non-family guardians (as defined in K.A.R. 28-39-275 (h)) and, should be the standard regardless of where the person with a disability resides – adult care home, community-based setting, own home, etc.

Current Kansas law, Kan. Stat. Ann. § 59-3068(b), requires the court, in appointing a guardian, to only "consider" the "potential conflicts of interest" of the proposed guardian or conservator. Kansas law does not prohibit appointment of a guardian or conservator with conflicts. This loophole in the law allowed Arlan Kaufman to be the guardian and conservator for Barb T. Moreover, once a guardian or

conservator is appointed, real conflicts of interest can arise where no "potential" conflict existed at the time of appointment.

The Perfect Example of Financial Exploitation:
I want to refer to the financial records that are attached to my testimony. Mr. Kaufman controlled Barbara T's finances because he was her guardian and conservator. Mr. Kaufman lost his license to practice social work and could no longer bill Medicare for services in November 2001. Then, Mr. Kaufman won the lottery. His ward, Barb T., inherited $175,000 as the result of her brother's death. Because Mr. Kaufman was the guardian and conservator, he controlled these dollars. Because he was also the service provider and had a financial conflict of interest, stating in 2002 he began to launder funds from Barbara's accounts into his own. He literally wrote checks to himself as the service provider. Within two years he had taken nearly $100,000 of Barb T's inheritance for "services rendered" over the prior 15 years. This flaw in Kansas law that allows guardians and conservators to be service providers and have financial conflicts of interest with their wards helped enable the financial exploitation of Barb T, to the tune of $100,000.

Allowing for these kinds of conflicts of interests creates a systemic and inherent problem that puts persons with disabilities at risk for abuse neglect and exploitation. The guardian and conservator must always be in a position to zealously advocate on behalf of the ward. For example, when the guardian or conservator is also the service provider for a ward or an employee of a service provider for the ward, who is he or she likely going to support in a dispute, the ward or their employer? Many, if not most people, are going to be significantly affected by their own monetary and employment concerns. This creates a conflict of interest. Kansas law should be strengthened and clearly prohibit conflicts of interest. Non-family guardians and conservators choose which role they prefer: guardian?, conservator?, or provider?

The 2006 Legislature needs to act now to close this gap in the Guardianship law.

The law failed Barbara T. and the other victims at the Kaufman house. Kansas law will continue to fail many others with disabilities unless you take action to correct that failure.

Historical Background

Guardianship law in Kansas was substantially unchanged from 1965 until 2002. In 1997, the Kansas Judicial Council advisory committee on guardianship and conservatorship started to review and draft an entire new code. The advisory committee's proposal was adopted by the Judicial Council and introduced in 2001 in the House Judiciary Committee as HB 2469. The bill was over 110 pages long. There were many opponents to the bill, including the Disability Rights Center of Kansas, then known as Kansas Advocacy & Protective Services. The bill was referred for an interim study. Some changes were proposed by the interim committee. The Judicial Council then proposed some additional amendments in the 2002 session. Once again, even though everyone agreed that overall the changes were positive, many opponents testified. After much debate, all the parties agreed that it was better to have the bill pass in that session and for advocates and other interested parties to come back with changes individually in succeeding years.

SB 240 and HB 2307 were introduced in the 2005 legislature By Attorney General Phill Kline and the Disability Rights Center. SB 240 was in part a response to the Arlan and Linda Kaufman abuse case in Newton, but also in large part, with concern about the increasing numbers of guardians who have become service providers as Kansas has expanded community based services for persons with disabilities.

DRC presented the concept regarding the problem of conflict of interest regarding guardianships/conservatorships to the Judicial Council sub-committee on Guardianship on January 28, 2005. DRC was granted only 15-20 minutes to explain the bill. There was little discussion by the sub-committee. Later that year the House Judiciary Committee heard HB 2307 (which is identical to SB 240). House Judiciary Chairman Mike O'Neal referred HB 2307 to the Kansas Judicial Council for further review. Their report was issued December 2, 2005. DRC was not given another opportunity to address the sub-committee. In fact DRC was not told of when the Judicial Council sub-committee would be studying the issue of conflict of interest. When DRC contacted the Judicial Council we were discouraged from even attending their meetings, giving DRC and the disability community the clear message that the committee had already staked its position. After all, it was this sub-committee that wrote the original re-write of the guardianship statute in 2000-2001, so why would they admit that they were in error? Moreover, the Judicial Council sub-committee did not give any consideration to the balloon amendments offered by DRC in the House Judiciary Committee – those same balloon amends are offered to this Senate committee. Those balloon amendments addressed many concerns of the guardianship

community and they were formulated with the input of the Kansas Guardianship Program. According to members who sat on the Judicial Council sub-committee, the issue of conflict of interest was barely discussed. So, DRC was not allowed to provide input, was discouraged from being involved, and the matter did not receive the due diligence that it deserved.

DRC disagrees with both the way Council conducted its review, and their conclusions. The sub-committee refuses to recognize the problems that SB 240 addresses. The community based service system is the only system that does not prohibit conflicts of interests between unrelated guardians and their wards. As stated above, the adult care home regulations recognize the dangers of having guardians who are employed by, or represent the service provider. The Kansas Guardianship Program prohibits conflicts of interest between guardians in their program. The National Guardianship Association standards recommend that states prohibit conflicts of interest as many states have done.

The sub-committee recognizes the conflicts of interest that are present in guardian / ward relationships, especially when the guardian and ward are related. The sub-committee recognized that the Kaufman guardianship was the result of "human error." Unfortunately, the guardianship sub-committee spent its energies defending its position rather than crafting a response that better protects wards from potential guardians that will not have the wards best interest at heart.

A Case Example – the Financial Exploitation Example of Barbara T & Lessons Learned.

- Arlan Kaufman was the court appointed Guardian and Conservator for Barbara T, a person with mental illness who was a resident of the Kaufman house and receiving so-called "therapy" services.

- The attachments from the federal government show that nearly $100,000 of this one person's income remains unaccounted. (see total, page 2 of transfers chart) This nearly $100,000 does not include any of her SSI or SSDI checks that the Kaufman's may have taken from Barb T.

- This case example is a textbook reason why the State should not allow guardians or conservators to have financial or other conflicts of interest with their ward (the person with a disability). Mr. Kaufman was the guardian, conservator, so-called "therapist," and service provider. These conflicts of interest put people with disabilities at risk of abuse, neglect and financial exploitation.

- Arlan Kaufman billed Medicare for services provided to Barbara until he allowed his social work license to lapse in November of 2001. He billed taxpayers for "therapy" and other services until that time.

