



House of Representatives

General Assembly

File No. 146

February Session, 2016

Substitute House Bill No. 5361

House of Representatives, March 23, 2016

The Committee on Aging reported through REP. SERRA of the 33rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

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

1 Section 1. (NEW) (*Effective July 1, 2016*) (a) For purposes of this
2 section and section 2 of this act, (1) "conserved person" means a person
3 eighteen years of age and older for whom a conservator of the person
4 has been appointed pursuant to section 45a-646, 45a-648 to 45a-651,
5 inclusive, or 45a-654 of the general statutes, (2) "conservator" means a
6 conservator of the person appointed pursuant to section 45a-646, 45a-
7 648 to 45a-651, inclusive, or 45a-654 of the general statutes, (3) "court"
8 means a probate court with jurisdiction over a conservatorship of a
9 conserved person, and (4) "interact", "interaction" or "interacting with"
10 means communication by telephone, mail or in person.

11 (b) A conserved person, whether or not such person has voluntary
12 or involuntary representation of a conservator, has a fundamental
13 right of free association. Unless specifically authorized by an order
14 from a court pursuant to this section, a conservator shall not restrict a

15 conserved person's right to interact with other persons, including, but
16 not limited to, the conserved person's children, siblings, parents, or
17 other close relatives or friends. If a conserved person is unable to
18 express consent to interact with other persons due to a mental,
19 emotional or physical condition, then consent of the conserved person
20 may be presumed based on the conserved person's prior relationship
21 with such other persons unless the conserved person has previously
22 documented his or her wishes not to interact with the person seeking
23 access to him or her.

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

28 (d) Notwithstanding the provisions of subsection (b) of this section,
29 a conservator may petition the Probate Court that appointed the
30 conservator to order restrictions placed on a conserved person's ability
31 to interact with a person seeking access to him or her. The conservator
32 shall show by clear and convincing evidence that there is good cause
33 for such restrictions. In determining good cause, the court shall
34 consider all relevant factors, including, but not limited to:

35 (1) Whether any protective orders have been issued to prevent the
36 person or persons seeking access to the conserved person from
37 interacting with him or her;

38 (2) Whether the person seeking access to the conserved person has
39 been found by competent authority to have abused, neglected or
40 financially exploited the conserved person or the conservator can show
41 by a preponderance of evidence that such person has abused,
42 neglected or exploited the conserved person or is likely to abuse,
43 neglect or exploit the conserved person;

44 (3) If the conserved person is unable to communicate, whether such
45 person has stated that he or she does not want to interact with the
46 person seeking access to him or her in documents including, but not

47 limited to, a properly executed living will, durable power of attorney
48 or advance directive;

49 (4) If the conserved person resides in a skilled nursing facility,
50 residential care home or other facility subject to the provisions of
51 section 19a-550 of the general statutes, whether interaction with the
52 person seeking access to the conserved person is medically
53 contraindicated as documented by the patient's physician pursuant to
54 subsection (b) of section 19a-550 of the general statutes; and

55 (5) Any other information the court deems relevant.

56 (e) If the court finds by clear and convincing evidence that
57 restrictions must be placed on the conserved person's right to interact
58 with others pursuant to subsection (d) of this section, the court shall
59 order only such restrictions that are the least restrictive means of
60 intervention necessary to meet the needs of the conserved person and
61 shall expressly state that the conserved person shall retain all rights
62 and authority not expressly limited by the order. The court shall also
63 consider:

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

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

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

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

75 (1) Require the conservator to grant a person access to the conserved
76 person;

77 (2) Restrict, or further restrict, a person's access to the conserved
78 person in accordance with subsections (d) and (e) of this section;

79 (3) Modify the conservator's duties; or

80 (4) Remove and replace the conservator.

81 (g) Except as provided in subsection (h) of this section, a court shall
82 schedule a hearing on a petition or motion filed pursuant to subsection
83 (d) or (f) of this section not later than thirty days after the date the
84 petition or motion is filed. The court may, in its discretion, order
85 mediation to be conducted prior to the hearing. Any mediation shall
86 include the conserved person, the person seeking access to the
87 conserved person and the mediator. If mediation results in agreement
88 regarding interaction with the conserved person, such agreement shall
89 be approved by the court.

