

# Legal Assistance Resource Center of Connecticut, Inc.

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## **H.B. 5608 -- Grandparent visitation**

Judiciary Committee public hearing -- March 14, 2016  
Testimony of Raphael L. Podolsky

**Recommended Committee action: NO ACTION ON THE BILL**

The fundamental problem with this bill is that it appears not to comply with the constitutional standard for third-party visitation enunciated in the leading case of Roth v. Weston, 259 Conn. 202 (2002), as modified in 2011 by DiGiovanni v. St. George, 300 Conn. 59 (2011). These cases affirmed the federal constitutional right of fit parents to make decisions about the raising of their children without interference from others, sometimes known as the right to family integrity. The cases explicitly hold that, as a threshold matter to litigation, third parties, including grandparents, cannot seek visitation over the objection of the child's parent unless they can show both that (1) they have a parent-like relationship with the child and (2) denial of visitation to the third party would cause harm to the child analogous to neglect under the Juvenile Court statutes.

In 2012, the General Assembly codified these two cases in P.A. 12-137, which listed nine factors for the court to consider in determining whether the "parent-like relationship" test had been met. These include the length of the third party's relationship with the child and the length of any disruption that had occurred, the specific nature of the activities constituting the relationship, the death or the absence of the child's parent from the child's life, and other factors likely to be relevant to a relationship with a child. See C.G.S. 46b-59(b). It also added two factors that could be cited by grandparent applicants in particular: (1) their history of regular contact with the grandchild and (2) proof of a "close and substantial" relationship with the grandchild. See C.G.S. 46b-59(d). To our knowledge, these standards have not been challenged in court.

H.B. 5608 proposes to exempt grandparent applicants from the two-part Roth/DiGiovanni test and for them to substitute a new, lower standard for grandparents that "compelling circumstances exist that overcome the presumption that the parental decision to deny such visitation is in the child's best interest." It seems to us very unlikely that this could pass the Roth/DiGiovanni test. Indeed, it may not even constitute an alternative standard because it is so non-specific and general, i.e., it is very close to an open-ended offer to judges to label anything "compelling" and thereby override what the Supreme Court has directly held to be the fundamental right to family integrity. We think it is doubtful that this would stand up in court.

We also think that, to a large extent, the eleven grandparent factors of C.G.S. 46b-59(b) and (d), if they are valid, provide as much leeway as is likely to survive constitutional challenge. In that sense, the bill is unnecessary, and the best focus for litigants would be to present to the court convincing evidence under those two subsections.