- Arlan Kaufman made annual accountings to the Court of Barb T's income and expenditures through 1999. After 1999 he made no more reports to the Court.

- Barbara was a Social Security beneficiary and all of her benefits were controlled by her guardian/conservator, Arlan Kaufman. It appeared that she had no savings or resources until 2001, most likely because her SSDI and SSI were taken.

- Barb T's brother died in 2000 and she was the sole heir of his estate. The attached documents detail the transactions from receipt of her inheritance in January 2001 until Kaufman was removed as Guardian in May 2004. None of this was reported to the court.

- June 2001 the U.S. Department of Health and Human Services Office of Inspector General executed a search warrant at the Kaufman's home and other properties and obtained videotapes from Kaufman's bedroom that contain "therapy sessions" of the group home residents.

- Arlan Kaufman surrenders his Social Work License in November 2001. He could no longer bill Medicare prospectively for services after November 2001. So, what did he

do? He began writing himself checks retroactively for "therapy" services rendered prior to 2001.

- Barbara Received at TOTAL of $175,697.10 from her brother's estate between 2001 and 2002. (see transfer chart dated January 11, 2001 & December 19, 2002) (Check #1 is $165,000.10)

- Beginning on August 28, 2002 Arlan Kaufman began writing checks to himself as the Kaufman House, Inc. from Barbara's inheritance account (World Savings). He moved money from her World Savings account to her local Newton Commercial Federal account and then wrote checks to himself through Kaufman House, Inc. (Check #s 2, 3, 4 and 9 are examples of movement from inheritance to local checking)

- Federal prosecutors presented evidence in the form of canceled checks totaling more than $96,000 between August 2002 and May 2004 wrote to himself with his wife, Linda Kaufman co-signing and depositing them. (see total on Transfers Chart)

- By reviewing the canceled checks and the prosecutor's detailed statement you can see where Kaufman wrote himself checks from BTs accounts for "therapy" provided years earlier when he was already billing Medicare for the same services. For example, on May 27, 2003 he wrote a check to himself for $20,567.17 for "therapy" provided in 1986. (see transfer chart date May 27, 2003)

- He continued writing checks to himself for services provided in "1986, 1993, 1994, 1995, 1996, 1997, and 1998." During those same years the Kaufmans were billing Medicare for services for Barbara. Again, he couldn't continue to charge the taxpayers for this bizarre "therapy," so he found other ways. (See checks # 5-14)

- Arlan Kaufman continued to write checks to himself until DRC took action to file for removal of the Guardianship and removed Barbara at her request from the Kaufman group home on May 19, 2004. (see final checks dated May 10, 2004 on transfers chart)

- Unfortunately, until the conclusion of the criminal trial neither Barbara nor her newly appointed Guardian were not aware that some money remained in her inheritance account. DRC attorneys are working to ensure that she has access to the remaining funds.

Transfers to/from Barbara T's Accounts

Date	From Barbara T's Account at	To Barbara T's World Savings Acct	To Barbara T's Commercial Federal Acct	To Kaufman House, Inc. Acct	Noted Purpose
January 11, 2001	U.S. Treasury Check 08994712 VA Insurance		10,000.00		
August 28, 2002	Commercial Federal Check 0085			7,605.00	
September 12, 2002	Commercial Federal Check 0086			2,375.00	
December 19, 2002	U.S. Bank Check 500350596	165,697.10			
December 31, 2002	World Savings Bank Check 92			16,000.00	
January 3, 2003	World Savings Bank Check 91		15,000.00		
April 14, 2003	Commercial Federal Check 1014			3,440.00	Jan - Apr
May 9, 2003	World Savings Bank Check 94		40,000.00		Account # 92983401
May 27, 2003	**Commercial Federal Check 1024**			**20,567.17**	**86**
May 27, 2003	Commercial Federal Check 1025			470.00	May
May 27, 2003	Commercial Federal Check 1026			3,750.00	
July 21, 2003	Commercial Federal Check 1031			615.00	June
July 21, 2003	Commercial Federal Check 1032			560.00	July
September 6, 2003	Commercial Federal Check 89			3,251.50	93 Therapy
September 6, 2003	Commercial Federal Check 90			4,624.45	94 Therapy
September 6, 2003	Commercial Federal Check 91			3,210.55	93 Deficit
September 6, 2003	Commercial Federal Check 92			2,287.00	94 Deficit

Date	From Barbara T's Account at	To Barbara T's World Savings Acct	To Barbara T's Commercial Federal Acct	To Kaufman House, Inc. Acct	Noted Purpose
December 19, 2003	World Savings Bank Check 95		20,000.00		
January 2, 2004	Commercial Federal Check 1041			2,472.00	
February 20, 2004	Commercial Federal Check 1042			750.00	Jan.
February 24, 2004	Commercial Federal Check 1058			6,032.38	95 Therapy
February 24, 2004	Commercial Federal Check 1059			575.03	Feb
February 26, 2004	Commercial Federal Check 1060			992.00	95
February 26, 2004	Commercial Federal Check 1061			812.00	96
February 26, 2004	Commercial Federal Check 1062			5,033.16	96 ther
February 26, 2004	Commercial Federal Check 1063			133.31	Prescriptions
February 26, 2004	World Savings Bank Check 96		4,950.00		
April 5, 2004	World Savings Bank Check 97		4,950.00		
April 6, 2004	Commercial Federal Check 1069			3,898.62	97 ther
April 6, 2004	Commercial Federal Check 1070			4,477.79	98 ther
May 10, 2004	Commercial Federal Check 1072			913.52	97
May 10, 2004	Commercial Federal Check 1073			1,910.99	98
Totals		**$165,697.10**		**$96,756.47**	

Total Amounts in Barbara T's Accounts **$ 175,697.10**
Total Expenditures in 21 months **$ 96,756.47**
Percentage **55.1%**

THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED ON THE BACK. ABSENCE OF THIS FEATURE WILL INDICATE A COPY

usbank
Five Star Service Guaranteed

No. 500350596

93-641
920

DATE: DECEMBER 12, 2002

ONE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED NINETY SEVEN DOLLARS AND 10 CENTS

$165,697.10

PAY

TO THE
ORDER OF: ARLAN KAUFMAN AS CONSERVATOR FOR BARBARA [redacted] T[redacted]

Drawer: USBank
420

PURPOSE/REMITTER: THOMAS SHADOIN

AUTHORIZED SIGNATURE

OFFICIAL CHECK
Location: 2539213
Issued By Traveler's Express Company, Inc
Drawee First Interstate Bank Helena, MT

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Arlan Kaufman

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World Savings Bank, FSB
DEC 19 2002