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

98 (i) Notice of the hearing, a copy of the petition or motion and a copy
99 of any order issued pursuant to this section shall be sent by certified
100 mail, return receipt requested, to the conserved person and any person
101 named in the motion. Nothing in this section shall be construed as
102 affecting the conserved person's right to appear and be heard in the
103 proceedings.

104 (j) A conserved person subject to involuntary representation shall
105 have the right to be represented by an attorney in accordance with the
106 provisions of section 45a-649a of the general statutes, in all
107 proceedings under this section.

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

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

120 (1) The conserved person's residence has changed;

121 (2) The conserved person is staying at a location other than the
122 conserved person's residence;

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

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

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

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

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

136 (c) A conservator shall not provide contact information for a

137 conserved person to any person who is the subject of an order of
 138 protection or a restraining order issued on behalf of the conserved
 139 person.

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

Statement of Legislative Commissioners:

In Section 1(d)(2), "has or is likely to abuse, neglect or exploit the conserved person" was changed to "has abused, neglected or exploited the conserved person or is likely to abuse, neglect or exploit the conserved person" for clarity; in Section 1(d)(4), "subject to section 19a-550" was changed to "subject to the provisions of section 19a-550" for clarity; and in Section 1(g), (h) and (i), "motion" was changed to "petition or motion" for internal consistency.

AGE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Probate Court	PCAF - Cost	\$865 - \$1,365/hearing	\$865 - \$1,365/hearing

Note: PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill results in a cost by requiring conservators to file a petition for a hearing in a probate court to restrict visitor access to a conserved person. Currently conservators are able to restrict visitation without a court order. It is estimated that the cost to hold each hearing, including conservator and attorney fees, service of notice, and optional mediation, will be \$865 - \$1,365. In the case of an indigent conserved person, all costs associated with the hearing will be paid by the Probate Court Administration Fund. There are currently approximately 3,900 indigent conserved persons.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5361*****AN ACT CONCERNING A CONSERVED PERSON'S RIGHT TO INTERACT WITH OTHERS.*****SUMMARY:**

This bill (1) prohibits a conservator of the person (hereafter referred to as “conservator”) from restricting a conserved person’s right to interact with other people, including his or her children, siblings, parents, and close relatives and friends, unless specifically authorized by the probate court and (2) creates a process to remove or sanction conservators who restrict such interactions in violation of the bill. The bill defines “interact” as communication by phone, mail, or in person.

The bill also requires a conservator to notify, as soon as reasonably possible, a conserved person’s closest relatives if the protected person (1) changes residence, (2) stays at a location other than his or her residence, (3) is admitted to a medical care facility for acute care or for emergency care of a life-threatening injury or medical condition, or (4) dies.

By law, a conservator of the person is a person, including a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home facility, appointed by the probate court to supervise the personal affairs of a person (1) found to be incapable of caring for himself or herself or (2) who voluntarily asks for a conservator. A conserved person is an adult for whom a conservator is appointed.

EFFECTIVE DATE: July 1, 2016

INTERACTION WITH CONSERVED PERSONS***Right to Free Association***

The bill specifies that a conserved person, regardless of voluntary or involuntary representation by a conservator, has a fundamental right to free association. Unless specifically authorized by a court order, the bill prohibits a conservator from restricting this right.

Conserved Person's Consent

The bill allows, if the conserved person is unable to consent to an interaction due to a mental, emotional, or physical condition, for consent to the interaction to be presumed based on the conserved person's prior relationships. However, consent may not be presumed when the conserved person previously documented his or her wishes to avoid interactions with specific people.

