

CONNECTICUT LEGAL RIGHTS PROJECT

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COMMITTEE ON AGING PUBLIC HEARING FEBRUARY 10, 2015 TESTIMONY OF SALLY R. ZANGER, STAFF ATTORNEY

Connecticut Legal Rights Project has concerns about proposed bill SB 204.
Senators Flexer and Osten, Senators Kelly and Bolinski, members of the committee.

The Connecticut Legal Rights Project (CLRP) is a legal services organization that advocates for low-income individuals in institutions and in the community throughout the state who have, or are perceived to have, psychiatric disabilities. We support initiatives that integrate individuals into the community.

CLRP has concerns about SB 204, which proposes to amend the general statutes (without specifying which of the general statutes) to require the use of best practices for protecting senior citizens in from interaction with sexual offenders

We agree with the purpose of the bill, to keep vulnerable senior citizens safe. However, the proposal casts a net that is both too wide, and too narrow. People who are on the sex offender registry are not all pedophiles or sexual predators. Some people who are on the sex offender registry are there for crimes they committed 10 or 20 years ago, when they were teenagers, barely out of their teens, or when they were under the influence of substances they no longer use. The bill assumes that senior citizens need to be protected from “interacting” with sexual offenders. “Interacting” is very very broad. Some people live in senior housing, in the same senior housing as their parents, and assist those senior parents with their day-to-day chores. On the other hand there are undoubtedly predators working in facilities who have never been caught or prosecuted and are not on any sex offender registry. It is important to draft and craft legislation that will actually protect people, not simply restrict individuals on the sex offender registry, who are already known to us. As the bill notes at the end, it is not clear at all what it means in terms of risk to the community for a person to be on the sex offender registry. I do not in any way diminish the seriousness of any crime against a person, but I emphasize that if a person has served time in prison, come out of prison, served probation, or is on parole, is registered and reporting his or her whereabouts as required and has not committed any further offenses it is not appropriate to automatically restrict him or her from public facilities, from employment, visiting, or living with or near senior citizens. Some of the people on the registry are in fact senior citizens!

The bill raises important questions: What are the best practices for protecting senior citizens? How to identify individuals who pose a risk to the community? Those questions need to be answered before enacting draconian legislation. The bill also seems to recognize, in the final paragraph, that it is necessary to assess the risk to the community that each offender poses. **We support reforms to our current sex offender**

registry system to create a tiered approach that utilizes the already existing risk assessments done by Dept. of Corrections to determine who is a high, medium or low risk. People deemed to be low risk should not have to be on a public registry at all. There should be a mechanism to petition to be removed from registry and sentencing judges should have discretion not to put an individual on the registry in the first place. CLRP respectfully suggests that there is much research to be done before this bill is drafted or enacted: research regarding best practices, regarding the risks, and regarding the legality and the wisdom of wholesale restrictions on the movements of citizens.

CLRP supports with questions Proposed Bill No. 5455 and Proposed Bill No. 290.

Both bills appear to enact a version of the CARE Act: Caregiver Advise, Record, Enable ACT. CLRP supports the bills because they provide autonomy for patients (of any age) and fill a gap in our current continuum of assistance, so that a person can designate a caregiver who will be involved in care but who is not a substitute decision maker. The carer can be available and must be informed without requiring a finding that the patient is incapable. I have had clients who found that the only way to be sure that their trusted family members were informed of important issues was to make those family members voluntary conservators of the person, which is a more restrictive solution than necessary. These bills may provide a middle ground.

However, there is no text to the proposed bills. We have some concerns about the ACT provided on the AARP website (attached to this testimony):

1. “Caregiver” need not be limited to individuals living in the same residence.
2. Section 2 A (c) (i) (1) states that if the patient or patient’s legal guardian declines to consent to the release of medical information to the patient’s designated caregiver, the hospital is not required to provide notice of discharge or transfer or to provide information contained in the discharge plan. There is an “all or nothing” quality to the release of information. A person should be able to consent to notice of discharge and/or transfer and release of information contained in the discharge plan without having to give the caregiver access to all of his or her medical records. A caregiver is not a medical decision maker, and only needs to know what he or she needs to know. A patient can make that distinction and should not have to forfeit the protections of an informed caregiver to preserve other aspects of his/her medical privacy.
3. Section 5 (B) states that any health care directive claimed to be in conflict with the Act must be in existence prior to the patient’s entry into a hospital. Under CT law, a person can execute an advance directive for health care while in the hospital, and there is no inherent conflict between the designation of a caregiver and the designation of a health care representative. It can be one person, but need not be.

Thank you for your work and for your consideration of these serious concerns.