Shawnee, KS
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> 1010-88882 <

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8-12

83-8929/1010 92

DATE Dec 31, 2002

PAY TO THE ORDER OF Kaufman Treatment Center $16,000.00

Sixteen Thousand Dollars & No/100 DOLLARS

WORLD SAVINGS®
455 South West Street
Wichita, KS 67213
www.worldsavings.com

MEMO

Allan Kaufman

[redacted]

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* FEDERAL RESERVE BOARD OF GOVERNORS

8-14

83-8929/1010 91

DATE 1-3-03

PAY TO THE ORDER OF Barbara T[redacted] Account #[redacted] $15,000.00

Fifteen Thousand dollars & No 100 DOLLARS

WORLD SAVINGS®
455 South West Street
Wichita, KS 67213
www.worldsavings.com

MEMO Transfer Arlan Kaufman

⑈101089292⑈0091 ⑈[redacted] ⑈000150000⑈

3

ENDORSE HERE

DO NOT WRITE, STAMP OR SUBMIT RECEIPTS WITHIN 2" OF TOP EDGE

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* FEDERAL RESERVE BOARD OF GOVERNORS

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DATE 5-9-03

PAY TO THE ORDER OF Barbara A. [redacted] checking Commercial Federal Bank $40,000.00

Forty Thousand dollars & No/100 DOLLARS

WORLD SAVINGS℠
455 South West Street
Wichita, KS 67213
www.worldsavings.com

MEMO Account # [redacted] Arlan Kaufman

⑈101089292⑈0094 ⑈ [redacted] ⑈0004000000⑈

4

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THIS IS TO CERTIFY THAT THE TOTAL AMOUNT OF THIS CHECK HAS BEEN CREDITED TO THE ACCOUNT OF THE WITHIN NAMED PAYEE IN ACCORDANCE WITH PAYEE'S INSTRUCTIONS. ABSENCE OF ENDORSEMENT GUARANTEED COMMERCIAL FEDERAL BANK

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Federal

8-18

0089

83-7108/3011

Date 9/6/03

Pay to the Order of Kaufman Treatment Center | $ 3251.50

three thousand two hundred fifty one + 50/100 Dollars

Security features included Details on back

Commercial Federal Bank
A Federal Savings Bank
Kansas

Arlan Kaufman

For 93 Therapy

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© HARLAND 1997

9/6/03
AK/LK wrote Themselves a checks for
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Kaufman Treatment Center
Funds for Kaufman

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83-7108/3011

Date 9/6/03

Pay to the Order of Kaufman Treatment Center $ 4624.45

four thousand six hundred twenty four and 45cents Dollars

Commercial Federal Bank
A Federal Savings Bank
Kansas

For 94 therapy

Arlan Kaufman

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© HARLAND 1997

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Kaufman Treatment Center
Linda J. Kaufman

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EX 080A-031

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83-7108/3011

Date 9/6/03

Pay to the Order of Kaufman Treatment Center $ 3210.55

Three thousand two hundred ten and 55/100 Dollars

Commercial Federal Bank
A Federal Savings Bank
Kansas

For 93 Deficit

Arlan Kaufman

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7

DO N...

x Kaufman Treatment Center
Arlan Kaufman
Linda J. Kaufman

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83-7108/3011

Date 9/6/03

Pay to the Order of Kaufman Treatment Center $2287.00

two thousand two hundred eighty seven Dollars

Commercial Federal Bank
A Federal Savings Bank
Kansas

For 94 Deficit

Allen Kaufman

⑈0092⑈ ⑆101100029⑆ [redacted]

©MARQUND 1997

EX 080A-032

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Kaufman Treatment Center
Allen
Lynda J. Kaufman

8

8-22

83-8929/1010

96

DATE 2/26/04

PAY TO THE ORDER OF Arlan Kaufman for Barbara A. [redacted] Commercial Federal Bank 92983401 $4950.00

forty nine hundred fifty and no cents DOLLARS

WORLD SAVINGS®
455 South West Street
Wichita, KS 67213
www.worldsavings.com

MEMO

Arlan Kaufman

⑆101089292⑆0096 ⑈ [redacted] ⑈000049500⓪⑈

9

8-23

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Arlen Kauffman
for Barbara A. Thiel

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
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RESERVE BOARD OF GOVERNORS REG CC

Commercial Federal

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ARLAN KAUFMAN
FOR BARBARA [redacted]
1416 GRANDVIEW
NEWTON KS 67114
316-283-4605

83-7109/3011 563

Date 2/24/04

Pay to the Order of Kaufman Treatment Center | $ 6032.38

Six thousand thirty two and 38 cents Dollars

Commercial Federal Bank
100 West 12th Street, Newton, KS 67114
1-800-742-5772
www.comfedbank.com

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Arlan Kaufman MP

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Kaufman Treatment Center
Linda J. Kaufman

10

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Commercial Federal

1059

ARLAN KAUFMAN
FOR BARBARA [redacted]
1416 GRANDVIEW
NEWTON KS 67114
316-283-4605

83-7108/3011 553

Date 2/24/04

Pay to the Order of Kaufman Treatment Center $ 575.03

five hundred seventy five and 3 cents Dollars

Commercial Federal Bank
100 West 12th Street, Newton, KS 67114
1-800-742-5772
www.comfedbank.com

For Feb

Arlan Kaufman

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Kaufman Treatments
Center
Fund for Kaufman

8.25

Commercial
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1060

ARLAN KAUFMAN
FOR BARBARA [redacted]
1416 GRANDVIEW
NEWTON KS 67114
316-283-4605

83-7108/3011 563

Date 2/26/04

Pay to the Order of Kaufman Treatment Center $ 992,00

nine hundred ninety two and no cents Dollars

Commercial
Federal Bank
100 West 12th Street, Newton, KS 67114
1-800-742-5772
www.comfedbank.com

For 95

Arlan Kaufman

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Kaufman Treatment
CODirectors
Linda J. Kaufman

12

Commercial Federal

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1061

ARLAN KAUFMAN
FOR BARBARA [redacted]
1416 GRANDVIEW
NEWTON KS 67114
316-283-4605

83-7109/3011 563

Date 2/26/04

Pay to the Order of Kaufman Treatment Center | $ 812.00

eight hundred twelve and no cents Dollars

Commercial Federal Bank
100 West 12th Street, Newton, KS 67114
1-800-742-5772
www.comfedbank.com

For 96

Arlan Kaufman

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Kaufman Treatment Center
Lindsay J. Kaufman

13

Commercial Federal

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EX 080A-052

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ARLAN KAUFMAN
FOR BARBARA [redacted]
1416 GRANDVIEW
NEWTON KS 67114
316-283-4605

