



Greater Hartford Legal Aid, Inc.
JUDICIARY COMMITTEE
RAISED BILL NO. 5840: AN ACT CONCERNING CONSERVATORS

My name is Marilyn Denny. I am an elder law attorney at Greater Hartford Legal Aid. During the past few years I have represented clients in involuntary conservatorship proceedings who are either indigent or who have modest estates. This representation has called to my attention omissions in the Connecticut General Statutes concerning conservators, and in the procedures applicable to such matters.

The good news is that I am not testifying about the number of probate courts, or the manner in which they are funded, although these concerns indirectly drive some of our more substantive concerns. This bill seeks to strengthen the existing Probate Court system.

First: when determining whether a conservator should be appointed and in selecting a conservator the court shall consider such things as: whether there is a more limited way to fix the problem, if there is not, what are the needs of the respondent and what is their capacity to understand and articulate an informed preference; what are past lifestyle practices. These changes move Connecticut closer to standards recommended by national conferences on guardianship and conservatorship and to standards used in Massachusetts.

Second, the changes make it easier for the Court to limit the powers and duties of the conservator, according to the abilities of the person to manage some of his/her affairs. The current statute makes it more difficult to accomplish this. The proposed changes makes it more likely that such limited removal of basic civil liberties will occur.

Third, the bill creates a procedure and a standard for terminating a conservatorship, when such is no longer required. In deciding whether to terminate the appointment of a conservator the bill asks the court to consider if the preexisting impediment which led to the imposition of a conservator has been overcome; if less restrictive measures can be put in place, etc. Right now, the Connecticut General Statutes are silent in this regard. Even if you enter the system for legitimate reasons, it is hard to exit the system.

Fourth, it allows a contested case for involuntary representation to be transferred to the Superior Court and to remain with the Superior Court. These will be a limited number of cases. This mirrors the rights that parties have concerning the termination of parental rights and removal of parents as guardians. The same rights of minors are extended to other probate litigants. It does not mandate removal to the Superior Court, but allows for a choice of forum. It helps address the problems one encounters when one tries to file an appeal from an order of the Probate Court. First, one gets a trial de novo, which is duplicative and wasteful of resources. Second, most Probate Courts and Superior Courts do not know how to handle such matters- one must first file a motion with the Probate Court and have the Judge sign an order allowing one to appeal to the Superior Court.

Often judges do not sign them in a timely fashion (although the mere filing of the motion perfects the appeal). Then the motion must be filed with the Superior Court and served, and one must wait for a hearing. In the meantime, one has a conservator of the person and or estate or both. By the time the appeal has been heard, great damage can be done.

The Probate Courts pride themselves with being user friendly, with providing social and well as legal services. There are some matters, however, which require more due process. The loss of one's fundamental liberties is one of those matters.

Are these changes necessary. In my experience, they are. The cases I have been involved with are not unusual or idiosyncrasies. They represent fundamental flaws with the current system. Let me provide examples:

One case, in which a woman was conserved without proper medical evidence, required 4 appeals to Superior Court before the 4 medical affidavits stating that she was capable of making her own decisions led to the removal of the conservator. In the meantime, her modest estate was depleted and the last few months of her life were miserable because she was a competent woman whose wishes were not attended to. She did have one specific problem with which she needed help, and even that problem was not successful addressed by her conservator. She should have been able to go to Superior Court initially. In this case, it took three legal aid attorneys 8 months to finally have the consrvatorship terminated. If we charged for our services, it would have cost approximately \$50,000.00, which most people don't have and certainly do not want to spend to correct an initial miscarriage of justice.

In other cases, we have seen probate courts impose temporary conservators without the requisite medical evidence, when no petition for a temporary was filed with the Court, and when the person was in a safe place.

We have seen attorneys appointed to represent the person agree to the involuntary imposition of a conservatorship – when the person did not want to be conserved. It is inconsistent to have a person voluntarily agree to be involuntarily conserved. Requiring specific findings to impose a general conservator might have curtailed these practices.

We have met with Judge Lawlor to discuss several of these issues with him; but he has no authority to correct them.

I would assume that anyone who has attended law school, or who has served as a Probate Judge, would support our efforts to make the statute relating to involuntary representation clearer, to limit the removal of one's basic civil rights, and to expedite due process in such cases. I urge the Judiciary Committee to pass HB 5840.