

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Jan Meyers at
Chairperson

10 a.m./~~pm~~ on February 10, 1984 in room 526-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Research Department

Conferees appearing before the committee:

Others present: see attached list

Senator Meyers asked for discussion on the amendments to HB 2002 and 2003 which were proposed by the Kansas Hospital Association.

Senator Meyers appointed a subcommittee consisting of Senators Gordon, Johnston, and Meyers, to further study the amendments and report back to the committee.

Senator Meyers briefly reviewed Sections of HB 2002 and the amendments suggested. She said there was some concern about amendments which would allow the hospital board to levy its own taxes, rather than the county commissioners, and would like some policy opinions expressed.

There was discussion concerning Clay County Hospital being the only county hospital to have an elected board, and amendments which would allow the hospital board to levy its own taxes. The bill as it is now leaves them the option of having an elected board.

Senator Johnston said a county commission should have the sole responsibility for the mill levy, and that responsibility should not be delegated to other electors, but limited-purpose boards. He felt that an appointed board should be the norm.

Senator Meyers asked Wayne Stratton, Attorney for KHA, if the changes in Section 6 were put in just for the Clay County Hospital. Mr. Stratton replied that they were, and that they had tried to bring everybody together and still be consistent.

Senator Meyers said she doesn't mind having a separate board, but some overall governing body should have the authority to review what is happening in that county.

Senator Johnston moved to conceptually amend this bill so that the county commission determines who serves on the hospital board. The motion would just pertain to the section dealing with county hospital boards. Senator Morris seconded the motion.

Senator Meyers felt that this should be discussed with other Senators who had expressed concern, and Senator Ehrlich suggested that the subcommittee study this before it is voted on.

Senator Johnston withdrew his motion.

SB 488 - Limitations on powers of guardians

A balloon of the proposed amendments to SB 488 was distributed to the committee, and Senator Meyers and Emalene Correll explained changes in the bill. (Attachment #1).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10 a.m. ~~pm~~ on February 10, 1984.

Senator Johnston moved that the amendments to SB 488 be adopted. Senator Gordon seconded the motion and it carried.

Senator Hayden moved that SB 488 be reported favorably, as amended. Senator Johnston seconded the motion and it carried. Senators Bogina, Francisco, Ehrlich, and Roitz voted "nay".

Senator Hayden moved that the minutes of February 8 and 9, 1984, be approved. Senator Ehrlich seconded the motion and it carried.

The meeting was adjourned.

#1 - 2-10-84

SENATE BILL No. 488

By Special Committee on Special Care Services

Re Proposal No. 38

12-20

0018 AN ACT relating to guardianships; amending K.S.A. 59-1701,
0019 59-2905, 59-2907 and 59-3018 and repealing the existing sec-
0020 tions.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 59-3018 is hereby amended to read as fol-
0023 lows: 59-3018. (a) A guardian shall be subject to the control and
0024 direction of the court at all times and in all things. It is the
0025 general duty of an individual or corporation appointed to serve as
0026 a guardian to carry out diligently and in good faith the specific
0027 duties and powers assigned by the court. In carrying out these
0028 duties and powers, the guardian shall assure that personal, civil
0029 and human rights of the ward or minor whom the guardian
0030 services are protected.

0031 (b) The guardian of a minor shall be entitled to the custody
0032 and control of the ward and shall provide for the ward's educa-
0033 tion, support and maintenance.

0034 (c) A limited guardian shall have only such of the general
0035 duties and powers herein set out as shall be specifically set forth
0036 in the dispositional order pursuant to K.S.A. 59-3013 and
0037 amendments thereto and as shall also be specifically set forth in
0038 "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014
0039 and amendments thereto.

0040 (d) A guardian shall have all of the general duties and powers
0041 as set out herein and as also set out in the dispositional order and
0042 in the letters of guardianship.

