

PA12-025

HB5287

House	1438-1441	4
Judiciary	913, 915, 916, 941, 942- 950, 995-998, 1028	18
<u>Senate</u>	<u>2462, 2489-2490</u>	<u>3</u>
		25

H – 1127

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2012**

**VOL.55
PART 5
1395 – 1745**

House Bill 5011.

Total number voting	143
Necessary for adoption	72
Those voting Yea	143
Those voting Nay	0
Those absent and not voting	8

SPEAKER DONOVAN:

The bill passes.

The Clerk please call Calendar 202.

THE CLERK:

On page 14, Calendar 202, House Bill Number 5287,

AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD
LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP
PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION
OF TREATMENT FOR A PSYCHIATRIC DISABILITY, favorable
report by the Committee on the Judiciary.

SPEAKER DONOVAN:

The distinguished Chair of Judiciary,
Representative Fox, you have the floor, sir.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint
Committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

The question before the Chamber is on acceptance of the Joint Committee's favorable report and passage of the bill.

Will you remark?

REP. G. FOX (146th):

Thank you, Mr. Speaker.

This bill puts limitations on those situations where a guardian ad litem can be appointed specifically in the conservatorship setting. What those restrictions are -- or that when a GAL, a guardian ad litem, is appointed, it would have to be an adult who is represented by a lawyer and is either a respondent in a conservatorship proceeding or already has a conservator.

It does not impact minors or children. Also, Mr. Speaker, it states that a judge may appoint a GAL under these situations unless that person has a lawyer, as I said, and is either a respondent in a conservatorship case or has a conservator.

Mr. Speaker, this is a bill that has, I believe, gotten out of the Senate the last two years, and it has died on our calendar at the end of session. It's one that has been worked on and supported by the probate court administrator as well as legal services

and other interested groups.

And I would urge passage of the bill.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker.

I rise in support of the bill. I think this will result in a more sparing use of the guardian ad litem process and not involve a guardian where it's not necessary. So I would join in support of this bill and urge its adoption.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, sir.

Would you care to remark further on the bill?

Would you care to remark further on the bill? If not, staff and guests please come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is taking a roll call vote. Members to the Chamber, please.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Please check the roll call board to make sure your vote has been properly cast. If all the members have voted, the machine will be locked. The Clerk, please take a tally. The Clerk, please announce the tally.

THE CLERK:

On house Bill 5287.

Total number voting	144
Necessary for adoption	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

SPEAKER DONOVAN:

The bill is passed.

Will the Clerk please call Calendar Number 64.

THE CLERK:

On page 36, Calendar 64, Substitute for House Bill Number 5094, AN ACT CONCERNING THE "MOVE OVER" LAW, favorable report by the Committee on Transportation.

SPEAKER DONOVAN:

Representative Steve Dargan, you have the floor, sir.

S - 643

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2012**

**VOL. 55
PART 8
2276 - 2638**

cah/meb/gdm/rgd/tmj
SENATE

224
May 2, 2012

item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Also on calendar page 11, Calendar 370, House Bill 5287,
move to place the item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Madam President.

Moving to calendar page 13, Calendar 385, House
Bill 5123, move to place this item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

And a final item, Calendar page 15, Calendar 401, House
Bill 5516, move to place this item also on the consent
calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Madam President.

THE CHAIR:

Mr. Clerk.

cah/meb/gdm/rgd/tmj
SENATE

251
May 2, 2012

Thank you, madam.

And if there's no objection, I'd ask that this be put on
the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

Mr. Clerk --

Oh, sorry. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President. Madam President.

THE CHAIR:

Yes. Yes, Senator Looney.

SENATOR LOONEY:

Yes, Thank you, Madam President.

Madam President, if the Clerk would now read the items on the consent calendar so that we might proceed to a vote on that consent calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Let's see. On today's consent calendar we have on page 1, Calendar 85, Senate Bill Number 43; page 3, Calendar 189, Senate Bill 323; page 4, Calendar 205, Senate Bill Number 237; on page 5, Calendar 237, House Bill Number 5057; on page 6, Calendar 294, Senate Bill 111.

