

**Statutory Revisions Committee Legislation Review Sub-Committee
Report for January 23, 2020**

As of January 23, 2020

First review of Legislation. Through HB 1164, and SB 114

the Sub-Committee found one (1) new bill of particular interest.

Because C.R.S. § 15-14-204, delineates the circumstances under which a court may appoint a guardian for a minor child as requiring that the court finds the appointment is in the minor's best interest, and:

- (a) The parents consent;
- (b) All parental rights have been terminated;
- (c) The parents are unwilling or unable to exercise their parental rights; or
- (d) Guardianship of a child has previously been granted to a third party and the third party has subsequently died or become incapacitated and [*other circumstances*],

and

HB 1164, protects against interference with parental rights under a standard stated in proposed C.R.S. § 14-16-103, which requires a demonstration "that the compelling governmental interest, as applied to the minor child involved, is of the highest order, is narrowly tailored, and cannot be accomplished in a less restrictive manner"

HB 1164 may interfere with or change the standard set forth in the Colorado Uniform Guardianship and Protective Procedures Act. C.R.S. § 15-14-101 *et seq.*

A copy of HB 1164 is attached.

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED



LLS NO. 20-0789.01 Jacob Baus x2173

HOUSE BILL 20-1144

HOUSE SPONSORSHIP

Pelton, Baisley, Beckman, Buck, Geitner, Humphrey, Larson, Liston, Neville, Ransom, Rich, Saine, Sandridge, Van Winkle, Will

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A PARENT'S BILL OF RIGHTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill establishes a parent's bill of rights that sets forth specific parental rights related to directing the upbringing, education, and health care of a minor child.

1 *Be it enacted by the General Assembly of the State of Colorado:*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 **SECTION 1.** In Colorado Revised Statutes, **add** article 16 to title
2 14 as follows:

3 **ARTICLE 16**

4 **Parent's Bill of Rights**

5 **14-16-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 16 IS
6 THE "PARENT'S BILL OF RIGHTS".

7 **14-16-102. Definitions.** AS USED IN THIS ARTICLE 16, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "MINOR CHILD" MEANS A PERSON SEVENTEEN YEARS OF AGE
10 OR YOUNGER.

11 (2) "PARENT" MEANS THE NATURAL OR ADOPTIVE PARENT OR
12 LEGAL GUARDIAN OF A MINOR CHILD.

13 **14-16-103. Parental rights reserved - exceptions.** (1) THE
14 STATE, ANY POLITICAL SUBDIVISION OF THE STATE, OR ANY OTHER
15 GOVERNMENTAL ENTITY OR INSTITUTION SHALL NOT INFRINGE UPON THE
16 FUNDAMENTAL RIGHT OF A PARENT TO DIRECT THE UPBRINGING,
17 EDUCATION, AND HEALTH CARE OF HIS OR HER MINOR CHILD WITHOUT
18 **DEMONSTRATING THAT THE COMPELLING GOVERNMENTAL INTEREST, AS**
19 **APPLIED TO THE MINOR CHILD INVOLVED, IS OF THE HIGHEST ORDER, IS**
20 **NARROWLY TAILORED, AND CANNOT BE ACCOMPLISHED IN A LESS**
21 **RESTRICTIVE MANNER.**

22 (2) EXCEPT AS OTHERWISE PROVIDED BY LAW, ALL PARENTAL
23 RIGHTS ARE RESERVED TO A PARENT OF A MINOR CHILD WITHOUT
24 OBSTRUCTION OR INTERFERENCE FROM THE STATE, ANY POLITICAL
25 SUBDIVISION OF THE STATE, OR ANY OTHER GOVERNMENTAL ENTITY OR
26 INSTITUTION, INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO:

27 (a) DIRECT THE UPBRINGING, EDUCATION, AND HEALTH CARE OF

1 THE MINOR CHILD;

2 (b) DIRECT THE MORAL OR RELIGIOUS TRAINING OF THE MINOR

3 CHILD;

4 (c) ACCESS AND REVIEW ALL SCHOOL RECORDS RELATING TO THE

5 MINOR CHILD;

6 (d) ACCESS AND REVIEW ALL MEDICAL RECORDS OF THE MINOR

7 CHILD;

8 (e) MAKE HEALTH CARE DECISIONS FOR THE MINOR CHILD;

9 (f) CONSENT IN WRITING BEFORE A BIOMETRIC SCAN OF THE MINOR

10 CHILD OCCURS OR IS SHARED OR STORED;

11 (g) CONSENT IN WRITING BEFORE ANY RECORD OF THE MINOR

12 CHILD'S BLOOD OR DNA IS MADE, SHARED, OR STORED, UNLESS OBTAINING

13 SUCH BLOOD OR DNA IS OTHERWISE REQUIRED BY LAW OR AUTHORIZED

14 PURSUANT TO A COURT ORDER;

15 (h) CONSENT IN WRITING BEFORE THE STATE OR ANY OF ITS

16 POLITICAL SUBDIVISIONS MAKES A VIDEO OR VOICE RECORDING OF THE

17 MINOR CHILD, UNLESS THE VIDEO OR VOICE RECORDING IS TO BE USED

18 SOLELY FOR ANY OF THE FOLLOWING PURPOSES:

19 (I) A PURPOSE RELATED TO A LEGITIMATE ACADEMIC OR

20 EXTRACURRICULAR ACTIVITY;

21 (II) A PURPOSE RELATED TO REGULAR CLASSROOM INSTRUCTION;

