

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 24-97—sSB 324
Judiciary Committee

AN ACT CONCERNING PROBATE COURT OPERATIONS AND ADMINISTRATION

SUMMARY: This act makes changes in laws governing probate court operations and related matters.

It prohibits using remote notarization to execute an agreement to divide a testate estate (i.e., an estate under a will). Existing law already prohibits using remote notarization for agreements to divide an intestate estate (i.e., estates without a will) (§ 1).

The act extends to the U.S. Department of Veterans Affairs Connecticut Healthcare System the same requirements that apply under existing law to state agencies for paying probate court fees. Under this law, if a state agency files a probate court matter or is otherwise liable for probate fees or expenses, the court must accept the matter without the filing fee and bill the agency for later payment, with the bill due upon receipt (§ 2).

The act changes certain notice requirements for involuntary proceedings under the state's Indian Child Welfare Act (ICWA), including setting different requirements for probate court and Superior Court cases and making minor changes to related provisions (for cases in either court) (§ 3).

The act specifies the procedures to notify the non-petitioning spouse of an involuntary conservatorship petition if the spouse is out-of-state, cannot be located, or cannot be served in the state. It also requires notice to be sent by certified mail to specified other family members if the spouse's location is unknown in certain cases involving elderly persons (§ 4).

EFFECTIVE DATE: October 1, 2024

§ 3 — NOTICES UNDER INDIAN CHILD WELFARE ACT

PA 23-113 generally codified into state law the federal ICWA, which governs jurisdiction over American Indian children's removal from their families in custody, foster care, and adoption cases. That act gives exclusive jurisdiction to Indian tribes over certain proceedings involving Indian children and preferred jurisdiction in some others.

Under prior law, for involuntary proceedings in state court (either probate court or Superior Court), the party seeking the foster care placement of, or termination of parental rights (TPR) to, an Indian child had to notify the parent or Indian custodian and the child's tribe about the pending proceedings and their right to intervene. This act sets different notice requirements for probate court cases (specifically, those in which a party is seeking an adoption or TPR), primarily by requiring the court, rather than the petitioning party, to send required notices, and makes a few changes

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to the underlying requirements for cases in either court. Principally, the act does the following:

1. specifically requires the probate court to notify the parent, and the notice to include the Indian custodian's or tribe's right to intervene, under existing notice procedures (outside of the ICWA) on TPR hearings (see BACKGROUND);
2. requires the probate court to notify the Indian custodian and tribe by registered or certified mail, return receipt requested;
3. for Superior Court cases, allows the notice (to the parent, custodian, or tribe) to be sent by certified mail, in addition to registered mail as under existing law;
4. in probate court cases where the person's and tribe's identity or location cannot be determined, requires the probate court to send the required notices to certain officials; and
5. for both Superior and probate court, where the person's and tribe's identity or location cannot be determined, allows the notice (for children from federally recognized tribes) to be sent to the Bureau of Indian Affairs Regional Director instead of the U.S. Secretary of the Interior and makes a conforming change.

§ 4 — INVOLUNTARY CONSERVATORSHIP NOTICES

By law, the probate court may appoint a conservator of the person or a conservator of the estate, or both, after finding that a person ("the respondent") is incapable of managing his or her affairs or caring for himself or herself.

If someone other than the respondent's spouse files a petition to appoint an involuntary conservator, existing law requires the spouse (in addition to the respondent) to receive personal (i.e., in-hand) service about the hearing. The act specifies the required notice process if (1) the spouse is out of state, (2) his or her address is unknown, or (3) personal service or service at the spouse's usual residence cannot reasonably be done in the state. In these cases, the judge or court clerk must order the notice to be sent by registered or certified mail, return receipt requested, or by newspaper publication at least 10 days before the hearing. If the latter, the notice must be in a newspaper of general circulation in the area of the person's last known address (in Connecticut or elsewhere), or in the place where the petition was filed if that address is unknown.

For all involuntary conservatorship cases, the court must order notice, as it directs, to the respondent's other relatives, as follows: the children; if none, the parents; if none, the siblings or their representatives; or if none, the next of kin. But existing law requires this notice to be sent by certified mail if the respondent is unmarried and the conservatorship application was brought by the Department of Social Services (DSS) commissioner for an elderly person who is being abused, neglected, exploited, or abandoned and lacks the capacity to consent to protective services. For these cases brought by DSS, the act also requires the notices to relatives to be sent by certified mail if the respondent's spouse cannot be located.

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BACKGROUND

Notice of TPR Hearings

By law, at least 10 days before a hearing on a TPR petition, notice generally must be served on the (1) parents, and in some cases, other people (e.g., the child if age 12 or older), by personal service or service at the person's usual residence (different requirements apply if the address is unknown or out of state) and (2) Department of Children and Families commissioner and attorney general by first class mail (CGS § 45a-716).