Also on page 6, Calendar 298, House Bill 5225; on page 11, Calendar 365, House Bill Number 5094; on page 11, Calendar 370, House Bill 5287; on page 13, Calendar 385,

cah/meb/gdm/rgd/tmj
SENATE

252
May 2, 2012

House Bill 5123; on page 15, Calendar 401, House Bill 5516; on page 19, Calendar 421, House Bill 5107.

On page 21, Calendar 59, Senate Bill Number 97; also on page 21, Calendar 90, Senate Bill 188; on page 21, again, Calendar 72, Senate Bill 63; page 21, Calendar 73, Senate Bill 195; on page 22, Calendar 104, Senate Bill 207; on page 24, Calendar 197, Senate Bill Number 315; also on page 24, Calendar 183, Senate Bill 234.

Page 25, Calendar 208, Senate Bill 347; on page 25, Calendar 233, Senate Bill 371; on page 26, Calendar 275, Senate Bill 391; on page 27, Calendar 288, Senate Bill 299; on page 27, Calendar 292, Senate Bill 156; and on page 28, Calendar 333, Senate Bill Number 426.

THE CHAIR:

Okay. Mr. Clerk, would you please call for a roll call vote and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

If all members have voted -- all members voted. The machine will be closed. And Mr. Clerk, will you call this great tally?

THE CLERK:

On today's consent calendar.

Total Number voting	36	
Necessary for adoption	19	
Those voting Yea		36
Those voting Nay		0
Those absent and not voting	0	

THE CHAIR:

The consent calendar passed.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 3
657 - 950**

2012

REP. FOX: Next we have The Honorable Paul Knierim, Probate Court Administrator.

Good afternoon.

THE HON. PAUL KNIERIM: Good afternoon, Representative Fox, Senator Coleman, members of the committee. I'm Paul Knierim. I serve as probate court administrator.

There are two bills principally that my office, together with the Probate Assembly, the Statewide Association of Judges submitted for your consideration, and I very much appreciate that they raised those items. They are Bills Number 309 and 348. I will say that in both cases these are largely technical, operational, administrative proposals, and they're rather in the nature of a laundry list this year of -- of things combined in these proposals, and I won't go through that laundry list because I don't think it's interesting enough to take your time to do that. I'll just point out a couple of items that may be of particular interest.

(SB248)

In the Probate Court Operations Bill, that's, that's Raised Bill 309, Sections 1 through 4, the main thing that I wanted to point out is intended to be clarifying language with respect to the calculation of pension benefits for Probate judges who serve as special assignment Probate judges or as administrative judges in children's courts in addition to their duties in their local courts. The proposal would -- is intended to have retroactive effect because of its clarifying nature. It represents what the practice has been since the General Assembly first authorized those positions, and again, it's just intended to be clarified, not to make a

charges, costs, expenses and instead streamline that to use just the term "fee," which I think is the more common usage anyway. It would also eliminate a couple of fees that have been on the books, but we feel would be appropriate to repeal them because they are inherently uncertain and therefore difficult to uniformly apply. And in the interest of fairness in Probate Court users, we think it would be better to be without those sections, and there is one additional new fee proposed. It is a \$25 fee for making available a digital copy of an audio recording of a hearing. This -- it's a very user-friendly proposal. I think the best way to understand it at present, we're able to make a transcript of a proceeding available to a party, a very expensive proposition. It can be hundreds of dollars to obtain a transcript. This instead would be a less expensive alternative to someone, for someone who wanted to hear what occurred in the proceedings perhaps over again or even for the first time.

Last, I'll just note there are two other bills on your agenda today that we are in support of, and they are 5287 concerning guardians ad litem and 5150 concerning the Uniform Adult Protective Proceeding Jurisdiction Act and that was to conservatorships with multistate involvement.

So I very much appreciate the opportunity to testify this afternoon.

REP. FOX: Thank you, Judge Knierim.

Are there any questions?

Representative O'Neill?

REP. O'NEILL: I'm not quite sure I haven't found

your testimony on the 5150, the uniform act, but are you -- is the court system in favor of that, your office and Probate Assembly supports the legislation?

