

Summary of Proposed Legislation by Judicial Council Guardianship and Conservatorship Advisory Committee

July 22, 2024

The Kansas Judicial Council has a long history of drafting and updating Kansas statutory codes. In 2020, the Council asked its Guardianship and Conservatorship Advisory Committee (Committee) to review the Kansas guardianship and conservatorship act, which was last updated in 2002, for any needed updates. As part of that review, 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). The first act is narrowly focused on jurisdiction in adult guardianship cases, while the second act is much broader and deals with substantive issues relating to guardianship and conservatorship of adults and minors.

Having spent the past several years conducting the assigned study, the Committee is now ready to circulate its recommendation for public comment. First, the Committee recommends that Kansas adopt the UAGPPJA in its uniform version so that Kansas can join the other 46 states that have adopted it. 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 facilitates the transfer of guardianships between jurisdictions; provides for interstate recognition and enforcement of guardianship orders; and facilitates communication and cooperation between state courts.

While current Kansas law has provisions governing jurisdiction, transfer and enforcement, these provisions are not identical to the uniform law. Adopting the UAGPPJA would enable Kansas to join the ranks of the vast majority of states that play by identical rules in resolving these difficult issues.

Second, the Committee recommends that Kansas adopt a modified version of the UGCOPAA. Together, these two acts would replace the current Kansas 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 act. It also contains some new concepts that will improve Kansas guardianship and conservatorship law. These include:

- 1) Person-centered philosophy. The act 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. The act 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. The act 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.

While the Committee supports the adoption of these new concepts into Kansas law, there were some concepts and procedures in current Kansas law that the Committee wished to retain. The redline draft available at the Judicial Council website shows exactly where the Committee made changes to the uniform version of the act.

Before making a final recommendation to the Judicial Council, the Committee would appreciate feedback from interested practitioners and advocates. Copies of both Uniform Acts as recommended by the Committee can be viewed on the Judicial Council website, and comments may be directed to judicial.council@ks.gov. Please provide any feedback by Friday, September 20, 2024.