83-7108/3011 563

Date 2/26/04

Pay to the Order of Kaufman Treatment Center $ 5033.16

Five thousand thirty three and 16 cents Dollars

Commercial Federal.Bank
100 West 12th Street, Newton, KS 67114
1-800-742-5772
www.comfedbank.com

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Arlan Kaufman MP

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Kaufman Treatment Center
Linda G. Kaufman

14

DISABILITY RIGHTS CENTER of KANSAS
EQUALITY • LAW • JUSTICE

Disability Rights Center of Kansas
Rocky Nichols, Executive Director
635 SW Harrison, Ste 100 • Topeka, KS 66603
785.273.9661 • 877.776.1541 (Voice)
877.335.3725 (TDD) • 785.273.9414 FAX
rocky@drckansas.org • *Telephone Ext. #106*

History, Timeline and Lessons Learned From Kaufman House

I. Six months that Changed Everything - May 18, 2004, to October 26, 2004:

- Disability Rights Center (DRC) and Kansas Attorney General (AG) involvement and collaboration
- Focus shifted to what the victims wanted and needed, not what the bureaucracy wanted and needed.
- The victim's disabilities were respected, and their opinions were valued … not discarded and discounted (others had said they were "delusional" and that what they claimed was happening at the Kaufman house couldn't be true).

II: The Timeline:

Feb 17, 2004
Attorney General Phill Kline meets with DRC's Executive Director Rocky Nichols and Litigation Director Kirk Lowry and makes a report of Abuse & Neglect at the Kaufman house. This report triggers DRC's access authority under federal law.

Feb 17 – May, 2004 – DRC uses its access authority to conduct an extensive investigation of the Kaufman house and obtain evidence, including copies of the video tapes depicting the bizarre sexual acts and abuse/neglect. DRC works with Attorney General and federal authorities to complete its investigation.

May 18, 2004, DRC employees go to the Kaufman house in Newton, Ks, accompanied by local law enforcement to execute our access authority, complete the on-site portion of the investigation and talk to residents of the

Kaufman house. DRC's federal law gives it reasonable unaccompanied access to the person, the place and their records in order to conduct an investigation. One of the residents for whom Mr. Kaufman was court appointed guardian/conservator enters into an attorney-client relationship with DRC attorneys, and DRC begins providing civil representation to her ("Barbara T").

May 19, 2004, DRC attorney's represented the first victim and obtain civil actions to protect her. An emergency order from the Court is granted to DRC. DRC gets "Barb T" out of the deplorable conditions of the Kaufman house and to safety. Federal authorities and prosecutors had their first witness free from the abusive Kaufman house and free from the Kaufman's influence.

May, 2004 through October 2004 – DRC and the Kansas Attorney General work closely with federal authorities (HHS, Department of Justice, OIG, US Attorney's office) as they begin the process of re-examining the criminal case against the Kaufmans.

Oct 26, 2004 – The Kaufman house is raided. Arlan and Linda Kaufman are arrested. DRC accompanies the FBI and DOJ in their raid and arrest of the Kaufmans. DRC attorneys are appointed by the court to provide support to the victims to ensure that their rights are protected and proper services and supports are provided (housing, mental health care, etc.). Within days a Grand Jury has indicted Arlan and Linda Kaufman on a total of 62 counts, ranging from involuntary slavery/servitude of persons with mental illness, to defrauding taxpayers and billing Medicare for so-called "therapy," mail fraud, conspiracy, etc.

Oct, 2004 to Oct, 2005 – Federal prosecutors and authorities prepare for trial against Arlan and Linda Kaufman. DRC worked closely with prosecutors to protect the rights of the victims who have now become witnesses in the case.

Oct, 2005 to November 3, 2005 – Trial against the Kaufmans takes place in US District Court in Wichita Kansas. Kansas Attorney General's office offers support and staff to assist federal prosecutors in their case. DRC provides civil representation to 13 of the former victims of the Kaufman's abuse and former residents of the Kaufman house.

November 7, 2005 – The Jury finds the defendants guilty as charged on a cumulative 61 of 62 counts. Arlan Kaufman is found guilty on all 31 charges and Linda Kaufman was found guilty on 30 of the 31 charges.

January 23, 2006 – Judge sentences Arlan Kaufman to 30 years and Linda Kaufman to 7 years.

February 7, 2006 – Judge hears arguments on restitution for the victims of the Kaufman's abuse. DRC represents 13 of the former residents. A ruling will be made soon on this issue.

February 8, 2006 – House Federal and State Committee receives briefing on Kaufman House. Victims of the Kaufmans abuse are in attendance.

February 13, 2006 – Hearings are held by House Federal and State Affairs on bills to respond to Kaufman house and prevent future tragedies.

III. A Case Example In Financial Exploitation: Barbara T.

Arlan Kaufman was appointed as the Guardian and Conservator for Barbara T., a Kaufman house resident and victim of more than 20 years. Mr. Kaufman systematically drained her bank accounts of money at the same time he was abusing her, mentally, sexually and emotionally. See Attachment A, a review of the financial documents that detail Kaufman's exploitation of Barbara T.

III. The Kaufman case is also an example of how various components of the State's protective system can better act in concert rather than in the current fragmented fashion.

Please see Attachment B that describes the differences between the legal authority of SRS's Adult Protective Services and the Kansas Protection and Advocacy system, The Disability Rights Center of Kansas.

A key to the success of actions taken in 2004 is the difference between SRS's access authority and DRC's access authority. The ability to obtain justice for the victim of abuse, neglect or exploitation – criminal prosecution or civil prosecution - is only as good as your investigation. This document walks through the differences and helps partially explain why so many investigations and reports by the State go unanswered.

10 total reports of Abuse, Neglect and Exploitation were made to SRS APS (Adult Protective Services) and the investigations were done by SRS APS workers. (these were taken directly from an SRS timeline of the events in the Kaufman case)

- June 1984
- October 1984
- April 1987
- July 1988
- June 1995
- Dec. 1997
- Nov. 1999
- June 2001
- Sept 2001
- Feb 2004

At least four of the 10 reports of abuse and neglect came from former residents of the Kaufman house or their family members – July 1988, June 1995, Dec. 1997 and March 2003.

IV. Four Key Lessons Learned from the Kaufman House:

#1 – Flaws in Kansas law and gaps in our State's Protective Services system failed the victims of the Kaufman House.

- A huge gap was a lack of focus on obtaining justice for people with disabilities and not focusing on the needs of the victims (see below).
- A big flaw is that Kansas law allowed Mr. Kaufman to be a guardian and conservator over a person with a disability and to have huge financial and other conflicts of interests. Mr. Kaufman was the guardian/conservator, so-called "therapist," landlord, service provider. These conflicts of interest are allowed under Kansas law, and they put people with disabilities at risk.
- Kaufman was allowed to act as though he was the guardian/conservator of the residents without accountability to the courts, families or the State.
- These flaws and gaps put people with disabilities at significant risk of abuse, neglect and exploitation. Current law enabled the Kaufmans to abuse and neglect the victims, and further perpetuated the abuse dragging it out the abuse for over 20 years.

- Until the law is changed and these gaps are closed, the State will continue to fail people with disabilities and put them at significant risk of abuse, neglect and exploitation.

#2 – Focus needs to change to obtaining justice for the victims – serving the victims' interest, not the interest of the bureaucracy.

- The 20+ year history of this case shows a problem that was almost exclusively the response with abuse & neglect of people with disabilities: the current system focuses on that the needs of the bureaucracy and not the needs of the victims to obtain justice.
- For example, much of the response from June of 1984 until Feb. 2004 dealt with the needs of the bureaucracy and the state's narrow interest (where was the Kaufmans' license, why weren't they licensed, why won't they conform with the Kansas Supreme Court order requiring them to be licensed, what are the bureaucratic policies, etc.).
- When the focus is on the victim's needs, then people's disabilities will be respected and biases and stigma against disability, especially mental illness will not thwart justice. Example: at least four of the 10 reports of abuse and neglect came from former residents of the Kaufman house or their family members – July 1988, June 1995, Dec. 1997 and March 2003.
- Once the focus was shifted to the needs of the victims, things changed for the better and results were obtained. The six month timeline above is the successful demonstration of this approach (May to Oct., 2004). This is the model of how the state should conduct business with abuse/neglect of victims with disabilities.
- The state has the same basic protective services today as when we had a handful of large facilities warehousing people with disabilities. Kansas needs to update its protective services to the new millennium and the new reality of community based services.
- The lack of focus on justice and the needs of the victims is a gap. The State needs to fill this gap by changing the system to create a new focus on obtaining Justice for the victims. Need a new focus, not a new agency.
- Turn the key the whole way to open up the door to justice. Way to do that is to provide funding and focus to represent the needs of the victims … what the victims need is the system to change to provide: 1) Effective Investigations, 2) Criminal Prosecution, 3) Civil

Prosecution (civil actions, change of guardianships, protect them as crime victims, etc.).

- The new, more effective system needs to be created through enabling legislation

#3 – Enable systemic coordination of the different protective services agencies, law enforcement, and prosecutors.

- Ensure that situations like Kaufman never happen again.
- Create the capacity to obtain justice for the victims.
- Have the different agencies involved (SRS, Dept. on Aging, KDHE, Attorney General, Protection and Advocacy agency – DRC – law enforcement, etc.) work cooperatively to support this new focus on justice.
- When all the different partners can only turn the key so far – then they need to collaborate with the partner who can.

#4 – Victims have asked us to tell you perhaps the biggest lesson learned is that the State needs to act now and take the necessary steps to prevent this from ever happening again.

Kansans for Life

1-800-928-LIFE (5433) www.kfl.org

State Office
2501 East Central
Wichita, KS 67214
(316) 687-5433

Legislative Office
929-A So. Kansas Ave.
Topeka, KS 66612
(785) 234-2998

K.C. Regional Office
7808 Foster
Overland Park, KS 66204
(913) 642-5433

PROPONENT – SB 240

March 13, 2006
Senate Judiciary Committee
Chairman John Vratil

Good afternoon, Chairman Vratil and members of this Committee. I am Jeanne Gawdun, senior lobbyist for Kansans for Life, an affiliate of the National Right to Life Committee. Our concern is protection of innocent human lives, particularly those threatened by abortion, infanticide and euthanasia.

I am here today in support of Senate Bill 240, a proposal to protect Kansans with disabilities. Our focus in this legislation is to correct Kansas law in favor of a presumption for life, when a ward of the state has not executed an informed and express document against certain end-of-life measures. For several years our organization has testified in support of related legislation in the House judiciary committee, most recently, House bills 2307, 2306, 2849, and 2884.

There is an understandable reluctance to take ordinary matters to court. But we are not dealing with ordinary matters here, and the law would not be imposing new duties to families at the bedside.

Current Kansas law does not afford due process rights for people with disabilities before medical care, including food and water, can be withheld or withdrawn. In fact, current law ties the judge's hands; directing a judge to allow the ward to lose his life if the guardian files such a petition with 2 physicians attesting to the ward's precarious medical condition. (See Attachment A.)

Unfortunately, a physician's signature can represent a quality of life decision that overshadows a medical analysis. See Attachment B-- a sample of studies in which patients rated their quality of life as high, but their physicians rated the same patients as having a low quality of life. See also Attachment C-- in regards to medical ethics permitting starvation for even non-comatose and non-terminally ill patients.

SB 240, section (e) 7 (c) can correct Kansas' current fatally flawed law that denies due process to the ward and allows no discretion to the court. We also support SB 239, funding for inspection and prosecution, that will hold perpetrators of abuse and neglect accountable. Both bills are important to pass out of the Senate.

In conclusion, it is the grave responsibility of this committee to structure the law to protect the lives of Kansans who may not possess a worthy guardian at the time their lives are in jeopardy. Even convicted criminals are afforded due process before the death sentence is carried out -- Kansans with disabilities deserve no less.

Thank you, I stand for questions.

Correcting fatal flaws in Guardianship law for Kansans with Disabilities – SB 240

A ward of the state with disabilities, who is not dying or in a coma, can nonetheless have his/her food & fluids withheld and a DNR (do not resuscitate order) put in place, under current Kansas law. Under current law, the judge must grant the petition filed by the ward's guardian as long as there are 2 physician's signatures verifying the ward's disability and his/her need for assistance (broadly defined). Due process would insure a proper hearing with legal counsel for the ward before granting any death sentence.

Both bills do NOT affect:

- **families making end-of-life decisions unless a family member is a ward or guardian**

Current Kansas law WRONGLY allows the guardian to withhold food & fluids from

- **a disabled individual who is not dying or comatose**
- **and who needs some assistance (feeding tube, oxygen tank, dialysis, etc.)**
- **and the judge must permit it**

Both bills ONLY affect:

- **an individual with a disability**
- **who has a court-appointed guardian**
- **and who has NOT executed a living will, advanced directive, or durable power of attorney governing his/her current condition**

Corrected Kansas law WILL require:

- **that any non-family guardian be free from conflicts of interest**
- **that the individual who is a ward receives 'due process' before losing his/her life**
- **that food & fluids not be denied**

A related bill, SB 239, will fund a special unit to investigate & prosecute abuse

SB 239 would create a special Unit to investigate and prosecute perpetrators of abuse, neglect and exploitation of persons with disabilities. Collaborative investigations would be conducted by the Attorney General's office and the Disability Rights Center. Depending on the facts and resolution needed, criminal or civil actions would be taken to obtain justice.