0043 (e) The general powers and duties of a guardian shall be to
0044 take charge of the person of the ward and to provide for the
0045 ward's care, treatment, habilitation, education, support and

AK 6.1

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#1

report

0046 maintenance and to file an annual accounting. The powers and
0047 duties shall include, but not be limited to, the following:

0048 (1) Assuring that the ward resides in the least restrictive
0049 setting reasonably available;

0050 (2) assuring that the ward receives medical care or nonmedi-
0051 cal remedial care and other services that are needed;

0052 (3) promoting and protecting the care, comfort, safety, health
0053 and welfare of the ward;

0054 (4) providing required consents on behalf of the ward;

0055 (5) exercising all powers and discharging all duties necessary
0056 or proper to implement the provisions of this section.

0057 (f) A guardian of a ward is not obligated by virtue of the
0058 guardian's appointment to use the guardian's own financial re-
0059 sources for the support of the ward.

0060 (g) A guardian shall not have the power:

0061 (1) To place a ward in a facility or institution unless such
0062 placement has been approved for that person by the court, *with*
0063 *or without a hearing as the court may direct*, except that:

0064 (A) A ward may be placed in a treatment facility under the act
0065 for obtaining treatment for a mentally ill person only after a
0066 hearing conducted in accordance with the provisions of K.S.A.
0067 59-2917 and amendments thereto and a finding by the court
0068 under that section that the ward is in need of treatment at a
0069 treatment facility. ~~Except as otherwise provided by law;~~ or

0070 (B) *a ward may be admitted to a medical care facility, as*
0071 *such term is defined in K.S.A. 65-425 and amendments thereto,*
0072 *by the guardian of the ward for emergency or acute care hospi-*
0073 *talization without approval of the court, or the ward may*
0074 *voluntarily consent to the admission of oneself to such a facility*
0075 *if able and permitted to do so according to the dispositional*
0076 *order pursuant to K.S.A. 59-3013 and amendments thereto or*
0077 *letters of limited guardianship pursuant to K.S.A. 59-3014 and*
0078 *amendments thereto, or both, or any modification of such order*
0079 *or letters by the court; or*

0080 (C) a ward may voluntarily consent to the admission of one-
0081 self to ~~such~~ a facility or institution if able and permitted to do so
0082 according to the ~~court's~~ findings of fact set forth in the court's

0083 order issued at the conclusion of the hearing on the petition for
0084 guardianship dispositional order pursuant to K.S.A. 59-3013 and
0085 amendments thereto or letters of limited guardianship pursuant
0086 to K.S.A. 59-3014 and amendments thereto, or both, or any
0087 modification of such order or letters by the court.

0088 (2) To consent, on behalf of a ward, to psychosurgery, re-
0089 moval of a bodily organ, or amputation of a limb unless the
0090 procedure is first approved by order of the court or is necessary,
0091 in an emergency situation, to preserve the life or prevent serious
0092 impairment of the physical health of the ward.

0093 (3) To consent on behalf of the ward to the withholding of
0094 life-saving medical procedures, *except that a life-sustaining*
0095 *procedure, as such term is defined by K.S.A. 65-28,102 and*
0096 *amendments thereto, may be withheld:*

0097 (A) ~~Except~~ In accordance with provisions of K.S.A. 65-28,101
0098 to 65-28,109, inclusive, and amendments thereto; or

0099 (B) pursuant to a court order after: (i) A full due process
0100 hearing where the ward is represented by legal counsel; and (ii)
0101 a finding by the court that the ward has an incurable injury,
0102 disease or illness certified to be a terminal condition by two
0103 persons licensed to practice medicine and surgery who have
0104 personally examined the ward, one of whom shall be the at-
0105 tending physician as such term is defined in K.S.A. 65-28,102
0106 and amendments thereto, and who have determined that the
0107 death of the ward will occur whether or not life-sustaining
0108 procedures are utilized; and (iii) a finding by the court that the
0109 application of life-sustaining procedures would serve only to
0110 artificially prolong the dying process.

