

SENATE BILL No. 92

By Committee on Public Health and Welfare

1-25

10 AN ACT [**concerning abuse, neglect or exploitation of persons;**
11 relating to the department of aging; concerning duties thereof; [**con-**
12 **cerning withholding or withdrawal of life-saving or life-sustain-**
13 **ing care of certain persons;**] amending K.S.A. 2004 Supp. 39-1404
14 [**and 59-3075**] and repealing the existing ~~section~~ [sections].
15

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

17 Section 1. K.S.A. 2004 Supp. 39-1404 is hereby amended to read as
18 follows: 39-1404. (a) The department of health and environment, *the de-*
19 *partment on aging* or the department of social and rehabilitation services
20 upon receiving a report that a resident is being, or has been, abused,
21 neglected or exploited, or is in a condition which is the result of such
22 abuse, neglect or exploitation[, **or is in a condition where food and**
23 **water may not be withheld under subsection (e)(7)(C) of K.S.A. 59-**
24 **3075 and amendments thereto**] or is in need of protective services
25 shall:

26 (1) When a criminal act has occurred or has appeared to have oc-
27 curred, immediately notify, in writing, the appropriate law enforcement
28 agency;

29 (2) make a personal visit with the involved resident:

30 (A) Within 24 hours when the information from the reporter indi-
31 cates imminent danger to the health or welfare of the involved resident;

32 (B) within three working days for all reports of suspected abuse, when
33 the information from the reporter indicates no imminent danger; or

34 (C) within five working days for all reports of neglect or exploitation
35 when the information from the reporter indicates no imminent danger.

36 (3) Complete, within 30 working days of receiving a report, a thor-
37 ough investigation and evaluation to determine the situation relative to
38 the condition of the involved resident and what action and services, if
39 any, are required. The investigation shall include, but not be limited to,
40 consultation with those individuals having knowledge of the facts of the
41 particular case; and

42 (4) prepare, upon a completion of the evaluation of each case, a writ-
43 ten assessment which shall include an analysis of whether there is or has

1 been abuse, neglect or exploitation; recommended action; a determina-
2 tion of whether protective services are needed; and any follow up.

3 (b) The department which investigates the report shall inform the
4 complainant, upon request of the complainant, that an investigation has
5 been made and, if the allegations of abuse, neglect or exploitation have
6 been substantiated, that corrective measures will be taken if required
7 upon completion of the investigation or sooner if such measures do not
8 jeopardize the investigation.

9 (c) The department on aging may inform the chief administrative
10 officer of a facility as defined by K.S.A. 39-923 and amendments thereto
11 within 30 days of confirmed findings of resident abuse, neglect or
12 exploitation.

13 **[Sec. 2. K.S.A. 2004 Supp. 59-3075 is hereby amended to read**
14 **as follows: 59-3075. (a) (1) The individual or corporation appointed**
15 **by the court to serve as the guardian shall carry out diligently and**
16 **in good faith, the general duties and responsibilities, and shall have**
17 **the general powers and authorities, provided for in this section as**
18 **well as any specific duties, responsibilities, powers and authorities**
19 **assigned to the guardian by the court. In doing so, a guardian shall**
20 **at all times be subject to the control and direction of the court,**
21 **and shall act in accordance with the provisions of any guardianship**
22 **plan filed with the court pursuant to K.S.A. 2004 Supp. 59-3076,**
23 **and amendments thereto. The court shall have the authority to**
24 **appoint counsel for the guardian, and the fees of such attorney**
25 **may be assessed as costs pursuant to K.S.A. 2004 Supp. 59-3094,**
26 **and amendments thereto.**

27 **[(2) A guardian shall become and remain personally ac-**
28 **quainted with the ward, the spouse of the ward and with other**
29 **interested persons associated with the ward and who are knowl-**
30 **edgeable about the ward, the ward's needs and the ward's respon-**
31 **sibilities. A guardian shall exercise authority only as necessitated**
32 **by the ward's limitations. A guardian shall encourage the ward to**
33 **participate in making decisions affecting the ward. A guardian**
34 **shall encourage the ward to act on the ward's own behalf to the**
35 **extent the ward is able. A guardian shall encourage the ward to**
36 **develop or regain the skills and abilities necessary to meet the**
37 **ward's own essential needs and to otherwise manage the ward's**
38 **own affairs. In making decisions on behalf of the ward, a guardian**
39 **shall consider the expressed desires and personal values of the**
40 **ward to the extent known to the guardian. A guardian shall strive**
41 **to assure that the personal, civil and human rights of the ward are**
42 **protected. A guardian shall at all times act in the best interests of**
43 **the ward and shall exercise reasonable care, diligence and**

1 **prudence.**

2 [(b) A guardian shall have the following general duties, re-
3 sponsibilities, powers and authorities:

4 [(1) If the ward is a minor, to have the custody and control of
5 the minor, and to provide for the minor’s care, treatment, habili-
6 tation, education, support and maintenance;

7 [(2) if the ward is an adult, to take charge of the person of the
8 ward, and to provide for the ward’s care, treatment, habilitation,
9 education, support and maintenance;

10 [(3) to consider and either provide on behalf of the ward nec-
11 essary or required consents or refuse the same;

12 [(4) to assure that the ward resides in the least restrictive set-
13 ting appropriate to the needs of the ward and which is reasonably
14 available;

15 [(5) to assure that the ward receives any necessary and reason-
16 ably available medical care, consistent with the provisions of K.S.A.
17 2004 Supp. 59-3077, and amendments thereto, when applicable,
18 and any reasonably available nonmedical care or other services as
19 may be needed to preserve the health of the ward or to assist the
20 ward to develop or retain skills and abilities;

21 [(6) to promote and protect the comfort, safety, health and wel-
22 fare of the ward;

23 [(7) to make necessary determinations and arrangements for,
24 and to give the necessary consents in regard to, the ward’s funeral
25 arrangements, burial or cremation, the performance of an autopsy
26 upon the body of the ward, and anatomical gifts of the ward, sub-
27 ject to the provisions and limitations provided for in K.S.A. 65-2893
28 and 65-3210 and K.S.A. 65-1734, and amendments thereto; and

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

31 [(c) A guardian shall not be obligated by virtue of the guard-
32 ian’s appointment to use the guardian’s own financial resources
33 for the support of the ward.

34 [(d) A guardian shall not be liable to a third person for the acts
35 of the ward solely by virtue of the guardian’s appointment, nor
36 shall a guardian who exercises reasonable care in selecting a third
37 person to provide any medical or other care, treatment or service
38 for the ward be liable for any injury to the ward resulting from the
39 wrongful conduct of that third person.

40 [(e) A guardian shall not have the power:

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

42 [(2) to consent, on behalf of the ward, to the termination of the
43 ward’s parental rights;

1 [(3) to consent to the adoption of the ward, unless approved by
2 the court;

3 [(4) to consent, on behalf of the ward, to any psychosurgery,
4 removal of any bodily organ, or amputation of any limb, unless
5 such surgery, removal or amputation has been approved in ad-
6 vance by the court, except in an emergency and when necessary
7 to preserve the life of the ward or to prevent serious and irrepa-
8 rable impairment to the physical health of the ward;

9 [(5) to consent, on behalf of the ward, to the sterilization of the
10 ward, unless approved by the court following a due process hear-
11 ing held for the purposes of determining whether to approve such,
12 and during which hearing the ward is represented by an attorney
13 appointed by the court;

14 [(6) to consent, on behalf of the ward, to the performance of
15 any experimental biomedical or behavioral procedure on the ward,
16 or for the ward to be a participant in any biomedical or behavioral
17 experiment, without the prior review and approval of such by ei-
18 ther an institutional review board as provided for in title 45, part
19 46 of the code of federal regulations, or if such regulations do not
20 apply, then by a review committee established by the agency, in-
21 stitution or treatment facility at which the procedure or experi-
22 ment is proposed to occur, composed of members selected for the
23 purposes of determining whether the proposed procedure or
24 experiment:

25 [(A) Does not involve any significant risk of harm to the phys-
26 ical or mental health of the ward, or the use of aversive stimulants,
27 and is intended to preserve the life or health of the ward or to
28 assist the ward to develop or regain skills or abilities; or

29 [(B) involves a significant risk of harm to the physical or mental
30 health of the ward, or the use of an aversive stimulant, but that
31 the conducting of the proposed procedure or experiment is in-
32 tended either to preserve the life of the ward, or to significantly
33 improve the quality of life of the ward, or to assist the ward to
34 develop or regain significant skills or abilities, and that the guard-
35 ian has been fully informed concerning the potential risks and ben-
36 efits of the proposed procedure or experiment or of any aversive
37 stimulant proposed to be used, and as to how and under what cir-
38 cumstances the aversive stimulant may be used, and has specifi-
39 cally consented to such;

40 [(7) to consent, on behalf of the ward, to the withholding or
41 withdrawal of life-saving or life sustaining medical care, treatment,
42 services or procedures, except:

43 [(A) In accordance with the provisions of any declaration of the

1 ward made pursuant to the provisions of K.S.A. 65-28,101 through
2 65-28,109, and amendments thereto; or

3 [(B) if the ward, prior to the court's appointment of a guardian
4 pursuant to K.S.A. 2004 Supp. 59-3067, and amendments thereto,
5 shall have executed a durable power of attorney for health care
6 decisions pursuant to K.S.A. 58-629, and amendments thereto, and
7 such shall not have been revoked by the ward prior thereto, and
8 there is included therein any provision relevant to the withholding
9 or withdrawal of life-saving or life-sustaining medical care, treat-
10 ment, services or procedures, then the guardian shall have the
11 authority to act as provided for therein, even if the guardian has
12 revoked or otherwise amended that power of attorney pursuant to
13 the authority of K.S.A. 58-627, and amendments thereto, or the
14 guardian may allow the agent appointed by the ward to act on the
15 ward's behalf if the guardian has not revoked or otherwise
16 amended that power of attorney; or

17 [(C) in the circumstances where the ward's treating physician shall
18 certify in writing to the guardian that the ward is in a persistent vegetative
19 state or is suffering from an illness or other medical condition for which
20 further treatment, other than for the relief of pain, would not likely pro-
21 long the life of the ward other than by artificial means, nor would be likely
22 to restore to the ward any significant degree of capabilities beyond those
23 the ward currently possesses, and which opinion is concurred in by either
24 a second physician or by any medical ethics or similar committee to which
25 the health care provider has access established for the purposes of re-
26 viewing such circumstances and the appropriateness of any type of phy-
27 sician's order which would have the effect of withholding or withdrawing
28 life-saving or life-sustaining medical care, treatment, services or proce-
29 dures. Such written certification shall be approved by an order issued by
30 the court when the guardian can prove beyond a reasonable doubt the
31 ward's intent, after full informed consent, to withhold or withdraw health
32 care or food and water in the current circumstances. The ward shall be
33 afforded full and complete due process including, but not limited to, the
34 right to court appointed counsel, notice, hearing, subpoena power, dis-
35 covery, payment of costs for experts if such ward is deemed indigent and
36 right to a jury trial. In making this determination, there shall be a pre-
37 sumption in favor of the continued treatment of the ward. If the ward is
38 not able to communicate or give informed consent, the court appointed
39 counsel shall make decisions on behalf of the ward in order to zealously
40 represent the ward and protect such ward's constitutional rights. If the
41 ward, or court appointed attorney on behalf of a noncommunicative ward,
42 elects a jury trial, the panel shall consist of 12 members and render a
43 unanimous verdict. The court should appoint an attorney from the pro-

1 *tection and advocacy system for the state of Kansas if they are able to*
2 *serve. Health care shall not include food and water. Food and water shall*
3 *not be withheld or withdrawn without express written intent of the ward.*
4 *Nonterminal physical or mental disability alone shall not be a rational*
5 *reason for withholding or withdrawing medical treatment. People with*
6 *nonterminal physical or mental disabilities who express an interest in*
7 *withholding or withdrawing medical care should be treated the same as*
8 *people without disabilities and be referred for appropriate support and*
9 *services;*

10 **[(8) to exercise any control or authority over the ward's estate,**
11 **except if the court shall specifically authorize such. The court may**
12 **assign such authority to the guardian, including the authority to**
13 **establish certain trusts as provided in K.S.A. 2004 Supp. 59-3080,**
14 **and amendments thereto, and may waive the requirement of the**
15 **posting of a bond, only if:**

16 **[(A) Initially, the combined value of any funds and property in**
17 **the possession of the ward or in the possession of any other person**
18 **or entity, but which the ward is otherwise entitled to possess,**
19 **equals \$10,000 or less; and**

20 **[(B) either the court requires the guardian to report to the**
21 **court the commencement of the exercising of such authority, or**
22 **requires the guardian to specifically request of the court the au-**
23 **thority to commence the exercise of such authority, as the court**
24 **shall specify; and**

25 **[(C) the court also requires the guardian, whenever the com-**
26 **ined value of such funds and property exceeds \$10,000, to:**

27 **[(i) File a guardianship plan as provided for in K.S.A. 2004**
28 **Supp. 59-3076, and amendments thereto, which contains elements**
29 **similar to those which would be contained in a conservatorship**
30 **plan as provided for in K.S.A. 2004 Supp. 59-3078, and amend-**
31 **ments thereto;**

32 **[(ii) petition the court for appointment of a conservator as pro-**
33 **vided for in K.S.A. 2004 Supp. 59-3058, 59-3059 or 59-3060, and**
34 **amendments thereto; or**

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

39 **[(9) to place the ward in a treatment facility as defined in K.S.A.**
40 **2004 Supp. 59-3077, and amendments thereto, except if author-**
41 **ized by the court as provided for therein.**

42 **[(f) The guardian shall file with the court reports concerning**
43 **the status of the ward and the actions of the guardian as the court**

1 **shall direct pursuant to K.S.A. 2004 Supp. 59-3083, and amend-**
2 **ments thereto.]**

3 Sec. ~~2~~ [3.] K.S.A. 2004 Supp. 39-1404 ~~is~~ [and 59-3075 are] hereby
4 repealed.

5 Sec. ~~3~~ [4.] This act shall take effect and be in force from and after
6 its publication in the statute book.