

## MINUTES

### SPECIAL COMMITTEE ON JUDICIARY

November 15-16, 2001  
Room 313-S—Statehouse

#### Members Present

Representative Ward Loyd, Chair  
Senator John Vratil, Vice Chair (November 15)  
Senator Greta Goodwin (November 15)  
Senator Kay O'Connor  
Senator Jean Schodorf  
Representative Peggy Long (November 15)  
Representative Dean Newton  
Representative Doug Patterson  
Representative Ethel Peterson  
Representative Rick Rehorn  
Representative Dixie Toelkes

#### Member Absent

Senator Dwayne Umbarger  
Representative Judy Morrison

#### Staff Present

Jerry Ann Donaldson, Kansas Legislative Research Department  
Mike Heim, Kansas Legislative Research Department  
Bill Wolff, Kansas Legislative Research Department  
Hank Avila, Kansas Legislative Research Department  
Gordon Self, Revisor of Statutes Office  
Jill Wolters, Revisor of Statutes Office  
Cindy O'Neal, Committee Secretary

#### Others Present

Judge Sam Bruner, 10<sup>th</sup> Judicial District, Chairman of the Judicial Council Guardianship and Conservatorship Committee

Jim Germer, Kansas Advocacy and Protective Services, Inc.  
Paul Davis, Kansas Bar Association  
Judge Fred Lorentz, Kansas Judicial Council  
Marie Landry, Children's Advocacy Resources Center  
Dawn Spencer, Court Improvement Specialist, Office of Judicial Administration  
Sue Lockett, Executive Director, Shawnee County CASA and Citizens Review Board  
Katie Kleim, Shawnee County Assistant District Attorney  
Kelly Lee, Shawnee County Court Services Officer  
Barbara Tombs, Executive Director, Kansas Sentencing Commission  
Mary McDonald, City of Wichita

**November 15, 2001**  
**Morning Session**

**Topic 8—Guardianship System**

Staff provided the following handouts: the Uniform Guardianship and Protective Proceedings Act of 1982 ([Attachment 1](#)); and the Kansas Judicial Council's 2001 Proposed Legislation ([Attachment 2](#)).

Judge Sam Bruner, 10<sup>th</sup> Judicial District, Chairman of the Judicial Council Guardianship and Conservatorship Committee, provided a list of those on that committee ([Attachment 3](#)). The Judicial Council started working on this issue three years ago. Kansas' guardianship program is like many other states. The Committee tried to pick enhancements from other states and included them in the proposed HB 2469. He explained the way the proposed bill would work and reminded the Committee that this would be a due process proceeding.

Some provisions he pointed out were the following:

- Increases in the dollar value of small estates which can be administered without resorting to a formal conservatorship;
- Provisions for insuring that these cases are heard in a place that is appropriate to the circumstances of the ward or conservatee;
- Reinforces concept that neither guardianship nor conservatorship relieves the natural parents of their parental obligation to support their minor children;
- Provisions more specifically setting out the powers and responsibilities of guardians and conservators;

- Provisions authorizing the conservator to suggest to the court, and for the court to provide for the establishment of benefits qualifying trusts and for an extended distribution of conservatorship assets in the case of a minor becoming 18 years old;
- Allowances for the assessment of costs against those parties who are either responsible for the ward or conservatee or who unnecessarily litigate claims within the guardianship or conservatorship; and
- Provisions for keeping medical information confidential except for the fact of guardianship or conservatorship proceedings.

Judge Bruner provided the Committee with a copy of a Petition to Establish an Extended Distribution Plan for the Minor's Estate (Attachment 4).

The Kansas Judicial Council provided the Committee with some suggested amendments to the bill for their consideration (Attachment 5).

Jim Germer, Kansas Advocacy and Protective Services, Inc., believes that HB 2469 is a significant improvement to present law; however, there are also some difficulties, such as new section 9 (c); 3009 (a) the provision that allows the petition to be accompanied by the evaluation report. He believes this may violate the requirement that there must first be a meeting with the proposed ward's attorney prior to submitting to such an evaluation. The other concern is that HB 2469 would delete the use of the term "limited guardianship" and would instead use "guardianship plans" allowing the "guardianship plans" to be permissive (Attachment 6).

Paul Davis, Kansas Bar Association, provided the Committee with his testimony given to the House Judiciary Committee during the 2000 Legislative Session and an article written on the issue (Attachment 7), and informed the Committee that the Kansas Bar Association was working on some suggested amendments which would be completed in the coming weeks.

### **Afternoon Session**

The Committee recessed at 12:00 noon and took up discussion and recommendations of several topics at 1:30 p.m.

## **Topic 1—Privacy of Medical Records, Access of Such Records, Expense of Obtaining Such Records, and Related Issues**

After discussion, the Committee concluded that patients should have a statutory right to access their medical records, either in person or by an authorized representative. Health care providers have a responsibility to provide that access in a timely manner and at a reasonable cost. The Committee understands that federal laws apply to the area of privacy of medical records and sees no reason to intrude into that regulatory field.

*Representative Patterson made the motion to adopt Substitute SB 88. Representative Long seconded the motion.*

Senator Vratil commended both the legal community and health care provider community for their continuing efforts to reach a workable agreement. *He proceeded to make a substitute motion that would remove health maintenance organizations from Substitute SB 88. Senator Schodorf seconded the motion. The motion carried.*

*Senator Vratil made the motion to set the copying charge rates, as the State of Missouri does, at \$15 for a service fee and \$0.35 per page with an annual adjustment based upon the Centers for Medicare and Medicaid Services. Representative Long seconded the motion. The motion carried.*

*Representative Rehorn made the motion to amend Section 2, line 3, change "written request" to "authorization," and in line 5 change "patient representative" to "authorized representative." The words "authorized and authorization" are defined in the proposed bill. Senator Vratil seconded the motion. The motion carried.*

The Committee recommended introduction of a bill for consideration in the 2002 Session that would:

- Define which health care providers must furnish patient records, while making clear health maintenance organizations are exempt;
- Specify what information an authorization document must contain;
- Require medical records be furnished within 30 days of receipt of a written authorization request;
- Allow providers to collect a service fee not to exceed \$15 and \$0.35 per page copying charge, as well as reasonable costs for duplication of medical records which cannot be routinely duplicated on a standard photocopy machine; and
- Provide enforcement of the act through the courts, with the costs of the action for enforcement charged to the provider and records produced without cost or expense to the requesting party.

### **Topic 7—Juvenile Offender and Child-in-Need-of-Care Codes**

Judge Fred Lorentz, Kansas Judicial Council, reminded the Committee that late in the 2000 Legislative Session, SR 1862 established a group to study and make recommendations as to the Kansas Juvenile Justice Code and the Child-in-Need-of-Care Code. The Council's intent was to appoint a broad-based committee and study the issues, but due to limited funds, the Council has been committed to other studies for fiscal year 2001. In FY 2002, work began on the study and monthly meetings have been held since that time (Attachment 8).

Judge Lorentz provided the Committee with an article from the *Topeka Capital-Journal* entitled "Problems Face System Designed for Children in Need" (Attachment 9).

Marie Landry, Children's Advocacy Resources Center, believes that the present system has too many cases and inadequate funding for the number of guardians *ad litem* available. She suggested improving the standards of practice by providing additional training, demanding accountability, developing innovative resolution processes, and establishing a statewide guardian *ad litem* system (Attachment 10).

Dawn Spencer, Court Improvement Specialist, Office of Judicial Administration, communicated to the Committee that Kansas Court Appointed Special Advocates (CASAs) are volunteers who are appointed by a judge and are to advocate the best interest of the child. CASA's ultimate goal is to find a safe and permanent home for children. Each program is nonprofit and provides training, support, and monitoring (Attachment 11). She provided handouts which contained a statistical overview of the state's CASA program (Attachment 12).

Staff presented the Committee with a copy of the Report of the Kansas Judicial Council Guardian *Ad Litem* Advisory Committee (Attachment 13).

Sue Lockett, Executive Director of Shawnee County CASA and Citizens Review Board, was available to answer any questions the Committee had.

### **Topic 3—Driver's License Privileges for Immigrants**

After Committee discussion, *Senator Vratil made the motion to recommend the passage of Sub. for HB 2135 and require a statement on all Kansas driver's licenses or identification cards indicating that such documents do not establish lawful presence in the United States and do not establish eligibility for employment, voter registration, or public benefits. Senator Goodwin seconded the motion. The motion carried.*

Committee minutes from August and September meetings were provided. *Representative Long made the motion to approve the minutes. Senator Schodorf seconded the motion. The motion carried.*

The Committee adjourned.

**November 16, 2001  
Morning Session**

**Topic 6—Drug Courts**

Staff provided the Committee with a memo giving background information on drug courts. The first drug court was implemented in 1989 in Miami, Florida. By December 2000, nearly 600 drug courts were operating in all 50 states, the District of Columbia, Puerto Rico, Guam, and two federal districts. Currently, there is one drug court in Kansas, which is operated by the City of Wichita and handles approximately 3,500 cases, annually. It is estimated that incarceration of a drug offender costs between \$20,000 and \$50,000 per person per year. In contrast, a comprehensive drug court can cost less than \$2,500 annually for each offender (Attachment 14).

Katie Kleim, Shawnee County Assistant District Attorney, focused on what Shawnee County has been doing. The 3rd Judicial District was in the process of establishing a drug court. A 33-member Shawnee County Drug Court Advisory Committee has been established and has been meeting over a year to put this program together. The goal is to have the court operational within six months. They are targeting low-level nonviolent drug offenders.

Kelly Lee, Shawnee County Court Services Officer, commented that it is estimated that 80 percent of arrests are the direct result of a drug-related activity. Kansas ranks second in the nation in the number of meth labs in the nation. Dealing with this large number of cases has caused the court to slow down its system (Attachment 15).

Barbara Tombs, Executive Director, Kansas Sentencing Commission, informed the Committee that they will request a specific drug court proposal with the following changes (Attachment 16):

- All drug possession convictions would be sentenced on severity level 4 of the drug grid, instead of the current practice of enhancing the severity level for second and subsequent convictions;
- Mandatory placement for up to 18 months would replace current sentences of incarceration or probation;
- Those who are unsuccessfully discharged or voluntarily quit would serve the entire underlying sentence;
- There would be a mandatory period of aftercare;
- A statewide drug treatment system with mandatory assessments would be established;

- An evaluation process would be developed; and
- Consolidation of field services should occur before implementation.

Mary McDonald, City of Wichita, described the Wichita Drug Court which is part of the municipal court. Their target population is misdemeanor drug offenders with no history of committing crimes against people. The most important part in a drug court is changing the way one lives (Attachment 17).

## **Topic 2—Review of Kansas Civil Forfeiture Law**

After Committee discussion, it was concluded that there is no evidence or suggestion that problems exist with the forfeiture law in Kansas. The current statutory scheme is indicative of a reasonable public policy benefitting the common good balancing civil liberties. The Committee does not believe there has been any indication of a need for expansion of forfeiture in recent years. They recommend no legislation be introduced.

## **Topic 4—Upward Departure of Sentencing Guidelines**

The Committee strongly recommended that the 2002 Legislature address the issue of upward departure in Kansas' sentencing law as soon as possible. They requested that the Kansas Sentencing Commission continue to refine its proposed bill to meet constitutional requirements set out in the *Gould* and *Apprendi* cases.

## **Topic 5—Use of Independent Hearing Examiners by Agencies Subject to the Kansas Administrative Procedures Act**

After Committee discussion, the passage of HB 2488 during the 2002 Legislative Session was recommended.

## **Topic 6—Use of Drug Courts and Treatment Facilities in Conjunction with or in Lieu of Incarceration for Drug Offenders**

The Committee endorsed the concept of drug courts as an alternative for incarceration of certain drug offenders and should strongly be considered for legislative action. In light of the fact that the Kansas Sentencing Commission has not finalized their bill, they urged the 2002 Legislature to enact legislation to implement the recommendations of the Sentencing Commission.

### **Topic 7—Juvenile Offender and Child-in-Need-of-Care Codes**

The Committee understands that this is an ongoing status of the study of these codes and due to the nature of the study and the possibility of recommendations by the Judicial Council Advisory Committee, they recommend that the Legislature reinstate funding for a Department of Social and Rehabilitation Services pilot program to implement a statewide mediation program as a measure to cut down on foster care time.

### **Topic 8—Guardianship System**

After discussion of the topic and review of the proposed amendments, the Committee concluded that HB 2469 received a full hearing. They also encourage favorable consideration of the amendments that were offered.

Prepared by Cindy O'Neal  
Edited by Jerry Ann Donaldson

Approved by Committee on:

June 21, 2002