

CONNECTICUT LEGAL RIGHTS PROJECT, INC.

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JUDICIARY COMMITTEE March 5, 2014

Testimony of Sally R. Zanger, Staff Attorney, Suggesting Changes to SB 260.

Senator Coleman, Representative Fox, distinguished members of the committee, I am a staff attorney with the Connecticut Legal Rights Project (CLRP), which is a legal services organization that advocates for low-income individuals in institutions and in the community who have, or are perceived to have, psychiatric disabilities. Tom Behrendt, our legal director emeritus, worked on the “Killian Committee” that drafted P.A.07-116 which reformed the conservatorship statutes. Our clients have an interest in the rights of conserved individuals. In addition, CLRP has been working with the Department of Mental Health and Addiction Services to promote the use of Advance Directives for Health Care by our clients. Many of those advance directives include instructions about organ donation and donation of remains. Our concern about this bill is that it needs to be drafted in a way that preserves the decisions made by individuals about the disposal of their remains. It does not address all of those decisions as it is currently drafted.

SB 260 allows a conservator of the person to execute a document to designate someone to take custody and dispose of remains or a deceased conserved individual’s body. The conservator should have to abide by any decisions or designations in a document previously executed by the conserved individual. The bill as drafted covers this only if the document is executed by the conserved individual while he or she had capacity **and if it is executed pursuant to 45a-318**. This problem can be dealt with by including a reference to the advance directive statute in the new statute—so that it would read “in documents executed by 1-52(14) **and 19a-575a et seq,**” (which references the advance directive for health care and health care representative statute).

A conservator of the person could execute such a document, and then the conservatorship could be terminated. In that case, is the document invalidated automatically? Is there an action that the conservator must take? The statute should require that the document state that it is invalid if the individual is not under a conservatorship of the person at the time of the individual’s death, or that it expires with the termination of the conservatorship. The instruction of the conservator should end with the conservatorship. These suggestions do not change the basic intent of the proposed bill; they make it comply with other provisions of the statutes. I have attached suggested language. (Our proposed changes are underlined bolded and highlighted.)

Sec. 2. Section 45a-318 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) (1) Any person eighteen years of age or older, and of sound mind, may execute in advance of such person's death a written document, subscribed by such person and attested by two witnesses, either: **[(1)]** (A) Directing the disposition of such person's body upon the death of such person, which document may also designate an individual to have custody and control of such person's body and to act as agent to carry out such directions; or **[(2)]** (B) if there are no directions for disposition, designating an individual to have custody and control of the disposition of such person's body upon the death of such person. Such disposition shall include, but not be limited to, cremation, incineration, disposition of cremains, burial, method of interment and cryogenic preservation. Any such document may designate an alternate to an individual designated under **[subdivision (1) or (2) of this subsection]** subparagraph (A) or (B) of this subdivision.

(2) Any conservator of the person authorized pursuant to subdivision (5) of subsection (a) of section 45a-656, as amended by this act, to act on behalf of a conserved person, or any agent authorized pursuant to subdivision (14) of section 1-52, as amended by this act, to act on behalf of a principal may execute in advance of such conserved person's or principal's death a written document, subscribed by such conservator or agent and attested by two witnesses, either: (A) Directing the disposition of such conserved person's or principal's body upon the death of such conserved person or principal, which document may also designate an individual to have custody and control of such conserved person's or principal's body and to act as agent to carry out such directions; or (B) if there are no directions for disposition, designating an individual to have custody and control of the disposition of such conserved person's or principal's body upon the death of such conserved person or principal. Such disposition shall include, but not be limited to, cremation, incineration, disposition of cremains, burial, method of interment and cryogenic preservation. Any such document may designate an alternate to an individual designated under subparagraph (A) or (B) of this subdivision. **Any such document shall state that it will expire or terminate with the termination of the conservatorship and will not be valid if the individual is not conserved at the time of his or her death.**

(b) No person having the custody and control of the disposition of a deceased person's body shall knowingly provide for a disposition of the body in a manner that is inconsistent with a document executed by a person pursuant to the provisions of subsection (a) of this section, **Sec. 1-52(14) or Sec. 19a-575a** unless such disposition is approved by the Probate Court.

19a-580 (e) or the CGS is repealed and the following is substituted.

Sec. 19a-580e. Conservator's duty to comply with conserved person's health care instructions or other wishes. Precedence of health care representative's decisions.

Exceptions. (a) Except as authorized by a court of competent jurisdiction, a conservator shall comply with a conserved person's individual health care instructions and other wishes, if any, expressed while the conserved person had capacity and to the extent known to the conservator, and the conservator may not revoke the conserved person's advance health care directive, or directive in accordance with 45a-318 unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a health care decision or a decision regarding the disposition of the body of a deceased person under a conservatorship of a health care representative takes precedence over that of a conservator, except under the following circumstances: (1) When the health care decision concerns a person who is subject to the provisions of section 17a-566, 17a-587, 17a-588 or 54-56d; (2) when a conservator has been appointed for a conserved person who is subject to an order authorized under subsection (e) of section 17a-543, for the duration of the conserved person's hospitalization; or (3) when a conservator has been appointed for a conserved person subject to an order authorized under section 17a-543a.