Convicted murderers get due process before losing their lives; the disabled deserve no less.

Kansans for Life supports SB 240 and SB 239 to correct flawed guardianship law.

How good are physicians at diagnosing DNR patients' quality of life?

Noelle Junod Perron, Alfredo Morabia, Antoine de Totrente -Switzerland
http://www.smw.ch/pdf200x/2002/39/smw-10083.PDF

This 2002 study assessed quality of life evaluation on the implementation of Do-Not-Resuscitate (DNR) orders by physicians and the accuracy of physicians' estimation of DNR patients' quality of life
Methods: A 10-month prospective clinical study in a community hospital including 255 DNR patients and 9 physicians in postgraduate training.

In many fields of medicine quality of life is becoming a common item in the assessment of outcome and health status. Furthermore, it is often used as a criterion for the appropriateness of intervention or treatment in clinical situations. Thus, it is of considerable importance to know to what extent physicians are able to estimate their patients' quality of life. However, physicians underestimated quality of life components of DNR patients.

Conclusion: Physicians often (71 %) rely on the assumed quality of life of their patients in their DNR decision but unfortunately tend to underestimate it. Greater involvement of patients in the DNR decision could improve quality of care.

The "misery" perspective: patients more positive than providers

Cheryl Lapp *http://www.uwopartners.org/whatsnews/fall2000/healthview.html*
It has long been noted in professional literature that there is a distinct gap between self-assessed health on the part of older adults and health ratings assigned to them by professional clinicians. Older adults' assessments of their own health are considered to be valid indicators, but interestingly, their health ratings are consistently more positive than the ones presented by professionals.

This 2000 study conducted in the Oshkosh area explored differences in health perceptions, utilizing a sample of 30 **older women, each paired with her own primary health care provider**. The average age of the sample was 83 years, whereas the providers' average age was 48 years, over three decades younger than the subject sample. Most of the women in this semi-rural community had long-standing relationships with their providers, typically ten to fifteen years in duration.

Based on the 60 in-person interviews, paired data were analyzed and compared. In these stable relationships, the health ratings of the patient/provider pairs actually matched 43% of the time. When they **did not match in another 40% of pairs, the older adults' ratings were more positive, a result consistent with the literature.**

Depressed mood in spinal cord injured patients: staff perceptions

Cushman LA, Dijkers MP. University of Rochester School of Medicine and Dentistry, NY.
Arch Phys Med Rehabil. 1990 Mar;71(3):191-6.

This 1990 study examined the correspondence between staff ratings and patient ratings of depressed mood for 102 newly spinal cord injured persons admitted to two regional spinal cord injury rehabilitation centers. Patients rated their mood by using the Depression Adjective Check List (DACL). Treatment staff also rated each patient by completing the DACL as they thought the patient would have on the same day. Ratings were made every three weeks during a patient's stay.

Results: **Staff members typically overestimated levels of patients' depressed moods.** Staff's accuracy in estimating patient mood did not increase with increased exposure to the patient or years of experience in rehabilitation.

Danger Zone

Even though Haleigh Poutre is conscious, she's not necessarily safe.

By Wesley J. Smith, Feb.1, 2005 *http://www.nationalreview.com/smithw/smith200602010816.asp*

In the court (and courts) of life and death, a little 11-year-old Massachusetts girl named Haleigh Poutre could be the next Terri Schiavo. Haleigh was beaten nearly to death last September, allegedly by her adoptive mother and stepfather. The beating left her unconscious and barely clinging to life.

Within a week or so of the beating, her **doctors had written her off**. They apparently **told Haleigh's court-appointed guardian,** Harry Spence**, that she was "virtually brain dead."** Even though he had never visited her, Spence quickly went to court seeking permission to remove her respirator and feeding tube. The court agreed, a decision affirmed recently by the supreme court of Massachusetts. If she didn't stop breathing when the respirator was removed, which doctors expected, she would slowly dehydrate to death.

Then came the unexpected: Before "pulling the plug" on Haleigh, Spence finally decided to visit her. He was stunned. Rather than finding a little girl with "not a chance" of recovery, as doctors had described Haleigh's condition to him (as reported by the Boston Globe), Haleigh was conscious. She was able to give Spence a yellow block when asked to by a social worker and respond to other simple requests.Laudably, Spence immediately called off the dehydration. Haleigh is now off her respirator and breathing on her own. She has been transferred out of the hospital and is currently being treated in a rehabilitation center.

Lest anyone think that Haleigh's apparent consciousness protects her from suffering the fate of Terri Schiavo, think again. In most states, exhibiting consciousness is not a defense against dehydration for profoundly impaired patients. Indeed, cognitively disabled people who are conscious are commonly dehydrated throughout the country. So long as no family member objects, the practice is deemed medically routine.

How can this be? The simple answer is that tube-supplied food and water — often called **"artificial nutrition and hydration" (ANH)** — has been defined in law and in medical ethics as an ordinary medical treatment. This means that it can be refused or withdrawn just like, say, antibiotics, kidney dialysis, chemotherapy, surgery, blood pressure medicine, or any other form of medical care. Indeed, **removing ANH has come to be seen widely in medicine and bioethics as an "ethical" way to end the lives of cognitively disabled "biologically tenacious" patients** (as one prominent bioethicist once described disabled people like Terri Schiavo and Haleigh Poutre), without resorting to active euthanasia.

Defining dehydratable people

It wasn't always so. It used to be thought of as unthinkable to remove a feeding tube. Then, as bioethicists and others among the medical intelligentsia began to worry about the cost of caring for dependent people and the growing number of our elderly — and as personal autonomy increasingly became a driving force in medical ethics — some looked for a way to **shorten the lives of the most marginal people without violating the law** or radically distorting traditional medical values**. Removing tubes providing food and fluids was seen as the answer**. After all, it was argued, use of a feeding tube requires a relatively minor medical procedure. Moreover, the nutrition provided the patient is not steak and potatoes, but a liquid formula prepared under medical auspices so as to ease digestion. There can also be complications such as diarrhea and infection.