THE HON. PAUL KNIERIM. Yes, we are. It will be a very useful rule to have specific guidelines for addressing situations where a person may be a respondent in a Connecticut court concerning conservatorship but may have involvement in the court of another state also. And so we think it would be very useful to have those rules. My understanding is that the count is something like 30 other states have adopted this provision.

REP. O'NEILL: Thank you, Mr. Chairman.

REP. FOX: Chairman Coleman.

SENATOR COLEMAN: Simple question: I -- I -- you mentioned two entities at the beginning of your testimony. One was the Probate Assembly and I don't recall what the other was that was in support of the bills that you spoke about.

THE HON. PAUL KNIERIM: I was referring to my office, the Probate Court Administrator. We -- although we are separate entities, we work jointly when it comes to legislative matters and have developed these proposals together.

SENATOR COLEMAN: Thank you.

REP. FOX: Thank you.

Are there any other questions? I see none.

Thank you very much, Judge Knierim.

THE HON. PAUL KNIERIM: Thank you.

Commission on Law and Aging, the Conference of Child Justices and Conference of State Court Administrations, the National Academy of Elder Law Attorneys, National Conference of Commissioners on Uniform State Laws, as well as the National Guardianship Association.

These cases arise particularly with patients with Alzheimer's in commonly known as snowbird cases or the transferring of long-distance care-giving responsibilities and interstate health markets, as well as the wandering of patients, and as many of you have heard over the years, we've had some high-profile cases in the media concerning elderly kidnapping.

So, currently there are 29 states that have adopted the New Uniformed Guardianship Act. I think attached to the testimony you'll see the states that have adopted it; 29 plus the District of Columbia and eight states, including Connecticut, which are introducing it this year. Particularly for Alzheimer's patients and their families we believe that this legislation will allow for cases to be settled more quickly and more consistently and also reduce economic and emotional cost which, which many of the families already bear.

That's basically (inaudible).

REP. FOX: All right. Thank you, Laurie. Are there any questions? I see none (inaudible). Next is Jocelyn Gates or Joelyn, sorry, Joelyn Gates. I'm sorry.

JOELYN GATES: Good afternoon, Representative Fox, Senator Coleman and members of the Judiciary Committee. My name is Joelyn Gates. I am an attorney with Connecticut Legal Services in Willimantic where I represent mostly elderly clients 60 years of age and older.

HB 5150
HB 5287

I'm here today to testimony on behalf of Legal Services to support HOUSE BILL 5150 - AN ACT CONCERNING THE CONNECTICUT UNIFORM ADULT PROTECTIVE PROCEEDINGS and HOUSE BILL 5287 - AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION OF TREATMENT FOR A PSYCHIATRIC DISABILITY.

House Bill 5150 reflects the efforts of several interested parties. You heard just a moment ago from the Alzheimer's Association but also involved were the Connecticut Bar Association, Probate Court Administration, Connecticut Legal Rights Project and Legal Services, and it was our effort to adopt Uniform Adult Guardianship and Protected Jurisdiction Act to conform it to Connecticut law. This bill was passed by the Senate last year, but unfortunately, it did not make it to the House floor for a vote before the session ended, and we hope that you will support the bill again this year.

This act maintains the protections and due process rights currently in Connecticut law for people who may be conserved. However, it improves current Connecticut law in cases where a conserved person may wish to move from one state to another by authorizing Connecticut to recognize the court orders from another states. It also provides a mechanism and criteria for Connecticut courts to determine the appropriate jurisdiction when a person has connections to different states. Overall, House Bill 5150 is an improvement over the current Connecticut law and should be adopted.

Legal Services also supports House Bill 5287

which is also the result of a collaboration between many stakeholders, including the Department of Mental Health and Addiction Services, the State Connecticut Council on Developmental Disabilities, the Connecticut Legal Rights Project, the Probate Court Administrator and, again, Legal Services.

Connecticut General Statutes Section 45(a)-132 authorizes a court of probate or superior court to appoint a guardian ad litem for any minor incompetent, undetermined or unborn person. This is a discretionary appointment without prerequisites or notice. The proposed legislation sets out criteria for appointing a GAL in a limited type of case; those that involved an adult who is represented by a lawyer, who is either a respondent in a conservatorship proceeding or already has a conservator.

This legislation will limit the appointment of a GAL prior to a person being found incapable in which case such appointment is appropriate because the person is deemed to be incompetent before the case is heard. And the courts will be allowed to appoint a GAL to answer specific questions, but once the questions have been answered, the appointment of the GAL would be terminated.

If you have any questions, I'd be happy to answer them. Thank you.

REP. FOX: Thank you for your testimony.

Are there any questions?

Thank you very much.

Next we have Tom Behrendt, and let's just -- before we begin, that's the last name that we

have on our list from members of the public. Are there any other individuals here that would like to testify?

THOMAS BEHRENDT: Good afternoon. My name is Thomas Behrendt. I am counsel emeritus with the Connecticut Legal Rights Project, a legal service organization that advocates for low-income adults who have or are perceived to have psychiatric disabilities.

I urge you to enact House Bill 5287, AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING THE ADMINISTRATION OF TREATMENT FOR PSYCHIATRIC DISABILITY.

This bill places limits on the broad discretion of the courts to appoint guardians ad litem in those cases involving an adult who is represented by counsel and is either respondent in a conservatorship proceeding or whoever already has a conservator. Identical bills, as just stated, were approved by this committee in both 2010 and 2011 sessions. The Senate passed the bills by unanimous vote each time. It is the project of the -- the product of the Connecticut Legal Rights Projects work with the Office of Probate Court Administrator, DMHAS. In addition, the bill has the support of the Elder Law Section of the Connecticut Bar Association, Legal Services, the Connecticut Office of Protection and Advocacy for persons with Disabilities and the Connecticut Council on Developmental Disabilities.

The proposal does not affect children at all.

It sets forth criteria for appointing a guardian ad litem in the limited cases that

involve an adult represented by an attorney who is either respondent in a conservatorship or already has a conservator. It does not affect people, including those involved in termination of parental rights who do not have conservators and who do not have attorneys. A judge may appointment a guardian ad litem under this proposal unless the person has a lawyer who is a respondent in a conservatorship case or has a conservator. And even in those cases, there is an exception for situations where a person's attorney is unable to ascertain the preferences of the individual.

The bill would place limits on the -- needed limits on the appointment of guardians ad litem, provide guidance for judges who are considering such appointments. A conservator's duty is to act for the person in those areas where he or she has been found incapable. It would prohibit the appointment of guardians ad litem when they are duplicative, unnecessary and costly in most cases where a person already has a conservator and just over the years we've seen a number of cases where there is a guardian ad litem and then that guardian ad litem, who is an attorney himself or herself, hires an attorney all at the conserved individual's or the respondent's expense. Sometimes in these cases, the conservators who may or may not be attorneys hire attorneys in addition, and it's just unnecessarily costly, prejudicial and problematic.

In the rare situations where an attorney is unable to determine the preferences of the client, the court may appoint a guardian ad litem after canvassing an individual to determine their preference or their inability to express that preference. It's limited --

such appointments are limited in scope and duration, and the judge will make a specific, would make a specific finding of the need for a guardian ad litem for a specific purpose or purposes or the judge would appoint the guardian ad litem to answer specific questions to assist the court.

At present, there also is no language in the current statute that specifies the duties and responsibilities of a guardian ad litem for an adult. This bill would fill that void by tracking the current conservatorship statute. The duty of the guardian ad litem would be to ascertain whether an attorney's proposed advocacy or a conservator's proposed course of action is the least restrictive and least intrusive means of addressing the respondent's or conserved person's affairs or personal care.

In addition, the present problem is that sometimes guardians ad litem can remain on a case forever, and this legislation would provide a needed end date to the appointment after the report is filed.

So I urge you to act favorably on House Bill 5287. Thank you for your time and attention, and I'd be happy to address any questions you may have.

REP. FOX: Thank you.

Are there any questions?

Representative Gonzalez.

REP. GONZALEZ: Good afternoon. The guardian ad litem for person with disabilities always appointed by a judge?

39
ak/mb/gbr JUDICIARY COMMITTEE

March 5, 2012
1:00 P.M.

THOMAS BEHRENDT: The judge would appoint the guardian ad litem.

REP. GONZALEZ: And always it's an attorney who is the guardian ad litem?