Restricting Access to Conserved Persons

The bill authorizes a conservator to petition the probate court to restrict a conserved person's ability to interact with certain people. The conservator must show, by clear and convincing evidence, that there is good cause for such restrictions. In determining good cause, the bill requires the court to consider all relevant factors including the following:

1. whether protective orders have been issued to prevent access to the conserved person;
2. whether the person seeking access to the conserved person has been found by a competent authority to have abused, neglected, or financially exploited him or her, or the conservator can show by a preponderance of evidence that the person has or is likely to;
3. if the conserved person is unable to communicate, whether he or she stated in documents, such as a living will, durable power of attorney, or advanced directive that he or she does not want to interact with the person;
4. if the conserved person resides in a skilled nursing facility, residential care home, or chronic disease hospital, whether

interaction with the person is medically contraindicated by his or her physician pursuant to the Connecticut’s Patient Bill of Rights; and

5. any other information the court deems relevant.

The bill allows the court, after a finding of clear and convincing evidence, to restrict a conserved person’s right to interact with others. In such a case, it must (1) order the least restrictive means necessary to meet the conserved person’s needs and (2) state that he or she retains all rights and authority not expressly limited by the order.

The court must also consider:

1. whether the conserved person wants to interact with the person seeking access;
2. reasonably restricting the time, place, and manner of the interaction, based on the history of the relationship, the conserved person's wishes, or both; and
3. requiring supervised interactions.

Contesting Restricted Access to Conserved Persons

The bill allows any interested person, including the conserved person, who reasonably believes the bill has been violated to contest access restrictions. Specifically, any interested person may ask the court to (1) require the conservator to grant a person access to the conserved person; (2) restrict, or further restrict, a person's access to the protected person; (3) modify the conservator's duties; or (4) remove and replace the conservator.

Court Hearings

The bill requires the court to schedule a hearing within 30 days of the filing of a motion or petition to restrict access or contest restricted access. The court must conduct an emergency hearing if the conserved person’s health is in significant decline or death may be imminent. Emergency hearings must be conducted as soon as practicable, and

within 10 days of the filing. Upon request, the court may order supervised interaction during the period before the hearing.

The court may, in its discretion, order mediation before the hearing. Under the bill, mediation must include the conserved person, person seeking access, and mediator. The court must approve any agreement reached through mediation.

Notice of the hearing, a copy of the relevant petition or motion, and a copy of any order must be sent by certified mail, return receipt requested, to the conserved person and any person named in the motion. (The bill does not specify who must send these documents.) Probate court statutes and rules currently require the court to contact certain individuals when it holds a hearing, including anyone designated as an interested party when the conservatorship was initially established.

The bill specifies that (1) a conserved person subject to involuntary representation has the right to be represented by an attorney in accordance with state law and (2) nothing may be construed to affect the conserved person's right to appear and be heard in the proceedings.

Penalty

The court may remove or replace a conservator who knowingly prevents or attempts to prevent interaction with a conserved person or violates any related court order. The court may also, upon its own or a motion filed with the court, appropriately sanction a conservator who knowingly violates the bill or a court order. Under the bill, sanctions may include an order to pay court costs and reasonable attorney's fees. However, the bill prohibits any monetary sanction from being paid out of the conserved person's estate.

REQUIRED NOTIFICATION OF CLOSE RELATIVES

The bill also requires a conservator to notify, as soon as is reasonably possible, a conserved person's closest relatives if the person (1) changes residence, (2) stays at a location other than his or her

residence, or (3) is admitted to a medical facility for acute care or emergency care of a life-threatening injury or medical condition. The bill specifies that a conserved person’s closest relatives include his or her children, siblings, and any other person he or she designated to be notified.

The conservator must also notify the conserved person’s closest relatives of the conserved person’s death. In such a case, the conservator must make a good faith effort to contact the closest relatives in person or by phone.

Probate court rules currently require the court to contact certain individuals when the conservator applies to change a conserved person’s residence, including anyone designated as an interested party when the conservatorship was initially established.

The bill exempts conservators from the notice requirement if (1) a person otherwise entitled to notice informs the conservator in writing that he or she no longer wishes to be notified or (2) the conserved person or a court order expressly prohibits notice to such persons. The bill prohibits the conservator from providing the conserved person’s contact information to any person who is the subject of a protection or restraining order issued on behalf of the conserved person.

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/08/2016)