Having reached consensus on the matter, the bioethics movement mounted a deliberate and energetic campaign during the 1980s to change the classification of ANH from humane care, which can't be withdrawn, to medical treatment, which can. The first people targeted for potential dehydration were the persistently unconscious or elderly with pronounced morbidity. Thus, bioethics pioneer Daniel Callahan wrote in the October 1983. Hastings Center Report, **"Given the increasingly large pool of superannuated, chronically ill, physically marginalized elderly it [a denial of ANH] could well become the non treatment of choice."**

In March 1986, the American Medical Association Council on Ethical and Judicial Affairs, responsible for deliberating upon and issuing ethics opinions for the AMA, legitimized dehydration when it issued the following statement: **Although a physician "should never intentionally cause death," it was ethical to terminate life-support treatment, even if: ...death is not imminent** but a patient's coma is beyond doubt irreversible and there are adequate safeguards to confirm the accuracy of the diagnosis and with the concurrence of those who have responsibility for the care of the patient. . . . Life-prolonging medical treatment includes medication and artificially or technologically supplied respiration, nutrition and hydration.

There it was: **Food and fluids provided by a feeding tube were officially deemed a medical treatment by the nation's foremost medical association, meaning that withdrawing them was deemed the same as turning off a respirator or stopping kidney dialysis.**

As often happens in bioethics, once the medical intelligentsia reached consensus, their opinion quickly became law. Thus, in 1990, the Supreme Court of the United States issued its decision in Cruzan v. Director, Missouri Department of Health, which upheld Missouri's law allowing for the removal of life-sustaining treatment from a person, provided there was "clear and convincing evidence" that the person would not have wanted to live. Unfortunately, the Court also agreed that tube-supplied food and fluids is a form of medical treatment that can be withdrawn like any other form of treatment. (This is often erroneously called the "right to die.") With the seeming imprimatur of the Supreme Court, all **50 states soon passed statutes permitting the withholding and withdrawal of tube-supplied sustenance — even when the decision was made by a third party.**

With that principle established, what did unconsciousness have to do with it? Not a thing. It didn't take long for the American Medical Association to broaden the categories of dehydratable people. Thus, in 1994, a brief eight years after its first ethics opinion classifying tube feeding as medical treatment that could be withdrawn only when the patient was "beyond doubt" permanently unconscious**, the AMA proclaimed it "not unethical" to withdraw ANH "even if the patient is not terminally ill or permanently unconscious."** And that's where the matter stands today.

But that doesn't make it right. Don't get me wrong: **People can and should be able to refuse unwanted ANH for themselves, either directly or in a written advance medical directive**. But it seems to me that given the certainty of death when denying a patient sustenance — and in light of the profound symbolism of refusing to provide even nourishment — a different standard should apply when third parties seek to refuse tube-supplied food and water on behalf of another.

In such cases, medically inappropriate ANH — such as when the actively dying body can no longer assimilate sustenance — should be able to be refused as other forms of care. **But when the decision is a value judgment that a person's life isn't worth living because of disability or perceived "quality of life," then the decision to dehydrate should be considerably constrained.**

Which brings us back to poor Haleigh Poutre: Until and unless ANH is recognized as a unique category of care to be governed by its own rules for determining when and whether sustenance can be withheld or withdrawn, Haleigh remains very much at risk. After all, her doctors could still conclude that she will not improve. They could still recommend to guardian Harry Spence that he withdraw her food and fluids lest she grow up profoundly disabled. Spence **could still agree that an early death is better than a longer disabled life and ask the courts to sanction her dehydration.** The juvenile court could promptly hold a new hearing in which the judge would undoubtedly be told by a bevy of "expert witness" bioethicists that dehydrating this child to death would be ethical and morally appropriate even though she is conscious. The court could still order her to die slowly, over two weeks, of dehydration despite her being awake and aware. And the supreme court of Massachusetts could still give final approval to the decision. Such is the sad state of medical ethics and the law in the United States of America.

— Wesley J. Smith is a senior fellow at the Discovery Institute and a special consultant to the Center for Bioethics and Culture

Topeka Independent Living Resource Center

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March 13, 2006

Testimony Presented to the Senate Judiciary Committee In Support of SB 240
By
Kevin Siek

Chairperson Vratil and Committee Members,

The Topeka Independent Living Resource Center (TILRC) is a civil and human rights organization. Our mission is to advocate for justice, equality and essential services for a fully integrated and accessible society for all people with disabilities. TILRC has been providing advocacy and services for over 25 years to people of any age with all nature and severity of disability, across the state.

TILRC believes that all Kansans have the right to self-determination and accessing necessary services and supports in order to achieve their goals. While we support less restrictive self-help options, which safeguard health and safety, that do not compromise a person's civil liberties (such as a payee, or durable powers of attorney) we agree with the provisions as contained in SB 240, which clarify some restrictions for appointed guardians.

Guardians, literally have the power of life and death over their wards. It is therefore appropriate that they should be held to the highest standard of accountability when this awesome power has been placed in their hands. We support this legislation, which will eliminate loopholes in the existing statute, in order to prevent needless harm though any potential conflict of interest.

Advocacy agencies who provide essential services and supports; civil and human rights advocacy; and aid Kansans in living with freedom, dignity, respect and having real choice and control regarding all aspects of their lives should provide this critical assistance free from any potential conflict of interest which could limit their effective advocacy.

We would ask this committee to support passage of SB 240.

Thank you for this opportunity to testify in support of SB 240, I will be happy to respond to any questions.

Senate Judiciary
3-13-06
Attachment 10

KANSAS GUARDIANSHIP PROGRAM KGP

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Manhattan, KS 66503-0353
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1-800-672-0086 www.ksgprog.org

Area Office
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Wichita, KS 67214
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To: Senate Judiciary Committee, Senator Vratil Chair
Fr: M. Jean Krahn, Executive Director
Date: March 13, 2006
Re: SB 240 Conflict of Interest When Appointing a Guardian or Conservator

The Kansas Guardianship Program recruits, trains and monitors community volunteers to serve as court appointed guardians or conservators for program eligible individuals. The individuals have limited financial resources (medicaid recipients) and do not have family members willing, able or appropriate to assume guardianship or conservatorship responsibilities. Currently the KGP serves approximately 1450 wards or conservatees through the efforts of more than 835 volunteers.

The KGP was initiated in 1979 under the administration of Kansas Advocacy and Protective Services, Inc. The 1995 Kansas Legislature established the program as a separate public instrumentality pursuant to K.S.A. 74-9601 et seq., as amended. The program is governed by a seven member board of directors, six of whom are appointed by the Governor and one by the Chief Justice. The KGP is funded through State General Funds.

Persons served by the KGP are identified by SRS Adult Protective Services and State Hospital social workers who make formal requests to the KGP for an approved volunteer to be nominated to the court for appointment as guardian or conservator. The needs of the potential ward and conservatee are matched with the abilities and interests of the volunteer.