THOMAS BEHRENDT: It does not necessarily have to be an attorney. In my experience, it almost always is.

REP. GONZALEZ: It always an attorney. And how can we -- how can a person -- let's say that, a senior with problems, the -- the court appoint a guardian ad litem and for some reason that guardian at litem is not doing the job he's supposed to, what can the -- the members of the family do, I guess, to get to appoint or -- to change the guardian ad litem?

THOMAS BEHRENDT: Is your concern regarding a guardian ad litem or a conservator who has been appointed?

REP. GONZALEZ: No, guardian ad litem.

THOMAS BEHRENDT: Okay, guardian ad litem. The guardian ad litem is appointed by the judge and the judge can remove the guardian ad litem or appoint a successor, another individual to serve in that capacity. This legislation would place limits on the -- on the role of guardian ad litem. That would be for a specific purpose to assist the court or assist counsel if it's an initial proceeding in ascertaining the preferences of the respondent, the alleged incapable individual.

REP. GONZALEZ: And -- and that litem, that -- and that guardian ad litem is appointed for a senior that has mental problems, that guardian ad litem is supposed is to take care of the bills, you know, pay, no?

THOMAS BEHRENDT: No, that would be the role of -- of a conservator.

REP. GONZALEZ: Oh, that's the conservator?

THOMAS BEHRENDT: Yes, so the conservator would act on -- on the -- on the behalf of the individual who is incapacitated.

REP. GONZALEZ: And it's the same process that if you want to change, that person wants to change that conservator, it's the same process, they have to go through the court?

THOMAS BEHRENDT: Yes.

REP. GONZALEZ: Thank you.

REP. FOX: Representative O'Neill.

REP. O'NEILL: Thank you.

You said that the -- this bill will provide for listing the duties of the guardian ad litem for an adult, is that correct? Is that what you testified to?

THOMAS BEHRENDT: Yes, this -- this language would track the current conservatorship statutes.

REP. O'NEILL: I -- I -- maybe I'm not recognizing it but could you point it out to me and indicate to me where it's located because I'm not seeing -- maybe it's very subtle by a reference or something.

THOMAS BEHRENDT: If you can bear with me for a moment. In Section -- it's A3 -- well, Section 1(a)(3), if the judge or magistrate appoints a guardian ad litem under this subdivision, the judge or magistrate's order

shall, one, limit the appointment in scope and duration -- which although not the same language as the 2007 amendment to the statute is consistent with it -- and, two, direct the guardian ad litem to take only the specific action required or to answer specific questions posed by the judge or magistrate including questions designed to ascertain whether the attorney or conservator's proposed course of action is the least restrictive means of intervention available to assist the person in managing his or her affairs or caring for himself or herself. I think that would be the specific language that tracks the 2007 Public Act 07-116.

REP. O'NEILL: All right. So it's -- it's the -- the judge -- all right so -- okay. So again, the part about the "judge shall" that's in the '07 act as well?

THOMAS BEHRENDT: Yes, and in the -- in the initial appointment of a conservator the duties of the conservator are to --

REP. O'NEILL: Let me say, I mean when I read the -- shall limit the scope and duration. "Duration" I think is obvious, it's time.

THOMAS BEHRENDT: Right.

REP. O'NEILL: "Scope," however, suggests that there could be a number of things that would be included within the scope of the guardian's duties.

THOMAS BEHRENDT: Correct.

REP. O'NEILL: And then the second subsection, subparagraph, directs the guardian ad litem to take only specific actions to ask (inaudible) specific questions -- well, only the specific

action required. I mean you could have a -- a longer list of things. It's up to the judge to decide what those actions are it sounds like.

THOMAS BEHRENDT: Yes, indeed.

REP. O'NEILL: Okay. So it's not like we're defining these are the duties of the guardian ad litem and he shall or she shall do this or that or the other thing, but rather we're sort of saying that the limitations have to be spelled out by the judge.

THOMAS BEHRENDT: That's correct. There's -- there's flexibility on the part of the judge and you know, conceivably it could be, you know, expanded or, or revised as needed.

REP. O'NEILL: Thank you, Mr. Chairman.

