



CONNECTICUT LEGAL SERVICES

A PRIVATE NONPROFIT CORPORATION

872 MAIN STREET P.O. BOX 258 WILLIMANTIC, CT 06226-0258

TELEPHONE (860) 456-1761 OR 1-800-413-7796 (CLIENT TOLL-FREE LINE)

FAX (860) 456-7420

E-MAIL WILLIMANTIC@CONNLEGALSERVICES.ORG

JOELEN J. GATES
MANAGING ATTORNEY
OFFICE

ANNE LOUISE BLANCHARD
LITIGATION DIRECTOR

CATHERINE CUSHMAN
CHERYL DIANE FEUERMAN
BET GAILOR
JILLIAN L. GRISWOLD
REBECCA LOOS
SAMUEL T.D. NEVES, JR.
ROYAL STARK
WENDY W. WANCHAK
ATTORNEYS AT LAW

CAROLE MASTERS
VOLUNTEER ATTORNEY

LAUREL J. FREEMAN
PARALEGAL

RICHARD EDMONDS
VOLUNTEER PARALEGAL

HEROILDA RIOS
KENNETH MAISONET
LEGAL ASSISTANTS

ADMINISTRATIVE OFFICE
62 WASHINGTON STREET
MIDDLETOWN, CT 06457
(860) 344-0447

ROSS H. GARBER
BOARD CHAIR

STEVEN D. EPPLER-EPSTEIN
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LAW OFFICES
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STAMFORD, CT 06901

85 CENTRAL AVENUE
WATERBURY, CT 06702

872 MAIN STREET
WILLIMANTIC, CT 06226

SATELLITE OFFICES

5 COLONY STREET
MERIDEN, CT 06451

98 SOUTH MAIN STREET
NORWALK, CT 06854

29 NAEK ROAD, SUITE 5A
VERNON, CT 06066

Testimony of Joelen Gates before the Committee on Aging March 3, 2016

Conditional Support of H.B. 5361, An Act Concerning a Protected Person's Right to Interact with Others, Only If Appropriate Revisions are Made

Support of H.B. 266, An Act Concerning a Right to Rescind a Nursing Home Contracts

My name is Joelen Gates and I am the managing attorney of the Willimantic office of Connecticut Legal Services, a private, non-profit law firm. I practice elder law.

House Bill 5361, An Act Concerning a Protected Person's Right to

Interact with Others has the stated goal of "protect[ing] the rights of protected persons to interact with family and friends." In furtherance of this goal, the proposed statute would expand the jurisdiction of the Probate Court to authorize a conservator of the person to impose restrictions on the social interactions (including phone, mail and visits) of a conserved person. The legal services community has experience with conservators taking action without authority to limit the right of conserved persons to freely associate. An individual's right of association is a fundamental right and should be protected. We therefore believe that it could be in the interests of conserved persons to have a statute to establish a procedure by which a Probate Court could order carefully considered restrictions when they have been proven to be necessary to protect a conserved person. Without such an order, the right of a conserved person to associate with friends and family should be unrestricted; under the conservatorship statutes, a conserved person retains "all rights and authority not expressly assigned to the conservator." Section 45a-650(k).

As drafted, H.B. 5361 is not consistent with existing conservatorship and other law. We are proposing substantial changes to H.B. 5361 to ensure that proper procedural protections are in place, the existing mandates of the conservatorship statute are followed, and the provisions of the Patients' Bill of Rights are not abrogated. Our proposed changes are attached to my testimony.

I urge you to review all of our suggested changes. I would like to highlight two of the most important.



1. The evidentiary standard in H.B. 5361 is “good cause”. The standard required to sanction the fundamental right of association should be “clear and convincing” evidence. This conforms to the standard of proof already required in our conservatorship statute to deprive an individual of important civil liberties. Section 45a-650(a).
2. Any restriction of a resident of a nursing home, residential care home or other facility covered by the Patients’ Bill of Rights must comport with the requirements of existing law.

With these and the other changes we have proposed, we would support this bill.