0111 (4) To consent on behalf of a ward to the performance of any
0112 experimental biomedical or behavioral procedure or to partici-
0113 pation in any biomedical or behavioral experiment unless:

0114 (A) It is intended to preserve the life or prevent serious
0115 impairment of the physical health of the ward; or

0116 (B) it is intended to assist the ward to develop or regain that
0117 person's abilities and has been approved for that person by the
0118 court.

0119 (5) To prohibit the marriage or divorce of a ward.

0120 (6) To consent, on behalf of a ward, to the termination of the
0121 ward's parental rights.

0122 (7) To consent, on behalf of a ward, to sterilization of the
0123 ward, unless the procedure is first approved by order of the court
0124 after a full due process hearing where the ward is represented by
0125 a guardian *ad litem*.

0126 (h) The guardian shall at least annually file a report concern-
0127 ing the personal status of the ward as provided by K.S.A. 59-3029
0128 and amendments thereto.

0129 Sec. 2. K.S.A. 59-1701 is hereby amended to read as follows:
0130 59-1701. (a) No bank or other corporation shall be appointed or
0131 authorized directly or indirectly to act as a fiduciary in this state,
0132 except:

0133 (1) A bank or other corporation organized under the laws of,
0134 and having its principal place of business in, this state;

0135 (2) a national bank located in this state;

0136 (3) a bank or other corporation organized under the laws of,
0137 and having its principal place of business in, another state which
0138 permits a bank or other corporation which is similarly organized
0139 in this state to act in a like fiduciary capacity in the other state
0140 under similar conditions;

0141 (4) a national bank located in another state which permits a
0142 national bank located in this state to act in a like fiduciary
0143 capacity in the other state under similar conditions; ~~or~~.

0144 (5) as provided in K.S.A. 59-1707 and 59-1708 and amend-
0145 ments thereto; *or*

0146 (6) *a nonprofit corporation certified in accordance with*
0147 *K.S.A. 59-3037 and amendments thereto may be appointed and*
0148 *act as guardian of the person of a ward.*

0149 (b) No officer, employee or agent of a bank or corporation
0150 which is not authorized to act as a fiduciary in this state shall be
0151 permitted to act as a fiduciary, whether such officer, employee or
0152 agent is a resident or a nonresident of this state, when in fact
0153 such officer, employee or agent is acting as a fiduciary on behalf
0154 of such bank or corporation.

0155 (c) No bank or other corporation shall be appointed guardian
0156 of the person of a ward *except that a nonprofit corporation*

a procedure conducted for the purpose of

0157 certified in accordance with K.S.A. 59-3037 and amendments
0158 thereto may be appointed guardian of the person of a ward.

0159 Sec. 3. K.S.A. 59-2905 is hereby amended to read as follows:
0160 59-2905. Any person may be admitted to a treatment facility as a
0161 voluntary patient when there are available accommodations and
0162 in the judgment of the head of the treatment facility or ~~his or her~~
0163 *the designee of the head of the treatment facility* such person is
0164 in need of treatment therein. ~~Such~~ The person, if ~~eighteen (18)~~
0165 18 years of age or older, shall make written application for
0166 admission. If ~~such~~ the person is less than ~~eighteen (18)~~ 18 years
0167 of age, then the parent or person *in loco parentis* to ~~such~~ the
0168 person may make such written application. If ~~such~~ the person is
0169 ~~fourteen (14)~~ 14 years of age or ~~over older~~, ~~such~~ the person may
0170 make such written application ~~on his or her own behalf~~ without
0171 the consent or written application of ~~such~~ the person's parent,
0172 ~~guardian~~ or any other person. ~~In any case, if such person is over~~
0173 ~~eighteen (18) and has a guardian, the guardian shall make such~~
0174 ~~application.~~ The head of the treatment facility or ~~his or her~~ *the*
0175 *designee of the head of the treatment facility* may require a
0176 statement of ~~such~~ the person's attending physician or a statement
0177 of the local health officer of the area in which ~~such~~ the person
0178 resides that ~~such~~ the person is in need of treatment in a treatment
0179 facility. Whenever a minor ~~fourteen (14)~~ 14 years of age or older
0180 makes written application ~~on his or her own behalf~~ and is
0181 admitted as a voluntary patient, the head of the treatment facility
0182 shall promptly notify the minor's parent or other person *in loco*
0183 *parentis* of the admittance of such minor.

0184 No person shall be admitted as a voluntary patient under the
0185 provisions of this act to any treatment facility unless the head of
0186 the treatment facility or ~~his or her~~ *the designee of the head of the*
0187 *treatment facility* has informed ~~such~~ the person or ~~such~~ the
0188 person's parent, ~~guardian~~ or person *in loco parentis* in writing of
0189 the following: (a) The rules and procedures of the treatment
0190 facility relating to the discharge of voluntary patients; (b) the
0191 legal rights of a voluntary patient receiving treatment from a
0192 treatment facility; and (c) the types of treatment which are
0193 available to the voluntary patient from the treatment facility.

0194 Sec. 4. K.S.A. 59-2907 is hereby amended to read as follows:
 0195 59-2907. Except as hereinafter provided, the head of the treat-
 0196 ment facility shall discharge any voluntary patient who has
 0197 requested discharge, in writing, or whose discharge is requested,
 0198 in writing, by another person, within a reasonable time but not to
 0199 exceed three (3) days; ~~excluding Sundays and legal holidays~~ after
 0200 the receipt of ~~such the~~ request ~~excluding Sundays and legal~~
 0201 ~~holidays~~. If, however, ~~such the~~ request is made by another
 0202 person, ~~such the~~ discharge shall be conditioned upon the written
 0203 consent of the voluntary patient, except that if the voluntary
 0204 patient ~~be is~~ under ~~eighteen (18)~~ 18 years of age, ~~such the~~
 0205 discharge shall be conditioned upon the consent of ~~such the~~
 0206 patient's parent, guardian or person *in loco parentis* unless ~~such~~
 0207 ~~the~~ patient made written application to become a voluntary
 0208 patient ~~on his or her own behalf~~. If, however, ~~such voluntary~~
 0209 patient is over eighteen (18) years of age and has a guardian, ~~such~~
 0210 discharge shall be conditioned only upon the consent of the
 0211 ~~guardian~~. Whenever a minor ~~fourteen (14)~~ 14 years of age or
 0212 older has made written application to become a voluntary patient
 0213 ~~on his or her own behalf~~ and has requested to be discharged, the
 0214 head of the treatment facility shall promptly inform the minor's
 0215 parent or other person *in loco parentis* of the request.

0216 No application to determine whether a person is a mentally ill
 0217 person shall be filed with respect to a voluntary patient unless
 0218 such patient has requested or consented to ~~his or her~~ discharge
 0219 or, if the voluntary patient is under ~~eighteen (18)~~ 18 years of age
 0220 and did not apply to become a voluntary patient ~~on his or her~~
 0221 ~~own behalf~~, the discharge has been requested by the parent,
 0222 guardian or person *in loco parentis* to ~~such the~~ patient.

0223 *If a voluntary patient admitted to a treatment facility prior to*
 0224 *the effective date of this act has a guardian, the discharge of the*
 0225 *voluntary patient shall be in accordance with the provisions of*
 0226 *the section in effect immediately prior to the effective date of*
 0227 *this act.*

0228 Sec. 5. K.S.A. 59-1701, 59-2905, 59-2907 and 59-3018 are
 0229 hereby repealed.

0230 Sec. 6. This act shall take effect and be in force from and
 0231 after its publication in the Kansas register.

Amend K.S.A. 59-3002 subsection (e) as follows:

(e) "Natural guardian" means both the father and mother of a legitimate minor, the parent who has legal custody of a legitimate minor or the mother of an illegitimate minor, provided except that both such parents or parent shall not have been found to be a disabled person or had their parental rights severed by a court of competent jurisdiction. If either parent of a legitimate minor dies, or has been found to be a disabled person or has had parental rights severed by a court of competent jurisdiction, the other shall be the "natural guardian."

Amend repealer and title as appropriate by inserting reference to K.S.A. 59-3002.