

**Testimony before the Judiciary Committee
Submitted by Attorney Veronica Halpine
March 9, 2009**

IN SUPPORT OF H.B. 6626; H.B. 6629; H.B. 6385 and

IN OPPOSITION TO S.B. 576; H.B. 6027

I am an attorney with Greater Hartford Legal Aid. I represent elderly and disabled clients in the Greater Hartford area who will be affected by the committee's vote on these bills.

I am here to ask for your support for **H.B. 6626: An Act to Transfer Jurisdiction Over All Contested Probate Cases to the Superior Court**. This bill is modeled after the bill that consolidated the county courts into the statewide judicial system. It will transfer original jurisdiction of all contested cases from the probate court to the superior court. This is not a new idea and it should be part of the current discussion on court consolidation. Conservatorships result in serious deprivations of liberty and property. These proceedings should be given heightened procedural protections and be afforded the same formality and decorum afforded matters brought in the superior courts.

I also ask for your support for **H.B. 6629: An Act Concerning Guardian Ad Litem and Conservatorships**. This bill will eliminate the appointment of Guardian Ad Litem in conservatorship cases. GALs have no place in conservatorship proceedings. The appointment of a GAL in connection with an original involuntary conservatorship proceedings deprives the respondent of due process of law. GALs are appointed in conservatorship proceedings as a counter balance to the individual's defense and to shield the probate judge from the responsibility of a difficult decision. They interfere with the role of the attorney, the court and of the conservator. They are an improper delegation of the probate court's responsibility and operate in derogation of the statutes. The appointment of a GAL before someone is conserved is tantamount to having a GAL in a criminal proceeding, undermining the accused's defense. It is in fact worse than a criminal proceeding because the issue IS whether your judgment is impaired and the appointment of a GAL already presumes you are impaired. Deprivations suffered under conservatorships are drastic and, more often than not, permanent. They result in life sentences.

GALs hold the role of determining best interests, a role borrowed from juvenile proceedings. People brought before the court in conservatorship proceedings are adults, not children. They are not legally incompetent. They are allowed to have preferences, including preferences that others disapprove of. Connecticut follows the substituted judgment, not best interest, standard. A third party's opinion of the respondent's 'best interest' is not relevant to the conservatorship proceedings. The people appointed as GALs are not necessarily qualified to state a superior opinion about best interests, however, once they have been given the title, their opinion is accorded greater weight.

GALs are an unnecessary expense. GALs are almost always attorneys. They stay on retainer even after a conservator has been appointed and the conserved individual already has a substitute decision maker. The conserved person thereafter bears the expense of an attorney, a conservator and a guardian ad litem (and attorneys for all of them if you seek to remove them). The appointment of GAL or continued appointment after a conservator is creates the potential for conflict, is unnecessary and is a waste of money.

I also ask you to support the governor's efforts to reform the probate system, **H.B. 6385: An Act Concerning Reform of the Probate Court System**. It is a thoughtful and courageous plan.

I have attached to my testimony **substitute language for S.B. 576**. The substitute language will provide heightened protections against conserving individuals who are not residents or domiciliaries of the probate district, while allowing probate courts very limited authority to appoint a temporary limited conservator in emergency situations.

I ask for your **strenuous opposition** to **S.B. 576: An Act Concerning the Connecticut Uniform Protective Proceedings Jurisdiction Act**. This bill will lead to more 'granny snatching' instead of less. It does not harmonize with our existing laws. It is an amalgamation of other states's laws. It introduces alien terminology and will cause confusion in the operation of our statutes. There appears to have been little effort to conform the language or process to our laws. It will eviscerate the protections and reforms implemented by P.A. 07-116. It purports to be a uniform law but very few states have enacted it. There is no urgency to enact it before seeing what other states adopt.

SB 576 will make Connecticut residents vulnerable to the conservatorship laws of other states. And it should be of concern to those 'out-of-staters' who are not keen on what happens to New York and New Jersey residents in this state. I get calls from people all over the country asking for my help on probate matters. I have the distinct impression this is not a time to be allying ourselves with the procedures in place in some of the other states. SB 576 will increase the incidents of in-state forum shopping. It also raises the question of how this act will mesh with our own curious system of 117 courts.

SB 576 exhibits all the vices of a tradition and practice that refuses to change. It maintains the touted informality of the system. It contains very few procedural protections. A good deal of it, in fact, was drafted by the National Guardianship Association and other "stakeholders" who profit from the elderly. It confuses 'forum' with jurisdiction. SB 576 fails to comprehend that a judge lacking subject matter jurisdiction does not have authority to pick up the phone and have that ex parte communication with a judge in another state. The failure to understand this basic legal concept will add fuel to the fire in a state where probate courts have difficulty 'keeping their hands off' people from out of state. In perhaps an excess of good will, probate courts sometimes overlook procedural technicalities, including evidence that someone lives in another state. Even in the rare case where the judge dismissed the case for

lack of jurisdiction, he still held a status conference and interjected himself into the person's affairs.

Once someone is conserved by an out of state probate court, SB 576 saves them the "trouble" of having the conservatorship reviewed under the laws of one's own state. Since it was written by conservators, its essential premise is that conservatorships are necessary and beneficial. If the uniform act were drafted by someone with a different perspective, due process would be no trouble at all. The act also presumes that the money spent conserving someone is well spent, but a second review of that process in the home state is too costly. Whose money are we talking about anyway? Our client, Florence Kidwell, thought the money spent securing her freedom was well spent.

SB 576 expands the jurisdiction of probate courts by allowing them to investigate, consider and balance elements that would confer jurisdiction. A writ of habeas corpus will no longer be available to free victims of the unlawful assertion of jurisdiction. All probate courts will always have the right to interject themselves unwelcomed into the lives of people, if only to inquire about where the case should be. P.A. 07-116 made it clear that they do not have that right. SB 576 will expand the scope of jurisdiction and in so doing deprive the victims of an important defense.

Even if the committee does not share my shock and concern over this bill, I hope it will table the proposal until Connecticut residents have had more time to consider its impact and ramifications.

I also urge you to oppose **S.B. 6027: An Act Concerning Probate Court Reforms**. The probate courts should not be given appellate jurisdiction as a means to generate more revenue nor to undermine the necessary consolidation by shifting existing probate judges to the appellate docket. The probate courts should be required to consolidate now, not be given yet another opportunity to study consolidation. I object to the pay offs and inducements for voluntary consolidation at a time when all state employees and many state residents have concerns over keeping their jobs.

45a-186 should not be repealed and replaced by section 12 of this bill. The provision allowing the superior court to reject the appeal and refer it back to probate is very disturbing. Particularly when the subtext to this reform bill is the need to generate revenue. I very much doubt it would survive a constitutional challenge. Subdivision (h)(3) does not exempt conservatorship cases from the remand section because appeals from probate decisions are brought pursuant to section 45a-186, not 45a-644 to 45a-663, inclusive. The superior court is the only lifeline for people involuntarily conserved, people locked away in nursing homes and those suffering from the caprices and expense of the "court appointed" conservator. Moreover, attorneys who will not or cannot practice in the superior court will be steering their unwitting clients into the legal limbo of the probate appeal process. The reference to a return date is inappropriate as these are not mesne proceedings and appeals are initiated upon the filing of the complaint. There are other drafting errors, as well, such as the language in subdivision (2) stating that the appeal shall be both de novo and on the record.

FACTS about

Why SB 576 – AAC the CT Uniform Protective Proceedings Jurisdiction Act, Will Not Work for CT

CT's Legal Services Programs believe that the impact of this proposal on CT law and procedures has not been fully analyzed, particularly in the context of the revision to the conservatorship statutes enacted two years ago. We would ask that this proposal not be acted on this session in order to provide an opportunity for CT attorneys to consider the impact of this act, as viewed through the prism of our state specific laws.

SB 576 is a Uniform Law that First Needs to be Tailored to Existing CT Law

Given the enactment of substantial revisions to the CT conservatorship statutes just two years ago (P.A. 07-116), it is critical that there be a careful analysis of the impact of this proposal on CT's new and carefully crafted protections. We should take the time to get it right the first time.

- Instead of conforming to existing CT law, this proposal will create confusion by conflicting and contradicting existing statutory language, terminology and definitions.
- CT law already addresses some of the substantive changes this proposal seeks to implement.

SB 576 Raises Serious Due Process Concerns

This proposal allows judges from different jurisdictions to communicate about which court should have jurisdiction over a dispute. Courts with no centralized supervision will be allowed to assert jurisdiction, raising questions of professional and ethical standards. Jurisdiction will be conferred on all courts to inquire and decide what is the appropriate forum. Persons conserved in an alien forum can be deprived of the due process protections afforded by their home state.

SB 576 Applies Standards Developed for Children – Not Adults

This proposal is modeled on the Uniform Custody Jurisdiction and Enforcement Act. The child custody analogy implies that elders or adults with disabilities are to be treated as children. This is both discriminatory and inappropriate. Adults in CT are presumed to be competent unless and until there is a determination through clear and convincing evidence of a functional limitation. Children are deemed legally incompetent and child custody law uses the "best interests" standard for substitute decision making. CT's recent efforts to afford important protections in conservatorship proceedings (P.A. 07-116) clearly indicates that CT is to use the "substituted judgment" standard when supplanting an adult's judgment. This means that CT courts must look at the person's past preferences and practices, regardless of whether they were in the person's "best interest".

Useful provisions of SB 576 may be adapted in the future to harmonize with CT's existing law. However, more time is needed to consider its provisions and implications before any action is taken.

SUBSTITUTE LANGUAGE FOR COMMITTEE BILL Bill 576

Purpose: To limit the probate courts' authority to conserve nondomiciliaries to temporary and emergency circumstances.

Section 1. Section 45a-648 of the general statutes is repealed and the following is substituted in lieu thereof:

Application for involuntary representation of resident or [non]domiciliary. Fraudulent or malicious application or false testimony: Class D felony

(a) An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and stating the reasons for the alleged incapability. The application shall be filed in the court of probate in the district in which the respondent resides[,] or is domiciled [or is located] at the time of the filing of the application.

[(b) An application for involuntary representation for a nondomiciliary of the state made pursuant to subsection (a) of this section shall not be granted unless the court finds the (1) respondent is presently located in the probate district in which the application is filed; (2) applicant has made reasonable efforts to provide notice to individuals and applicable agencies listed in subsection (a) of section 45a-649 concerning the respondent; (3) respondent has been provided an opportunity to return to the respondent's place of domicile, and has been provided the financial means to return to the respondent's place of domicile within the respondent's resources, and has declined to return, or the applicant has made reasonable but unsuccessful efforts to return the respondent to such respondent's place of domicile; and (4) requirements of this chapter for the appointment of a conservator pursuant to an application for involuntary representation have been met.

(c) If, after the appointment of a conservator for a nondomiciliary of the state the nondomiciliary becomes domiciled in this state, the provisions of this section regarding involuntary representation of a nondomiciliary shall no longer apply.

(d) The court shall review any involuntary representation of a nondomiciliary ordered by the court pursuant to subsection (b) of this section every sixty days. Such involuntary representation shall expire sixty days after the date such involuntary representation was ordered by the court or sixty days after the most recent review ordered by the court, whichever is later, unless the court finds the (1) conserved person is presently located in the state; (2) conservator has made reasonable efforts to provide notice to individuals and applicable agencies listed in subsection (a) of section 45a-649 concerning the conserved person; (3) conserved person has been provided an opportunity to return to the conserved person's place of domicile and has been provided the financial means to return to the conserved person's place of domicile within the conserved person's resources, and has declined to return, or the conservator has made reasonable but unsuccessful efforts to return the conserved person to the conserved person's place of

domicile; and (4) requirements of this chapter for the appointment of a conservator pursuant to an application for involuntary representation have been met. As part of its review under this subsection, the court shall receive and consider reports from the conservator and from the attorney for the conserved person regarding the requirements of this subsection.]

[(e)](b) A person is guilty of fraudulent or malicious application or false testimony when such person (1) wilfully files a fraudulent or malicious application for involuntary representation or appointment of a temporary conservator, (2) conspires with another person to file or cause to be filed such an application, or (3) wilfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in sections 45a-644 to 45a-663, inclusive. Fraudulent or malicious application or false testimony is a class D felony.

Section 2. Section 45a-654 of the general statutes is repealed and the following is substituted in lieu thereof:

Appointment of temporary conservator. Duties.

(a) [Upon written application for appointment of a temporary conservator brought] An application for the appointment of a temporary conservator may be filed by any person considered by the court to have sufficient interest in the welfare of the respondent, including, but not limited to, the spouse or any relative of the respondent, the first selectman, chief executive officer or head of the department of welfare of the town of residence, [or] domicile or location of any respondent, the Commissioner of Social Services, the board of directors of any charitable organization, as defined in section 21a-190a, or the chief administrative officer of any nonprofit hospital or such officer's designee. The application shall be signed under oath and penalty of perjury and shall contain detailed allegations regarding the respondent's inability to manage his or her affairs or the inability of caring for himself or herself and stating the reasons for the alleged incapability. The applicant must disclose any actual or potential conflict of interests with the respondent. The application shall be filed in the court of probate in the district in which the respondent resides, is domiciled or is located at the time of the filing of the application.

(b)[, t] The Court of Probate may appoint a temporary conservator if the court finds by clear and convincing evidence that: (1) The respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, (2) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed, and (3) appointment of a temporary conservator is the least restrictive means of intervention available to prevent such harm. The court shall require the temporary conservator to give a probate bond. The court shall limit the duties and authority of the temporary conservator to the circumstances that gave rise to the application and shall make specific findings, by clear and convincing evidence, of the immediate and irreparable harm that will be prevented by

the appointment of a temporary conservator and that support the appointment of a temporary conservator. In making such specific findings, the court shall consider the present and previously expressed wishes of the respondent, the abilities of the respondent, any prior appointment of an attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the respondent, any support service otherwise available to the respondent and any other relevant evidence. In appointing a temporary conservator pursuant to this section, the court shall set forth each duty or authority of the temporary conservator. The temporary conservator shall have charge of the property or of the person of the conserved person, or both, for such period or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than thirty days [, unless at any time while the appointment of a temporary conservator is in effect, an application is filed for appointment of a conservator of the person or estate under section 45a-650]. The court may (A) extend the appointment of the temporary conservator [until the disposition of such application under section 45a-650, or] for a period of no more than [additional] thirty days[, whichever occurs first,] or (B) terminate the appointment of a temporary conservator upon a showing that the circumstances that gave rise to the application for appointment of a temporary conservator no longer exist. No appointment of a temporary conservator under this section may be in effect for more than sixty days from the date of the initial appointment.

[(b)] (c) Unless the court waives the medical evidence requirement pursuant to subsection (e) of this section, an appointment of a temporary conservator shall not be made unless a report is filed with the application for appointment of a temporary conservator, signed by a physician licensed to practice medicine or surgery in this state, stating: (1) That the physician has examined the respondent and the date of such examination, which shall not be more than three days prior to the date of presentation to the judge; (2) that it is the opinion of the physician that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself; and (3) the reasons for such opinion. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court shall provide for the disclosure of the medical information required pursuant to this subsection to the respondent on the respondent's request, the respondent's attorney and to any other party considered appropriate by the court.

[(c)](d) Upon receipt of an application for the appointment of a temporary conservator, the court shall issue notice to the respondent, appoint counsel for the respondent and conduct a hearing on the application in the manner set forth in sections 45a-649, 45a-649a and 45a-650, except that (1) notice to the respondent shall be given not less than five days before the hearing, which shall be conducted not later than seven days after the application is filed, excluding Saturdays, Sundays and holidays, or (2) where an application has been made ex parte for the appointment of a temporary conservator, notice shall be given to the respondent not more than forty-eight hours after the ex parte appointment of a temporary conservator, with the hearing on such ex parte appointment to be conducted not later than three days after the ex parte appointment, excluding Saturdays, Sundays and holidays. Service on the respondent of the notice of

the application for the appointment of a temporary conservator shall be in hand and shall be made by a state marshal, constable or an indifferent person. Notice shall include (A) a copy of the application for appointment of a temporary conservator and any physician's report filed with the application pursuant to subsection (b) of this section, (B) a copy of an ex parte order, if any, appointing a temporary conservator, and (C) the date, time and place of the hearing on the application for the appointment of a temporary conservator. The court may not appoint a temporary conservator until the court has made the findings required in this section and held a hearing on the application, except as provided in subsection (d) of this section. If notice is provided to the next of kin with respect to an application filed under this section, the physician's report shall not be disclosed to the next of kin except by order of the court.