Senate Bill 266, An Act Concerning A Right To Rescind A Nursing Home Contract, would provide a consumer with a three day period to rescind a nursing home contract. We support this effort to protect individuals and their families from being pressured into contracts of adhesion with nursing homes. Nursing home admission is a time of crisis and emotion. The process occurs either after a medical emergency, or when a family reluctantly decides that it can no longer care for a family member at home. There is pressure to find a nursing home placement. While the individual and his or her family are focused on finding the best possible health care, they are presented with a barrage of forms, including a lengthy and complicated contract. They may be told that it must be signed in order to gain admission. They often must sign immediately; they are not afforded an opportunity to have the contract reviewed by an attorney. We have seen nursing home contracts which contain provisions which are unfair to consumers, and some which are illegal. It is not unusual for a contract to contain provisions requiring the prospective resident to waive a variety of federally or state protected rights.

We believe there is considerable work to be done to make the nursing home admission process a fair one for consumers. Ultimately, we would like to see Connecticut develop detailed required provisions for nursing home contracts or a standard nursing home contract. States like Maine and California have such laws in place. Meanwhile, this bill is a good first step to protect vulnerable people in a time of crisis.

Thank you for your time and your attention to these important issues.

Attachment: Proposed Changes to H.B. 5361

Substitute Language For House Bill No. 5361

AN ACT CONCERNING A CONSERVED [PROTECTED] PERSON'S RIGHT TO INTERACT WITH OTHERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2016*) (a) For purposes of this section and section 2 of this act, (1) "conserved [protected]person" means a person for whom a conservator of the person has been appointed in accordance with the provisions of section 45a-649 et seq. of the general statutes [eighteen years of age and older who is incapable of meeting essential requirements for his or her personal needs of managing his or her financial affairs or property because of a mental, emotional or physical condition,] (2) "conservator" means a conservator of the person as defined in section 45a-644 of the general statutes, (3) "court" means a probate court with jurisdiction over a conservatorship of a conserved [protected] person, and (4) "interact", "interaction" or "interacting with" means communication by telephone, computer or other electronic devices, mail or other document delivery services, or in person.

(b) A conserved person has a fundamental right of free association. Unless specifically authorized by an order from a court pursuant to this section, a conservator shall not restrict a conserved [protected] person's right to interact with other persons, including, but not limited to, the conserved [protected] person's children, siblings, parents, or other close relatives or friends. If a conserved [protected] person is unable to express consent to interact with other persons due to a mental, emotional or physical condition, then consent of the conserved [protected] person may be presumed based on the conserved [protected] person's prior relationship with such other persons unless the conserved [protected] person has previously documented his or her wishes not to interact with the person seeking access to him or her.

(c[b]) A conservator who knowingly prevents or attempts to prevent interaction with a conserved [access to a protected] person in violation of subsection (b[a]) of this section, or any court order issued pursuant to this section, is subject to removal and replacement by the court.

(d[c]) Notwithstanding the provisions of subsection (b[a]) of this section, a conservator may petition the probate court that appointed the conservator [move a court] to [have] order restrictions placed on a conserved [protected] person's ability to interact with a person seeking access to him or her. The conservator must show by clear and convincing evidence that there is [for] good cause for such restrictions. In determining good cause, the court shall consider all relevant factors, including, but not limited to:

(1) Whether [That] any protective orders have been issued to prevent the person or persons seeking access to the conserved [protected] person from interacting with him or her;

(2) Whether t[T]he person seeking access to the conserved [protected] person has been found by competent authority to have been [charged with the] abused, neglected or financially exploited[ation of] or the conserved [protected] person or the conservator can show by [presents] a preponderance of evidence that such person has or is likely to abuse, neglect or exploit the conserved[protected] person[or];

(3) If the conserved [protected] person is unable to communicate, whether such person has stated that he or she does not want to interact with the person seeking access to him or her in documents including, but not limited to, a properly executed living will, durable power of attorney or advance directive;[.]

(4) If the conserved person resides in a skilled nursing facility, residential care home or other facility subject to section 19a-550 of the general statutes, whether interaction with the person seeking access to the conserved person is medically contraindicated as documented by the patient's physician, as required by the Patients Bill of Rights, section 45a-550(b)(12) of the general statutes; and

(5) Any other relevant information presented by the conserved person or the person seeking access to the conserved person.