REP. FOX: Are there any other questions from members of the committee. Seeing none, thank you very much. That is the last name we have on our sign-up sheet, but there was somebody who wished to speak but apparently that was not on an item related to this agenda. Is there anybody else here this afternoon who would like to speak towards the items on the agenda? No? I think we are about to conclude our shortest public hearing of the, of the session. So we might as well enjoy it. So with that, I will close the public hearing. We do have a meeting scheduled for this Wednesday beginning at noon, another one this coming Friday beginning at 11:00 a.m. So thank you very much.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 4
951 - 1300**

2012

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**THE JUDICIARY COMMITTEE**

March 5, 2012

Testimony of Joelen J. Gates**H.B. 5150 - An Act Concerning the Connecticut Uniform Adult Protective Proceedings Act****H.B. 5287 – An Act Concerning the Appointment of a Guardian Ad Litem for a Person Who Is Subject to a Conservatorship Proceeding or a Proceeding Concerning Administration of Treatment for a Psychiatric Disability**

Good afternoon, my name is Joelen Gates. I am an attorney with Connecticut Legal Services, Inc. in Willimantic where I represent and advise elderly clients 60 years of age and older. I'm here today on behalf of Legal Services to support **H.B. 5150, An Act Concerning the Connecticut Uniform Adult Protective Proceedings Act** and **H.B. 5287 An Act Concerning the Appointment of a Guardian Ad Litem for a Person Who Is Subject to a Conservatorship Proceeding or a Proceeding Concerning Administration of Treatment for a Psychiatric Disability.**

H. B. 5150 reflects the efforts of several interested parties, including the Connecticut Bar Association, the Probate Court Administration, Connecticut Legal Rights Project and Legal Services to adopt the Uniform Adult Guardianship and Protective Procedure Jurisdiction Act. This bill was passed by the Senate last year, but unfortunately did not make it to the House floor for a vote before the session ended. We hope you will support the bill again this year.

This Act maintains the protections and due process rights currently in Connecticut law for people who may be conserved. However, it improves current Connecticut law in cases where a conserved person may wish to move from one state to another by authorizing Connecticut to recognize the court orders from another state. It also provides a mechanism and criteria for Connecticut courts to determine the appropriate jurisdiction when a person has connections to different states. Overall, **H. B. 5150** is an improvement over current Connecticut law and should be adopted.

Legal Services supports H. B. 5287 which is also the result of collaboration between many stakeholders, including the Department of Mental Health and Addiction Services, The State of Connecticut Council on Developmental Disabilities, The Connecticut Legal Rights Project, the Probate Court Administrator and Legal Services.

Connecticut General Statutes, Section 45a-132 authorizes a court of probate or superior court to appoint a guardian ad litem (GAL) for "any minor or incompetent, undetermined or unborn person." This is a discretionary appointment without prerequisites or notice. The proposed legislation sets out criteria for appointing a GAL in a limited type of case: those that involve an adult who is represented by a lawyer either is 1) a respondent in a conservatorship proceeding or 2) already has a conservator.

This legislation will limit the appointment of a GAL prior to a person being found incapable in which case such appointment is inappropriate because the person is deemed to be incompetent before the case is heard. Courts will be allowed to appoint a GAL to answer specific questions, but once the questions have been answered, the appointment of the GAL would terminate. The proposal preserves the ability to appoint a GAL in certain situations, but limits and provides guidance for what the GAL can do.

We urge you to support this bill.

CONNECTICUT LEGAL RIGHTS PROJECT
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PAGE 5
LINE 14

Testimony of Thomas Behrendt, Esq.
Judiciary Committee
March 5, 2012

**Support for H.B. 5287, AAC the Appointment of a Guardian Ad Litem
for a Person Who is Subject to a Conservatorship Proceeding
or a Proceeding Concerning the Administration of Treatment
for a Psychiatric Disability**

Sen. Coleman, Rep. Fox, distinguished members of the committee, my name is Tom Behrendt. I am Counsel Emeritus with the Connecticut Legal Rights Project (CLRP), a legal services organization that advocates for low-income adults who have, or are perceived to have, psychiatric disabilities. Although CLRP does not represent clients in probate court proceedings where they have court-appointed counsel, it frequently assists them and their counsel, and CLRP represent clients in appeals of conservatorship proceedings. We certainly hear about the problems and try to help correct them.

