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## **OLR Bill Analysis**

### **sSB 494**

#### ***AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS.***

#### **SUMMARY:**

This bill makes several modifications to laws related to the appointment of guardians ad litem (GALs) and counsels for minor children (CMC). It:

1. establishes new procedures for courts to follow when appointing GALs and CMCs in family relations matters or before allowing certain third-party interventions but exempts emergency situations from the procedures;
2. allows parties to (a) request the appointment of a specific GAL or CMC, with a written agreement, or (b) choose one from a list of five provided by the court;
3. allows the court to appoint a GAL or CMC from the list if the parties do not make a selection within a specific period of time;
4. requires the court to include in its orders, the GAL's or CMC's specific duties, appointment duration, deadline for reporting to the court, fee schedule, and proposed schedule for periodic court review;
5. allows parties, in a case involving a minor child's care, custody, support, education, or visitation, to file a motion to seek removal of a GAL or CMC and requires the Judicial Branch to establish procedures to have a hearing on such a motion;
6. establishes new compensation requirements, such as (a) allowing courts to order payment of GALs' reasonable fees in the same manner currently available to CMCs, (b) prohibiting

courts from ordering payment of fees from a minor child's college savings funds, and (c) allowing courts to order the calculation of fees on a sliding-scale basis (i.e., fees that vary based on a person's ability to pay), using a methodology the Judicial Branch develops; and

7. requires the Judicial Branch to develop a (a) GAL and CMC professional code of ethics and (b) publication on their roles and responsibilities applicable to family relations matters.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014, except for (1) the section on the Judicial Branch's publication, which is effective July 1, 2014 and (2) the section on the GAL and CMC professional code of conduct, which is effective upon passage.

### **§§ 1-3 — GAL AND CMC IN FAMILY MATTERS**

#### ***Appointment***

By law, a GAL is a person, not necessarily an attorney, appointed by the court during certain proceedings to gather information at the court's request and report on what he or she believes to be in a person's best interest. A CMC is an attorney appointed by the court to advocate in court for a minor child's best interest.

***New Appointment Procedure.*** Under current law, a court may appoint a GAL or CMC in "family relations matters" (see below) involving minor children. The court may also appoint a CMC (1) after the return date of a divorce, annulment, or legal separation action and (2) in certain cases where a third party wishes to be awarded full or partial custody of a minor child.

Under the bill, before appointing a GAL or CMC in any of these cases, the:

1. court must provide the parties with a list of five people it has determined eligible to serve as GAL or CMC;

2. parties, within two weeks after the court provides the list, must notify the court in writing of the name of the person they have selected to serve; and
3. court must appoint one of the people from the list to serve, if the parties cannot agree or do not notify the court in a timely manner.

***Emergency Situation or Written Agreement.*** Under the bill, the new appointment procedures do not apply in an emergency situation or if the parties ask the court to appoint a specific GAL or CMC by submitting a written agreement to the court with the name of the person they have selected to serve.

***Duties, Duration of Appointment, Fee Schedule, and Periodic Review***

Under the bill, within 21 days after the court has ordered the appointment of a GAL or CMC, it must enter a subsequent order, which must include the:

1. specific nature of GAL's or CMC's work;
2. appointment end date, which may be extended by a court order for good cause shown;
3. deadline for the GAL or CMC to report to the court on the work he or she has done;
4. fee schedule, which must include the (a) retainer amount, (b) hourly rate, (c) each party's share of the retainer and hourly fees, and (d) if applicable, information related to the calculation of fees on a sliding-scale basis; and
5. proposed schedule of periodic court review of the GAL's or CMC's work done and fees charged.

Under the bill, the periodic court review of the GAL's or CMC's work and fees must occur at least every six months after his or her appointment. The bill allows the parties and the GAL or CMC to

waive the periodic court review by filing a written agreement with the court.