(e[d]) If the court finds by clear and convincing evidence that restrictions must be placed on a conserved person's right to interact with others pursuant [Prior to issuing an order pursuant] to subsection (d[c]) of this section, the [a] court shall order only such restrictions that are the least restrictive means of intervention necessary to meet the needs of the conserved person. The order shall expressly state that the conserved person shall retain all rights and authority not expressly limited by the order. The court shall also consider:

(1) Whether the conserved [protected] person expresses or has expressed a desire to interact with the person seeking access to him or her;

(2) Placing reasonable time, place and manner restrictions on interaction between the conserved[protected] person and the person seeking access to him or her based on the history of their relationship, the conserved [protected]person's wishes or both; and

(3) Requiring that interaction between the conserved [protected] person and the person seeking access to him or her be supervised.

(f [e]) If any interested person, including the conserved [protected] person, reasonably believes that provisions of this section have been violated, then such person may move the court to:

(1) Require the conservator to grant a person access to the conserved [protected] person;

(2) Restrict, or further restrict, a person's access to the conserved [protected] person, but only in accordance with the requirements of subsections (d) and (e);

(3) Modify the conservator's duties; or

(4) Remove and replace the conservator.

(g[f]) Except as provided in subsection (h[g]) of this section, a court shall schedule a hearing on a motion filed pursuant to subsection (d[c]) or (f[e]) of this section not later than thirty [sixty] days after the date the motion is filed. The court may, in its discretion, order mediation to be conducted prior to the hearing. Any mediation so ordered shall include the conserved person, the person seeking access to the conserved person and the conservator. If mediation results in agreement regarding interaction with the conserved [protected] person, such agreement shall be approved by the court.

(h[g]) If a motion filed pursuant to this section states that the conserved [protected] person's health is in significant decline or that the conserved [protected] person's death may be imminent, a court shall conduct an emergency hearing as soon as practicable, but not later than ten days after the motion is filed. Upon request, the court shall order that supervised interaction between the conserved [protected] person and persons seeking access to the conserved [protected] person be granted during the period prior to the hearing.

(i[h]) Notice of the hearing, a copy of the motion and a copy of any order issued pursuant to this section shall be personally served upon the conserved [protected] person and any person named in the motion. Nothing in this section shall be construed as affecting the conserved [protected] person's right to appear and be heard in the proceedings.

(j) The conserved person shall have the right to be represented by an attorney in accordance with the provisions section 45a-649a of the general statutes in all proceedings under this section.

(k[i]) A court, upon its own motion or a motion filed with the court, may impose an appropriate sanction, including, but not limited to, an order to pay court costs and reasonable attorneys' fees, upon a conservator who knowingly has violated any provision of this section or an order issued by the court pursuant to this section. No monetary sanction may be paid out of the conserved [protected] person's estate.

Sec. 2. (NEW) (Effective July 1, 2016) (a) Except as provided in subsections (b) and (c) of this section, a conservator shall notify as soon as is reasonably possible a conserved[protected] person's closest relatives, including, but not limited to, children and siblings, and any other person designated by the conserved [protected]person to be notified, in the event that:

(1) The conserved [protected] person's residence has changed;

(2) The conserved [protected] person is staying at a location other than the conserved person's residence;

(3) The conserved [protected] person is admitted to a medical facility for emergency care in response to a life-threatening injury or medical condition or for acute care; or

(4) The conserved [protected] person dies. In the case of the conserved person's death, the conservator shall make a good faith effort to contact such relatives or designated persons in person or by telephone.

(b) A conservator is not required to provide notice in accordance with subsection (a) of this section if:

(1) A person who is entitled to notice under subsection (a) of this section informs the conservator in writing that such person does not wish to receive such notice; or

(2) The conserved [protected] person or a court order has expressly prohibited the conservator from providing notice to such person.

(c) A conservator shall not provide contact information for a conserved person to any person who is the subject of an order of protection or a restraining order issued on behalf of the conserved [protected] person.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<u>July 1, 2016</u>	New section
Sec. 2	<u>July 1, 2016</u>	New section

Statement of Purpose:

To protect the rights of conserved [protected] persons to interact with family and friends.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined]