

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 8, 2005 in Room 313-S of the Capitol.

All members were present except:

Michael Peterson- excused

Ward Loyd- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research

Jill Wolters, Office of Revisor of Statutes

Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Brian Lowe, Citizen

Jennifer Roth, Citizen

Rocky Nichols, Kansas Disability Rights Center

Michael Donnelly, Kansas Disability Rights Center

Kevin Graham, Office of Attorney General

Kerrie Bacon, Kansas Commission on Disability Concerns

Barbara Helm, ARCare

Tom Laing, InterHab

John Carney, Center for Bioethics

Jean Krahn, Kansas Guardian Program

Randy Hearrell, Kansas Judicial Council

The hearing on **SB 7 - in child custody/residency issues, relevant factors include whether parent is residing with a registered offender or person convicted of child abuse**, was opened.

Brian Lowe, Citizen, requested the proposed bill because his children were living with his ex-wife and a registered sex offender. The judge in the case stated that there is no statute that addresses the issue of notifying the other parent when a child is living with a sex offender.

The bill would require, in the divorce code, a rebuttable presumption that it is not in the best interest of the child to have custody or residency granted to a parent involved with someone who is registered under the Kansas Offender Registration Act. Failure to give notice would be considered an indirect civil contempt and the courts could impose reasonable attorney fees. Several other states have similar legislation. (Attachment 1)

Jennifer Roth, Citizen, expressed the following concerns with the proposed bill:

- it imposes a duty on any adult, whether they had custody or not, to inform a parent if someone was in their home who was listed on the Kansas Offender Registration Act.
- juveniles would be brought into the bill because they are required to register
- not every state has a registry, and how often does one have to check the registry for information

While the bill has good intentions, courts are already allowed to consider all relevant factors when determining issues of child custody, residency and parenting time. (Attachment 2)

Written testimony was provided by the Kansas Coalition Against Sexual & Domestic Violence which suggested that current law could be strengthened by merely including two additional factors on the list of factors the court may consider when deciding custody, residency and visitation. (Attachment 3)

The hearing on **SB 7** was closed.

The hearing on **HB 2307 - appointment of guardians, protection of rights of certain ward**, was opened.

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Rocky Nichols, Kansas Disability Rights Center, spoke as a proponent to the bill which reforms two problems with current law, it prevents financial and other conflicts of interests between guardians/conservators and people with disabilities who are their wards and it eliminates the current bias in state law that makes it easy to withhold/withdraw medical care.

The bill adopts a portion of the National Guardianship Association's 2002 Standards of Practice relating to conflicts of interest of guardians/conservators. They have received many complaints from those with disabilities about guardians and conservators with conflicts of interest which puts them at risk for abuse, neglect, and exploitation. ([Attachment 4](#))

He proposed a balloon amendment which would clarify the prohibition of conflicts of interest for conservators, that the bill does not apply to families and that it applies to guardianships and conservators only. ([Attachment 5](#))

Michael Donnelly, addressed the second problem of Kansas law which is providing due process in withholding or withdrawing medical care without formal inquiry into the intent of the person with a disability whose life will end when these decisions are made. The proposed bill would ensure that the rights and wishes of those with disabilities are protected and equal to others.

Kevin Graham, Office of Attorney General, stated that the goal was to increase protection under the law for those who have disabilities. ([Attachment 6](#))

Kerrie Bacon, Kansas Commission on Disability Concerns, this bill is an important bill because it extends basic rights as other citizens to those with disabilities. ([Attachment 7](#))

Written testimony in support of the bill was provided by NAMI ([Attachment 8](#)), Kansas Catholic Conference ([Attachment 9](#)), Kansas Mental Health Coalition ([Attachment 10](#))

Tom Laing, InterHab, supported the concept of the proposed bill but suggested that it needed:

- to provide for recruitment and training of guardians
- to provide that family members be held to equal standards of scrutiny
- corporate guardianships should not be categorically invalidates ([Attachment 11](#))

He had not seen the balloon amendment provided by Rocky Nichols and therefore had no comment on it.

Barbara Helm, ARCare, opposed the bill as currently written. She noted that the Kansas Judicial Council's Guardianship Committee meet on Friday and again opposed the bill. She supported the proposed amendment by Mr. Nichols which would allow corporate guardians to receive reasonable compensation for guardianship services. ([Attachment 12](#))

John Carney, Center for Bioethics, explained that the Kansas Judicial Council crafted guardianship legislation three years ago with many of the individuals in the room. At the time, noone anticipated the complicating factor that the ambiguity of the disabled and disability would present. While he was supportive of the efforts to address the issue, he did not believe that the language fairly represented the clinical and medical interests and needs of those who are disabled and facing the end of life. He requested that the committee direct the Judicial Council to continue to study the language and address concerns. ([Attachment 13](#))

Jean Krahn, Kansas Guardian Program, recruits, trains and monitors guardian volunteers who receive \$20 per month to cover their out of pocket expenses. She was concerned that the proposed bill would make the \$20 a fee for services, the term "...or is likely..." is open to conjecture, and proposed language on page 1, line 37 "...or anything of benefit to the incapacitated person" could be interpreted in such a way as to prohibit any type of pro bono service. ([Attachment 14](#))

Randy Hearrell, Kansas Judicial Council, informed the committee that while the Guardianship Advisory Committee has met and has some possible language it would not be brought before the full Judicial Council until after the 2005 Legislative Session has adjourned.

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Kansans for Life provided some proposed changes (Attachment 15)

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 9, 2005 at 3:30 p.m. in room 313-S.