***Family Relations Matters***

By law, “family relations matters” are matters affecting or involving divorce; legal separation; annulment; alimony; support; custody; visitation; change of name; civil restraining orders; civil support obligations; petitions on behalf of a mentally ill person not charged with a criminal offense; wrongful convictions; paternity; appeals from probate court decisions concerning adoption, termination of parental rights, appointment and removal of guardians, custody of a minor child, appointment and removal of conservators, orders for custody of any child, and orders to commit persons to public and private institutions and to other appropriate facilities; actions related to prenuptial and separation agreements and to matrimonial and civil union decrees of a foreign jurisdiction; dissolution; legal separation or annulment of a civil union performed in a foreign jurisdiction; interstate child custody matters; and all other matters within the Superior Court’s jurisdiction concerning children or family relations as the court determines (CGS § 46b-1).

**§ 4 — STANDING TO SEEK REMOVAL OF GAL OR CMC**

The bill allows parties to a case involving a minor child’s care, custody, support, education, or visitation to file a motion to seek removal of a GAL or CMC (i.e., it gives such parties “standing”). The judge presiding over the underlying case must assign the judge to hear the motion for removal.

The bill requires the Judicial Branch to establish procedures to have a hearing on the motion for removal of GALs and CMCs.

Under the bill, the court (1) may, before hearing the motion, refer the parties to the Judicial Branch’s family services unit and (2) if there is no resolution, must have a hearing and make a decision on the motion for removal.

**§ 5 — GAL AND CMC COMPENSATION**

### ***Reasonable Fees***

Under current law, if the court appoints an attorney for a minor child in a case involving divorce, annulment, legal separation, child support enforcement, revocation or construction of wills, or in any family relations matter, it may order the attorney's reasonable fees be paid:

1. by the father, mother, or intervening party, individually or in any combination;
2. from the child's estate, in whole or in part; or
3. by the Public Defender Services commissioner, if the child is receiving or has received state aid or care.

The bill allows the court, in cases where a GAL is appointed, to also order these payment options for the GAL's reasonable fees.

The bill updates the reference to the term "attorney for a minor child" with the terminology "counsel for a minor child" (CMC), for consistency.

### ***College Savings Accounts Exempt from Payment Orders***

The bill prohibits the court from ordering the father, mother, or intervening party to pay the GAL's or CMC's reasonable fees from a college savings account established for the minor child. These accounts include certain tuition programs established and maintained by a state or its agency or instrumentality, or by one or more eligible education institutions (i.e., "qualified tuition programs") (see BACKGROUND).

### ***Sliding-Scale Basis***

Under the bill, in cases where the court appoints a GAL or CMC, after considering the parties' income and assets, the judge may order the fees to be calculated on a sliding-scale basis. The bill requires the Judicial Branch to develop and implement a methodology for calculating GALs' and CMCs' fees on a sliding-scale basis.

## **§ 6 — JUDICIAL BRANCH'S FAMILY RELATIONS PUBLICATION**

The bill requires the Judicial Branch to develop a publication on the roles and responsibilities of GALs and CMCs in family relations matters. The publication must be available to the public in hard copy and on the Judicial Branch's website.

## **§ 7 — GAL AND CMC CODE OF CONDUCT**

Under the bill, by October 1, 2014, the Judicial Branch must develop and implement a professional code of conduct for GALs and CMCs appointed in family relations matters.

### **BACKGROUND**

#### ***Qualified Tuition Program***

The term "qualified tuition program" means a program established and maintained by a state, its agency or instrumentality, or by one or more eligible educational institutions that allows a person to:

1. purchase tuition credits or certificates on behalf of a designated beneficiary entitling him or her to the waiver or payment of his or her qualified higher education expenses or
2. make contributions to an account established for the beneficiary's qualified higher education expenses.

A qualified tuition program must meet other specified requirements that pertain to things such as cash contributions, separate accounting, investment direction, and tax treatment (26 U.S.C.A. § 529(b)).

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 0 (04/01/2014)