I urge you to enact House Bill 5287, which removes the broad discretion of the courts to appoint a guardian ad litem in those cases involving an adult who is represented by counsel *and* is either a respondent in a conservatorship proceeding or already has a conservator. Identical proposals were approved by this committee in both the 2010 and 2011 legislative sessions; The Senate passed the bills by unanimous vote in each of those years. The bill is the product of CLRP's work with the office of the Probate Court Administrator and DMHAS. In addition, the bill has the support of the Elder Law Section of the Connecticut Bar Association, Legal Services, Judge Knierim's office, and the Connecticut Office of Protection and Advocacy for Persons with Disabilities.

This proposal does not affect children at all.

Section 45a-132 of the Connecticut General Statutes authorizes a court of probate or a superior court to appoint a guardian ad litem (GAL) for "any minor or incompetent, undetermined or unborn person." This is a discretionary appointment, without prerequisites or notice.

The present proposal, H.B. 5287, sets forth criteria for appointing a GAL in those limited cases that involve **an adult who is represented by a lawyer AND is either (1) a respondent in a conservatorship proceeding or (2) already has a conservator.** H.B. 5287 has no impact on minors; it does not affect children.

Furthermore, this proposal does not affect people (including those involved in termination of parental rights) who do not have conservators or who do not have lawyers. A judge may appoint a GAL under this proposal unless a person has a lawyer AND is either a respondent in a conservatorship case, or already has a conservator. Even in those cases, there is an exception for the situation when a person's attorney is unable to ascertain the preference of the person.

Rationale:

1. A conservatorship proceeding addresses the ability of the person to make and communicate decisions about his or her life. Appointing a GAL **prejudges** that case by assuming that the person is incapable or incompetent. Therefore, this bill would prohibit the appointment of a GAL in most conservatorship cases.
2. A conservator's duty is to act for the person in those areas where he or she has been found incapable. Adding a GAL when a conservator has already been appointed increases expenses without benefiting the conserved person. Therefore, this proposal prohibits the appointment of a GAL which is **duplicative** in most cases when a person already has a conservator.
3. There are **rare situations** when an attorney cannot determine the preference of the client. Therefore, under this proposal the court may appoint a guardian ad litem after canvassing the individual to determine his or her preference, or his or her inability to express that preference.
4. Currently, there is no language in the statute that specifies the **duties or responsibilities** of a GAL for an adult. H.B. 5287 fills that void by tracking the conservatorship statute: The duty of a guardian ad litem appointed under the exception is to ascertain whether an attorney's proposed advocacy or a conservator's proposed course of action is the least restrictive and least intrusive means of addressing a respondent's or conserved person's affairs or personal care.
5. Currently, guardians ad litem can remain on a case forever -- and this is frequently the situation. Therefore, H.B. 5287 provides an **end date** to the appointment after a report is filed.

I urge you to act favorably on H.B. 5287. Thank you very much for your time and attention.



STATE OF CONNECTICUT

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To: Senate Co-Chair Eric Coleman
House Co-Chair Gerald Fox
Senate Ranking Member John Kissel
House Ranking Member John Hetherington
Honorable Members of the Judiciary Committee

From: Paul J. Knierim
Probate Court Administrator

Re: RB 5287 An Act Concerning the Appointment of a Guardian Ad
Litem for a Person who is Subject to a Conservatorship Proceeding
or a Proceeding Concerning Administration of Treatment for a
Psychiatric Disability

Date: March 5, 2012

The Office of the As Probate Court Administrator supports this bill.

The appointment of a guardian ad litem to represent the interests of a respondent in conservatorship proceedings has long been a matter resting in the discretion of the probate courts. Courts should make such appointments sparingly, because the involvement of a guardian ad litem may add to the cost and complexity of the proceeding. At the same time, situations can and do arise in which the appointment of a guardian ad litem is essential to ensure that the outcome of the proceeding promotes the best interests of the conserved person.

My office has worked with the proponents of the bill to craft this language, which establishes reasonable guidelines for judges when appointing guardians ad litem. We urge the committee to approve the bill.