~~[(d)]~~(e) (1) If the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent as required in subsection (c) of this section would cause immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent, the court may, ex parte and without prior notice to the respondent, appoint a temporary conservator upon receiving evidence and making the findings required in subsection (a) of this section, provided the court makes a specific finding in any decree issued on the application stating the immediate or irreparable harm that formed the basis for the court's determination and why such hearing and appointment was not required before making an ex parte appointment. If an ex parte order of appointment of a temporary conservator is made, a hearing on the application for appointment of a temporary conservator shall be commenced not later than three days after the ex parte order was issued, excluding Saturdays, Sundays and holidays. An ex parte order shall expire not later than three days after the order was issued unless a hearing on the order that commenced prior to the expiration of the three-day period has been continued for good cause.

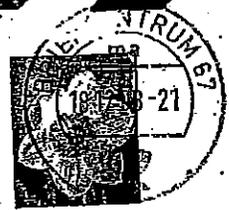
(2) After a hearing held under this subsection, the court may appoint a temporary conservator or may confirm or revoke the ex parte appointment of the temporary conservator or may modify the duties and authority assigned under such appointment.

~~[(e)]~~(f) The court may waive the medical evidence requirement under subsection (b) of this section if the court finds that the evidence is impossible to obtain because of the refusal of the respondent to be examined by a physician. In any such case the court may, in lieu of medical evidence, accept other competent evidence. In any case in which the court waives the medical evidence requirement as provided in this subsection, the court may not appoint a temporary conservator unless the court finds, by clear and convincing evidence, that (1) the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, and (2) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed pursuant to this section. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court shall make a specific finding in any decree issued on the application stating why medical evidence was not required.

NEW (g) An application for a temporary conservator of a nondomiciliary of the state made pursuant to subsection (a) of this section shall not be granted unless the court finds the (1) respondent is presently located in the probate district in which the application is filed; (2) applicant has made reasonable efforts to provide notice to individuals and applicable agencies listed in subsection (a) of section 45a-649 concerning the respondent; and (3) respondent has been provided an opportunity to return to the respondent's place of domicile, and has been provided the financial means to return to the respondent's place of domicile within the respondent's resources, and has declined to return, or the applicant has made reasonable but unsuccessful efforts to return the respondent to such respondent's place of domicile.

NEW (h) The court shall review any involuntary representation of a nondomiciliary ordered by the court of probate pursuant to subsection (b) of this section every sixty days, including whether there continues to be a risk of immediate and irreparable harm to the conserved individual. The temporary conservatorship of a nondomiciliary of the state shall expire sixty days after the date the initial appointment as provided in subsection (b) of this section, unless the court finds, after due notice and a hearing, that (1) the conserved person is still located in the probate district; (2) the conserved person remains incapable of managing his or her affairs or incapable of caring for himself or herself, even with appropriate assistance, (3) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the conserved individual will result if the temporary conservatorship is terminated, (4) the continued appointment of a temporary conservator is the least restrictive means of intervention available to prevent such harm; (5) the temporary conservator has made reasonable efforts to engage the assistance of individuals and applicable agencies listed in subsection (a) of section 45a-649 to return to his or her residence or place of domicile; and (6) the conserved person has been provided an opportunity to return to the conserved person's place of domicile and has been provided the financial means to return to the conserved person's place of domicile within the conserved person's resources, and has declined to return, or the temporary conservator has made reasonable but unsuccessful efforts to return the conserved person to the conserved person's residence or place of domicile.

[(f)] (i) Upon the termination of the temporary conservatorship, the temporary conservator shall file a written report with the court and, if applicable, a final accounting as directed by the court, of his or her actions as temporary conservator.



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Mrs. Veronica HALPINE, 209
Legal Aid Society of Hartford
499 Asylum Ave. 3rd floor.
HARTFORD, CT 06105-2465
USA

MIT LUFTPOST
PAR AVION
BY AIR MAIL

POSTWEG
NAN 02 216

Margot Claus
Storchenpark
Obere Langgasse 13
67346 Speyer/Germany

DECREE: FINAL ACCOUNT
(NON-DECEDENT)
PC-462 NEW 6/94

STATE OF CONNECTICUT
COURT OF PROBATE

RECORDED:

COURT OF PROBATE, DISTRICT OF North Haven

DISTRICT NO. 101

ESTATE OF:

MARGOT CLAUS (08-0023)

FIDUCIARY:

Linda D. Eger

FINAL ACCOUNT

Dated: February 03, 2009

Received: February 04, 2009

TYPE: CONSERVATOR

PRESENT: Hon. Michael R. Brandt, Judge

At the time and place set by order of this court, together with any continuances thereof, as on file more fully appears, for a hearing on the allowance of the above-designated Accounting, the Court, after due hearing had, FINDS THAT:

Notice was given in accordance with the Order(s) of Notice previously given.

After having examined said Accounting, together with all supporting documents, the court FURTHER FINDS THAT:

The fiduciary has filed this final Account for the following reasons:

The conservatorship was terminated on May 6, 2008.

Said Accounting is true and correct.

The Court FURTHER FINDS THAT:

There are outstanding Probate Court fees totaling \$915.00.

WHEREFORE, it is ORDERED AND DECREED that:

Said Final Account be and hereby is allowed and approved and shall be recorded and filed.

The Probate Court fees in the amount of \$915.00 are to be paid out of the \$10,000.00 reserve held by Segal Roitman, LLP. The balance of said reserve shall be transferred to Margot Claus.

It is further ORDERED AND DECREED that said fiduciary make due return of compliance with this Order.

Dated at North Haven, Connecticut, this 19th day of February, 2009.


.....
Michael R. Brandt, Judge

MEMORANDUM

To: Members of the Connecticut General Assembly

From: Attorneys from Legal Services and the Connecticut Legal Rights Project

Date: March 4, 2009

Re: OPPOSITION TO SB 576: AN ACT CONCERNING THE UNIFORM ADULT
GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Attorneys from Greater Hartford Legal Aid, Connecticut Legal Services, New Haven Legal Aid and the Connecticut Legal Rights Project oppose passage of SB 576, a bill that seeks to have the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act enacted into law in this state.

We respectfully request that the legislature not pass this highly controversial legislation at this time.

The National Conference of Commissioners on Uniform State Laws is seeking nationwide enactment of this act. As of yet, only three states and the District of Columbia have enacted this act into law. As the proponents readily admit, the system created by this act will only work if it is enacted nationwide. It would be advisable, therefore, to see how this act is received in other states, particularly those states with which Connecticut residents have the most contact. There is no particular advantage conferred by being among the first states to enact this uniform act and much to be gained by seeing what changes other states make when adapting the act to their particular laws and procedures.

The impact of this legislation on Connecticut law and procedures has not been fully analyzed, particularly in the context of the revisions to the conservatorship statutes enacted two years ago and pending legislative initiatives to overhaul the probate court system. Additionally, genuine concerns about the merits and constitutionality of the process established under this act. The following comments, questions and concerns are based upon a preliminary review of the proposal. It warrants more careful review.

I. The Proposal Raises Serious Due Process Concerns

The proposal authorizes judges in different jurisdictions to "communicate" to determine which court will take jurisdiction when disputes or questions arise. Rather than curtail the kidnapping of out-of-state-residents and foreign nationals, this approach will confer jurisdiction on all courts to inquire and decide, with even more latitude than currently allowed, which is the "appropriate" forum. More significantly, it deprives persons conserved in an alien forum of the due process protections afforded by their home state. The fact that the absence of jurisdiction can be "cured" by authorizing the "non-home"

state to communicate with the court of competent jurisdiction and transfer the conservatorship without due process protections should give the legislature pause. A law that deprives an individual of pre-deprivation procedural protections afforded to citizens of a state may be unconstitutional. In addition, authorizing *ex parte* communications between the "courts," is a practice which raises questions regarding rules of professional and judicial ethics.

Furthermore, this practice is complicated by the fact that Connecticut has a decentralized probate system of 117 courts operating independently. Despite efforts to address this lack of uniformity and oversight, there continue to be reports of judges who assert jurisdiction over out-of-state, foreign and out-of-district residents and domiciliaries. While such actions may reflect a well-intentioned effort by the court to help someone with exigent circumstances, an act allowing courts with no centralized supervision to assert jurisdiction may in fact increase the potential for granny snatching.

II. Uniform Laws Should Not Be Enacted Without Tailoring Them To State Laws.

Uniform laws should not be passed "as is" without tailoring them to the specific needs of a state, given the state's history and related legislative schemes.

In 2006, Connecticut adopted the ABA model Rule of Professional Conduct 1.14, promoted by similar organizations, including NAELA, and then rejected it in 2007 as unworkable under Connecticut laws and practices. Research on that model rule revealed that the states did not adopt one uniform rule but made modifications. In short, most states did not adopt the model rule and Connecticut had to reverse itself after adopting it too readily.

Similarly, the Uniform Custody Jurisdiction and Enforcement Act (UCCJEA) was adopted in Connecticut with a modification in one provision that made Connecticut's version significantly different from the model. The Connecticut version of the UCCJEA allows for jurisdiction in an emergency without specifying that it can only be temporary. Attorneys took the time to see that it was appropriate for our system of laws. Other states did the same. This proposal should not be rushed through without more careful review and consideration.

Given the enactment of substantial revisions to the Connecticut conservatorship statutes just two years ago, it is critical that there be a careful analysis of the impact of the proposal prior to proceeding.

III. Applying Procedures for Children to Adults is Discriminatory and Inappropriate

The proposal extols the fact that this uniform act is modeled after the Uniform Custody Jurisdiction and Enforcement Act (UCCJEA). However, it is important to recognize that a model for children is not necessarily applicable to adults. Although the act only

borrowed a few provisions of the UCCJEA, it is publicly touted as having been based upon the UCCJEA and it is imbued with the concept of "custody."

The problems experienced by children when parents having legal rights to them reside in different states is not a proper analogy to interstate adult kidnapping cases. More often than not the kidnapper has no legal right to the victim. More often than not, the victims have more than six months residency to indicate that they live somewhere else. Six months is too short a period to overcome other overwhelming indicia of residence and domicile. When someone is kidnapped and confined, it can take months and months for them to manage to obtain outside legal assistance to challenge their confinement.

The child custody analogy implies that elders or adults with disabilities are to be treated as children. This is both discriminatory and legally wrong. Children are legally incompetent. However, in Connecticut, a person with a disability, including a person confined in a psychiatric facility, is presumed to be competent unless and until there is a determination through appropriate procedures that there is clear and convincing evidence of a functional limitation. Under Connecticut law, the self determination of the individual is protected to the fullest extent possible, and conservators are given specific, limited authority with an obligation to consider the conserved person's reasonable wishes when exercising that authority.

Importing child custody law into this discussion also inadvertently and inappropriately introduces the standard for substitute decision making for children. One of the articulated justifications for this act is to allow states to work out a procedure that would be in the "best interest" of the alleged incapable person and the families. However, "best interests" is not the applicable standard in Connecticut. In addition, consistent with the new conservatorship laws, the rights of the person whose rights have been placed in jeopardy must be the court's focus. While it is understandable that the courts may be inclined to support families, inquiry into the family's interests can distract the court from the focus on the individual whose rights are being restricted and can lead to costly disputes.

The passage of P.A. 07-116 makes perfectly clear that Connecticut has adopted the substituted judgment standard. "Best interest" is the standard applied to make decisions on behalf of children in Connecticut, not adults. When supplanting an adult's judgment, both the court and the conservator must look to the person's past preferences and practices - whether or not they were in the person's "best interest." Adults are entitled to dignity and respect for their preferences, and they are entitled to their pecadillos, even those that the family may not approve of or appreciate.

Unlike the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and the Uniform Guardianship and Protective Proceedings Act, SB 576 does not underscore the fact that the substituted judgment standard, because of the strong autonomy values, is promoted nationally and is the standard adopted in Connecticut law. "Interests" in

Connecticut, will be construed as "best interest," thereby reinforcing existing tendencies among Connecticut lawyers to apply the wrong standard.

IV. Proposed Definitions are Confusing and Conflict with Existing Statutory Language

First, the application of the new definitions in Section 2 of the proposal is unclear and could lead to confusion. The proposal states that it is limited to this "act", however, this is neither practical or realistic. The act cannot operate independently. It will be codified with the existing statutes and it must be construed within the existing statutory scheme.

Second, the proposal seeks to redefine existing terminology. For example, Section 2 (2) states that a "Conservator" means a conservator of the estate as defined in General Statutes section 45a-644; Section 2 (3) states, a "Guardian" is a conservator of the person as defined in General Statutes section 45a-644, etc. Additionally, "guardian" has a different specific definition in Connecticut. There is no compelling reason to change the terms known and understood in Connecticut and the body of law that interprets them. On the contrary, there are good reasons to modify the terms in the uniform proposal to conform to current Connecticut law and practice. Having a second definitional statute within Title 45a will only cause confusion. This problem is compounded by the fact that section 8 of the proposed act has additional definitions that apply only to sections 8 to 16 of the act.

