
OLR Bill Analysis

sSB 154

AN ACT CONCERNING PROBATE COURT OPERATIONS.

SUMMARY:

This bill makes various revisions in probate statutes.

It allows the probate court administrator to establish a second pilot truancy clinic in New Haven, in addition to the one in Waterbury (§ 9).

It allows probate courts, when appointing a conservator, to designate a successor. It also allows people to designate their own successor conservators (§§ 10-13).

Among other changes affecting civil commitment, it shifts jurisdiction over civil commitment review hearings from the probate court that ordered the commitment to the court where the hospital is located (§ 1). For court actions involving someone committed to a psychiatric hospital, it eliminates the requirement that process or other documents be served on the administrative services (DAS) commissioner (§ 4).

Among other things, the bill also:

1. specifies that the rules of civil evidence in Superior Court civil matters apply in probate court hearings on involuntary civil commitment, requests for release from psychiatric hospitals, and conservatorship (§§ 1, 3, 5, & 6);
2. transfers responsibility for administering the Kinship Fund and Grandparents and Relatives Respite Fund from the Department of Social Services (DSS) to the probate court administrator (§§ 7 & 8);
3. requires the probate court, before approving a transfer of

jurisdiction over a conserved person who has moved, to determine that the person prefers the transfer (§ 14);

4. eliminates a Probate Court Budget Committee annual reporting requirement (§ 15); and
5. repeals a largely redundant statute on payment of probate court fees by credit card (§ 16).

The bill also makes several minor, technical, and conforming changes to probate statutes.

EFFECTIVE DATE: October 1, 2014, except as noted below.

CIVIL COMMITMENT

§ 1 — *Involuntary Commitment Documents*

The bill shifts responsibility regarding which state entity or officer is required to provide certain forms used in the involuntary commitment process. It requires the probate court administrator, rather than the Department of Mental Health and Addiction Services (DMHAS), to provide the form to be completed by the court-selected examining physicians, for initial commitment hearings and reviews of committed patients.

§ 1 — *Jurisdiction Over Commitment Review Hearings*

Under current law, if someone committed to a hospital for psychiatric disabilities requests a hearing, the court that ordered the commitment holds the hearing. The bill instead requires the court for the district where the hospital is located to hold the hearing.

The bill makes a corresponding change regarding the requirement for hospitals to provide probate courts with a monthly list of patients involuntarily committed to the hospital for one year since the last annual review or the original commitment. It requires this list to go to the probate court where the hospital is located, rather than the court that ordered the commitment.

§ 2 — *Court Records*

The bill eliminates the requirement for courts, after ordering someone committed to a hospital for psychiatric disabilities, to provide the DMHAS commissioner with copies of the commitment orders. It still requires such courts to provide the commissioner with access to identifying information regarding the committed individuals.

The bill requires the probate court administrator, rather than the attorney general, to prescribe forms for courts when committing someone to a psychiatric hospital, including forms for commitment applications, orders, and other papers. The bill eliminates the requirement for DMHAS to have blanks of these order and application forms printed and furnished at the state's expense.

§ 4 — Service Requirements

The bill makes changes regarding service of process, notices, and other documents on someone committed to a psychiatric facility.

Under current law, if a document must be served on such a person either in person, at home, or by mail:

1. a copy must be sent, by registered or certified mail, to the person at the facility where he or she is confined;
2. a copy must be sent to the DAS commissioner; and
3. two copies must be provided to the facility's superintendent or representative, and the superintendent or representative must deliver a copy to the confined person.

Also under current law, if service is required by publication only, (2) and (3) apply, but not (1).

The bill eliminates the requirement that the notice be served on the DAS commissioner. It requires only one copy be sent to the superintendent or his or her representative, who still must deliver a copy to the confined person.

It specifies that this mailing and proof of delivery satisfies any legal requirements where personal service is not required, and is deemed

equivalent to service under these laws.

These provisions apply to people committed by court order, emergency certificate, or voluntarily, and apply regarding any court action or proceeding in which the person is a party or that may affect the person's property rights.

By law, failure to send or serve documents does not abate the action or proceeding, although the court can order compliance.

§§ 7 & 8 — KINSHIP FUND AND GRANDPARENTS AND RELATIVES RESPITE FUND

The bill transfers responsibility for administering the Kinship Fund and Grandparents and Relatives Respite Fund to the probate court administrator. Under current law, DSS administers the funds, through the probate court.

By law, a relative who is appointed guardian of a child, and who does not receive foster care payments or subsidized guardianship benefits from the Department of Children and Families, can apply for grants from these funds. The bill specifies that the funds are available to people appointed guardians by the probate court, not just by the Superior Court as under current law.

EFFECTIVE DATE: July 1, 2014

§ 9 — NEW HAVEN TRUANCY CLINIC

The bill allows the probate court administrator, within available appropriations, to establish a pilot truancy clinic in the New Haven regional children's probate court. He already has authority to establish such a clinic in the Waterbury regional children's probate court.

The bill applies the same conditions to the New Haven truancy clinic as apply to the Waterbury clinic. For example:

1. the regional children's probate court administrative judge administers the clinic (the bill specifies that for either clinic, the judge can delegate the clinic's administration to someone else);

2. an elementary or middle school principal or his or her designee can refer the parent or guardian of a truant child, or one at risk of becoming a truant, to the clinic;
3. a parent's or guardian's participation is voluntary after his or her appearance as required by the court's citation and summons;
4. the administrative judge may refer any truancy clinic matter to a probate magistrate or attorney probate referee;
5. the clinic must establish participation protocols and programs and relationships with schools and other individuals and organizations to provide support services to clinic participants; and
6. the administrative judge must submit annual reports to the probate court administrator, due each September 1, on the clinic's effectiveness.

Under current law, the probate court administrator must report on the Waterbury clinic's effectiveness to the Judiciary and Education committees, by January 1, 2015. The bill requires the report to cover both clinics, and extends its due date until January 1, 2016.

EFFECTIVE DATE: Upon passage

§§ 10-13 — SUCCESSOR CONSERVATORS

§ 10 — *Probate Court Appointment*

The bill allows probate courts, when appointing a conservator of the person or a conservator of the estate, to also appoint a successor conservator.

Under the bill, the successor must act as conservator if (1) the court accepts the conservator's resignation or removes the conservator or (2) the conservator dies or is adjudicated incapable. The successor can assume conservator duties immediately upon the occurrence of any of these events, with one exception. If a conservator of the estate was required to furnish a probate bond or provide proof of a restricted

account, the successor must do so as well before assuming conservator duties.

The bill requires a successor conservator, immediately after assuming the conservator role, to inform the probate court with jurisdiction that he or she has assumed that role and the reason why. It allows the probate court to issue a decree, without notice and hearing, confirming the successor conservator's appointment after these requirements are met.

EFFECTIVE DATE: July 1, 2014

§§ 11 & 12 — Designation by the Person in Event of Future Incapacity

The bill allows an adult, when designating someone to serve as conservator for himself or herself in the event of future incapacity, to designate a successor conservator.

§ 13 — Designation by Conserved Person

By law, a conserved person or someone subject to a conservatorship hearing may choose someone to serve as his or her conservator. The bill also allows such a person to choose someone to serve as successor conservator.

As under existing law, the court must accept the appointment unless the nominee is unwilling or unable to serve or there is substantial evidence to disqualify the person.

By law, if the person does not nominate someone to serve as his or her conservator, the court must consider certain factors when deciding whom to appoint as conservator. The bill requires the court to consider the same factors when choosing a successor conservator.

§ 14 — TRANSFER OF JURISDICTION OVER CONSERVATORSHIP

Under current law, if a person under conservatorship moves to a probate district other than the one where the conservator was appointed, the conserved person, conservator, spouse, a relative, or first selectman can file a motion to transfer jurisdiction over the

conservatorship to the district where the person now resides.

The bill requires the probate court, before approving a transfer, to determine that the person under conservatorship prefers the transfer.

§ 15 — ELIMINATION OF PROBATE COURT BUDGET COMMITTEE REPORTING REQUIREMENT

The bill eliminates the requirement that the Probate Court Budget Committee annually report to the governor and the General Assembly on the committee's efforts to reduce costs and any potential cost-saving measures resulting from probate court mergers that took effect on or after June 9, 2009.

EFFECTIVE DATE: July 1, 2014

§ 16 — PAYMENT OF COSTS BY CREDIT CARD

PA 13-247 (§ 65) allows probate courts to accept payment of fees by credit, charge, or debit card, and to charge related service fees (which cannot exceed the card issuer's charge, including the discount rate).

The bill repeals another statute (CGS § 45a-113) which allows probate court costs to be paid by credit card. Unlike the provision in PA 13-247, this statute specifies that (1) the probate court administrator determines the services fees and (2) credit card payments must be made at the time and under conditions as the administrator may prescribe.

EFFECTIVE DATE: Upon passage

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0 (03/28/2014)