After a volunteer is appointed as the guardian or conservator, the KGP contracts with the volunteer, requires written monthly reports of activities undertaken on behalf of the person, provides a $20 per month stipend to the volunteer to offset out-of-pocket expenses (volunteers do not receive a fee for services from the individual's resources), and provides ongoing monitoring, training of and support to the volunteer in order to enhance the quality of life of the persons they serve.

KGP Conflict of Interest Guideline

The KGP, for more than twenty years, has had in place a conflict of interest guideline. The program does not initiate the nomination of a volunteer who directly provides or is employed by a program, facility or an organization providing services and supports to the ward or conservatee. We support the court considering conflict of interest parameters when appointing non-family guardians or conservators.

Senate Judiciary
3-13-06
Attachment 11

Testimony to the
Senate Judiciary Committee

Testimony in Support of SB 240

March 13, 2006

Mr. Chairman and members of the Committee my name is Lynn and I was a resident at one of the Kaufman group homes in 1985 and 1986. I am here today to tell you my story and ask you to take action because of my experiences at that house. But more importantly, I'm here today to talk for my friends who were not as lucky as me and can not be here because they were abused by the Kaufmans, some for more than 20 years. SB 240 is important to me because I don't want other people to have guardians like Arlan Kaufman who not only abuse them like he did Barbara, but gets paid to be their therapist and landlord. Because he was Barb's guardian, he should never have been allowed to be her "service provider" too. I'm asking you to act today to make sure that people like my friend Barb are not under the total control of guardians like Arlan Kaufman.

I spent a very large part of my time at the Kaufman group home locked in the seclusion room. I was required to stay in seclusion for up to a week at a time. I was naked and forced to sleep on the floor with only a piece of carpet for a blanket. All of the windows in the room were boarded up so I could not see out, and no else could see into the room. I used a wastebasket for a bathroom unless someone heard me pounding on the door and let me into a real bathroom. The room was locked from the outside. He would come in to that room every day to talk to me as a therapist would.

The house where I lived was in very bad shape. Mr. Kaufman did all the repair work himself, I believe because he didn't want contractors to see what was going on in the house. It was very unsafe. There were loose and exposed wires, and the stairs were very unstable. It seemed that the bath tub would fall right through to the first floor. The house was full of roaches and other bugs. It was a disgusting place to live. I lived in tremendous fear that the house would catch fire and I would be locked in the seclusion room with no one to let me out.

Like the other residents I was under the control of the Kaufmans. Mr. Kaufman acted just as if he was my guardian. He made me believe that I was a danger to myself and that's why I was required to be naked and stay in the seclusion room. Now I know that he kept me locked in there for other reasons too. He told me that if I didn't follow his direction, he would send me to a state hospital or a nursing facility. I didn't know then that I would have been treated better at those places.

I came here today to make sure you knew the truth about what happened to me and the others who lived at the Kaufman houses. I can speak for myself but many of the others can't. Their lives have been shattered and they may never recover from what the Kaufmans did to them. Even after all of the years I've been out of that place, I struggle.

Please make sure that neither I, nor anyone else is ever subject to this kind of abuse again. No one, including guardians should control every aspect of someone's life. You can change the law to make sure that no more Kaufmans can abuse people for as much as 20 years without being caught. We need you to pass this law so that people with mental illness and other people with disabilities don't ever have to experience that kind of abuse again by their guardians. We need to be able to trust our guardians.

Testimony to the

Senate Committee on Judiciary

Testimony in Support of SB 240

March 13, 2006

Mr. Chairman and members of the Committee my name is Nancy and I was a resident at one of the Kaufman houses from March 1986 to March 1987. I'm here to support SB 240 that would prohibit people like the Kaufmans from being the service provider for a person at the same time they are their guardian.

Although I left in March 1987 Kaufman continued to pressure me to through my church, my job and my therapists to return to his "treatment facility." I was there when Kaufman started his abuse of the people who were living there. I am one of the lucky ones, I was there at the beginning of the abuse and got out before he got worse and before he started video taping. Because I got out I can be here today to talk for my friends who were not so lucky because they were abused by him for more than 20 years.

Lots of other people lived at the Kaufman house over the 25 years before they were shut down. One of them was my friend Barb. Mr. Kaufman was Barb's guardian. No one believed me about what he was doing to Barb. He was allowed to control her whole life. She couldn't leave the Kaufman house because he was her guardian. He abused her, he stole her money, and he stole her life. He should never have been allowed to be her guardian. You need to act today to make sure that guardians like Mr. Kaufman do not have conflicts of interest like he did with Barb. Barb needed justice and as her guardian he made sure that justice never came. SB 240 would help stop people like Kaufman from becoming guardians in the future.

I am a person with mental illness. I was sent to the Kaufman house by the professionals at Prairie View and my church who trusted Kaufman. They didn't know that he was lying to them and manipulating the truth about what he was really doing.

The time I spent at the house was the worst days of my life. Kaufman put me into a locked seclusion room for up to three weeks at a time. My clothes were taken from me. There was no bed to sleep in, or blanket to cover up, just me. For me, Kaufman used seclusion as his way to control me, punish me and make me do what he wanted. I was not let out until I agreed to do and say what he directed me to do and say. He made me agree that I could never get married, never have children, never keep lasting friendships, never keep and job and lots of other things. He kept me in the seclusion room until I admitted and believed that I was responsible for my father sexually abusing me. That somehow I purposely seduced my father. He convinced my mother that I played a big part in the abuse. That was SO WRONG.

Several of your colleagues have asked me how the Kaufman's got away with their abuses for so long. What you need to understand is that he was a master liar and controller. Not only did he lie and manipulate the residents, but he lied and controlled the resident's families, significant others, the doctors, other therapist and the SRS investigators. He told each of them what he

knew they needed to hear to leave him alone and allow him to keep us under his control. He had everyone convinced that he was legit. Because he was Barbara's guardian he made sure that no one got to her and heard the real story.

I was the first resident to report what was happening. I told the people at Prairie View, I told people at my church, I told SRS, and I told my therapist and my doctor but no believed me. In fact they made me go back to that terrible place. I did everything I was supposed to do and no believed me, and no one investigated my story. I told them what Kaufman was forcing Barb to do as her guardian. I was one of four reporters that were either residents or a family member. No one listened to me. Everyone failed me. Everyone failed all of us. That must never happen again!

Arlan and Linda Kaufman have been sentenced to prison but that alone doesn't give me justice. He will spend the rest of his life in seclusion in a jail cell and in a prison that is better than the days I and others spent in his seclusion rooms. So, his being put in jail does not bring me closure, nor does it right the wrongs done to me and the other residents of his houses. I will not know justice, or closure until I know that you have done everything necessary to make sure that this never happens to anyone again.

Please pass SB 240.