Third, many of the definitions are highly contentious, for example, "home state," "party," "record" and "significant-connection state." The comment states that the definitions have been adopted from the terminology used in the majority of states. This is not useful for Connecticut because we have no reason to be looking up the terminology used in other states. Probate jurisdiction has been defined, and redefined, by Connecticut case law. It is more important to know that the opinion of Connecticut jurists and scholars has been considered than that a majority of foreign jurisdictions have held otherwise. If it is to become a Connecticut law, it should utilize the language and practices of this state.

V. Connecticut Should Not Inflict Its Probate Problems on International Visitors.

In 2007, Connecticut revised its probate statutes and all of the procedures by which incapacitated people are protected in Connecticut. Public Act 07-116 went into effect on October 1, 2007 yet the media is still reporting scandals and abuses. Connecticut should not presume to have jurisdiction over foreign nationals. There is absolutely no need for Connecticut to intercede in this fashion as foreign consulates have legal authority to assume control and care of their citizens. The fact that the language is permissive ("may"), rather than mandatory matters little. The bottom line is that it permits a probate court to assume jurisdiction over a foreign national.

Inasmuch as the law purports to take legal control over the person and property of a foreign national, it may violate international treaties.

VI. Connecticut Already Has Provisions for Emergency & Temporary Conservators

The fact sheet summarizing the UAGPPJA states that the only substantive change this act makes to the existing Connecticut conservatorship statutes is to limit jurisdiction by mere location to emergency or temporary appointments. That is not a necessary change, since it is codified in Connecticut law already. See General Statutes §§45a-648 and 45a-654.

VII. The Act Confuses Jurisdiction with Forum.

A court that lacks jurisdiction does not have the legal authority to act as a court in any fashion. By its very nature, this act would confer jurisdiction on courts that have no business ruling on the rights of the individual. A court that does not have jurisdiction does not have the legal authority to insert itself into the life of a citizen of another state, even if only to permit the sitting judge to pick up the phone and communicate with a court in another state. The act focuses on geographic jurisdiction while ignoring that the elements giving rise to subject matter jurisdiction in all likelihood have not been met.

The act, and the endorsements circulated with the act, presume that jurisdiction lies somewhere and that the imposition of the conservatorship is both necessary and good for the individual. By conferring jurisdiction on any probate court, if only for the purpose of finding the appropriate court, the act deprives the respondent of the single most important defense against the deprivation of liberty - the right to a dismissal for lack of jurisdiction. This act will compound the problem of probate courts asserting jurisdiction over out of state residents, the problem experienced in Connecticut, while depriving the respondents of remedies such as a writ of habeas. In short, the act will make the problem worse while eliminating existing remedies.

VIII. Connecticut Does Not Have the Problems The Act Purports to Fix.

According to the materials circulated with the act, the genesis for the act was the belief that probate court orders "stopped at the state border." The act was originally the product of the National College of Probate Judges and then it was taken up by the National Guardianship Association. Organizations such as NAELA, AARP and the Alzheimer's Association, "stakeholders", were invited to participate in the drafting and promotion of the act. Notably absent were advocates from the disability community or civil rights organizations. The result is a noticeably pro conservatorship product.

The UAGPPJA was promulgated to correct problems lawyers do not experience in Connecticut. Connecticut gives full faith and credit to out of state court orders that do not offend Connecticut public policy. There is comity between the states. To our knowledge, Connecticut lawyers do not experience many problems with multiple states asserting jurisdiction and potentially arriving at different conclusions. Even if they did,

there is well developed case law addressing questions of primary jurisdiction and conflict of laws.

The legislature should proceed with caution before supporting legislation seeking to correct problems that either do not exist or occur extremely rarely. Particularly when there is substantial risk that the cure may be deadlier than the disease.

IX. Conclusion

Enacting this uniform act, as proposed, would create confusion and undermine the due process protections recently enacted in Connecticut. Perhaps in the future, useful provisions in the UGPPJA could be adapted to harmonize with our existing law. However, more time is needed to consider its provisions and implications.