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**TO: House Judiciary Committee**

**FROM: Kansas Judicial Council - Rachael Pirner, Triplett Woolf Garretson, LLC,  
Member of the Judicial Council's Guardianship and Conservatorship  
Advisory Committee.**

**DATE: February 12, 2025**

**RE: Proponent testimony on H.B. 2359, enacting the Uniform Adult Guardianship  
and Protective Proceedings Jurisdiction Act and the Uniform Guardianship,  
Conservatorship and Other Protective Arrangements Act**

The Kansas Judicial Council and its Guardianship and Conservatorship Advisory Committee recommend the passage of H.B. 2359. This bill will update existing Kansas statutes to align with the the Uniform law, and help Kansas better work with other states regarding jurisdictional issues arising between Kansas and other states.

## Current Proposed Legislation

In 2020, the Judicial Council asked its Guardianship and Conservatorship Advisory Committee to review the Kansas guardianship and conservatorship act. The Council also asked the Committee to review two Uniform Acts: the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act (UGCOPAA). UAGPPJA is narrowly focused on jurisdiction in adult guardianship cases, while UGCOPAA is much broader and deals with substantive issues relating to guardianship and conservatorship of adults and minors, as well as protective arrangements which can be used in lieu of a "full" guardianship or conservatorship.

## Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

The Committee spent the past several years conducting its assigned study, and now recommends that Kansas adopt the UAGPPJA in its uniform version so that Kansas can join the 46 other states that have adopted it- Florida, Texas, and Michigan are the only other states that have not adopted the UAGPPJA.

The UAGPPJA deals with jurisdiction, transfer, and enforcement issues relating to adult guardianships and protective proceedings. The act resolves interstate jurisdictional conflicts, which are increasingly more common in our mobile society. The act also facilitates the transfer of guardianships between jurisdictions; provides for interstate recognition and enforcement of guardianship orders; and facilitates communication and cooperation between state courts.

Current Kansas guardianship and conservatorship statutes have provisions governing jurisdiction, transfer, and enforcement; however, these provisions are not identical to the Uniform law. When states have different provisions regarding jurisdiction, transfer, and enforcement of guardianship and conservatorship cases, it can be especially difficult for attorneys and special needs planners to transfer a guardianship or conservatorship into and between Kansas and the other three states that have not adopted the UAGPPJA. Adopting the UAGPPJA would allow Kansas to join the vast majority of states that play by identical rules in resolving these difficult issues.

## Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA)

The Committee additionally recommends that Kansas adopt a modified version of the UGCOPAA. Together, these two acts would replace the current guardianship and conservatorship act found at K.S.A. 59-3051 et seq. The UAGPPJA and the UGCOPAA were designed to work together, and if they are to replace the existing Kansas act, they must be adopted together.

The Committee found the UGCOPAA to be much better organized and more clearly written than the existing Kansas guardianship and conservatorship act. The UGCOPAA also contains some new concepts that will improve Kansas guardianship and conservatorship laws. These new concepts include:

- 1) Person-centered philosophy. UGCOPAA requires an individualized plan for each person subject to guardianship or conservatorship. It includes provisions requiring persons subject to guardianship or conservatorship to be given meaningful notice of their rights and an opportunity to be involved in decision-making. The act uses person-centered terminology such as “individual subject to guardianship” rather than “ward” or “incapacitated person.”

- 2) Standard of decision-making. UGCOPAA moves away from a best interest standard and toward a substituted decision-making standard, where a guardian or conservator must consider the preferences of the individual as expressed either in the past or the present.
- 3) Alternatives to guardianship and conservatorship. UGCOPAA encourages the use of less restrictive alternatives such as limited guardianship and conservatorship, supported decision-making or single-issue court orders (“other protective arrangements”) as an alternative to full guardianship or conservatorship. For example, this might mean authorizing a single transaction such as admission to a nursing home or sale of a house in situations where a full guardianship or conservatorship is not needed.

The Committee supports the adoption of these new concepts into Kansas law; however, there were some concepts and procedures in current Kansas law that the Committee wished to retain, and those existing elements of Kansas law have been woven into the proposed uniform act. The Committee’s [report](#) is available online on the Judicial Council’s website under the 2024 heading on the [Studies and Reports](#) page. Attached to the report is a redline draft that shows exactly where the Committee made changes to the Uniform Act to incorporate current Kansas law. The report also contains the Committee’s comments regarding each section.

#### End-of-Life Decision-Making by Guardians

In late July 2024, the Committee’s draft was posted on Judicial Council website for public comment and was sent directly to certain known stakeholders for their review and input. The most significant changes requested by other interested parties were in the area of end-of-life decision-making by guardians. These provisions are found in Section 78(c)(4) of the bill. The Committee had originally brought over language from existing Kansas law at K.S.A. 59-3075(e)(7)(C) setting out when a guardian can withhold or withdraw life-saving or life-sustaining medical care.

The Committee met with representatives of a group of organizations that requested amendments to these end-of-life provisions. That group included the Disability Rights Center (DRC), Kansans for Life, the Kansas Catholic Conference, the Kansas Council on Developmental Disabilities, and the Big Tent Coalition. The group’s suggested amendments were intended to accomplish three main goals:

- 1) to clarify the definition of who can have medical care withheld or withdrawn;
- 2) to ensure that the due process rights of that person are fully protected by requiring the appointment of an attorney, notice and a hearing; and
- 3) to authorize the court to exercise discretion in making a decision whether to approve the withholding or withdrawal of medical care.

The proposed changes would also allow the court to request that DRC represent the person.

The Committee ultimately agreed to make changes to accomplish two of the three identified goals. As reflected in the Kansas comment to Section 315 of the Uniform Act (section 78 of H.B. 2359), the Committee recommended adding the following new provisions regarding decisions by a guardian to withhold or withdraw life-saving or life-sustaining medical care and treatment:

- The requirement that a due process hearing be held within 72 hours;
- The requirement that the court appoint an attorney for the person subject to guardianship, with the option to request that DRC represent the person; and
- The requirement that the court find by clear and convincing evidence that the person meets the conditions of the section.

#### Judicial Council Recommendation

When the Judicial Council met to review the Committee's recommendations, the Council approved all but the portion of the bill dealing with end-of-life decision-making. The Council made no recommendation as to that specific provision and believes the legislative process is the best venue to determine whether further amendments are necessary.

#### Guardianship and Conservatorship Advisory Committee Members

The members of the Guardianship and Conservatorship Advisory Committee are:

Hon. Marilyn Wilder, Chair; Newton  
Hon. Keith Collett; Abilene  
Kip Elliot; Topeka  
Hugh W. Gill; Wichita  
Anne Hendrickson; Kansas City, MO  
Barbara Hickert; Topeka  
Hon. Michael Joyce; Olathe  
Jean Krahn; Manhattan  
Rachael Pirner; Wichita  
Kerry Wasinger; Hays