22 (III) SECURITY OR SURVEILLANCE OF BUILDINGS OR GROUNDS; OR

23 (IV) A PHOTO IDENTIFICATION CARD; AND

24 (i) BE NOTIFIED PROMPTLY IF AN EMPLOYEE OF THE STATE, ANY

25 POLITICAL SUBDIVISION OF THE STATE, ANY OTHER GOVERNMENTAL

26 ENTITY OR INSTITUTION, OR ANY OTHER INSTITUTION SUSPECTS THAT A

27 CRIMINAL OFFENSE HAS BEEN COMMITTED AGAINST THE MINOR CHILD BY

1 SOMEONE OTHER THAN A PARENT. THIS SUBSECTION (2)(i) DOES NOT
2 CREATE A NEW OBLIGATION FOR A SCHOOL TO REPORT MISCONDUCT
3 BETWEEN STUDENTS AT SCHOOL, SUCH AS FIGHTING OR AGGRESSIVE PLAY,
4 THAT IS ROUTINELY ADDRESSED BY THE SCHOOL AS A STUDENT
5 DISCIPLINARY MATTER.

6 (3) AN ATTEMPT TO ENCOURAGE OR COERCE A MINOR CHILD TO
7 WITHHOLD INFORMATION FROM HIS OR HER PARENT IS GROUNDS FOR
8 DISCIPLINE OF AN EMPLOYEE OF THE STATE, ANY POLITICAL SUBDIVISION
9 OF THE STATE, OR ANY OTHER GOVERNMENTAL ENTITY OR INSTITUTION,
10 EXCEPT AS USED BY A PEACE OFFICER IN THE CONTEXT OF A CRIMINAL
11 INVESTIGATION.

12 (4) UNLESS A RIGHT HAS BEEN LEGALLY WAIVED OR LEGALLY
13 TERMINATED, A PARENT HAS INALIENABLE RIGHTS THAT ARE MORE
14 COMPREHENSIVE THAN THOSE LISTED IN THIS ARTICLE 16. THE "PARENT'S
15 BILL OF RIGHTS" DOES NOT PRESCRIBE ALL RIGHTS OF A PARENT. UNLESS
16 OTHERWISE REQUIRED BY LAW, THE RIGHTS OF A PARENT OF A MINOR
17 CHILD MUST NOT BE LIMITED OR DENIED.

18 **14-16-104. Parental rights related to education of a minor**
19 **child - policy for parental involvement - request for information.**

20 (1) THE BOARD OF EDUCATION OF A SCHOOL DISTRICT, BOARD OF
21 COOPERATIVE SERVICES, CHARTER SCHOOL, OR INSTITUTE CHARTER
22 SCHOOL, IN CONSULTATION WITH PARENTS, TEACHERS, AND
23 ADMINISTRATORS, SHALL DEVELOP AND ADOPT A POLICY TO PROMOTE THE
24 INVOLVEMENT OF PARENTS OF THE ENROLLED MINOR CHILD. AT A
25 MINIMUM, THE POLICY MUST INCLUDE:

26 (a) A PLAN FOR PARENT PARTICIPATION IN THE SCHOOL THAT IS
27 DESIGNED TO IMPROVE PARENT AND TEACHER COOPERATION IN SUCH

1 AREAS AS HOMEWORK, ATTENDANCE, AND DISCIPLINE;

2 (b) PROCEDURES BY WHICH A PARENT CAN LEARN ABOUT THE
3 COURSE OF STUDY FOR HIS OR HER MINOR CHILD AND REVIEW LEARNING
4 MATERIALS, INCLUDING THE SOURCE OF ANY SUPPLEMENTAL
5 EDUCATIONAL MATERIALS;

6 (c) PROCEDURES BY WHICH A PARENT WHO OBJECTS TO ANY
7 LEARNING MATERIAL OR ACTIVITY ON THE BASIS THAT IT IS HARMFUL MAY
8 WITHDRAW HIS OR HER MINOR CHILD FROM THE ACTIVITY OR FROM THE
9 CLASS OR PROGRAM IN WHICH THE MATERIAL IS USED. AN OBJECTION TO
10 A LEARNING MATERIAL OR ACTIVITY ON THE BASIS THAT IT IS HARMFUL
11 MUST BE AN OBJECTION BASED ON THE BELIEF THAT THE MATERIALS OR
12 ACTIVITIES QUESTION BELIEFS OR PRACTICES IN SEX, MORALITY, OR
13 RELIGION.

14 (d) IF A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES,
15 CHARTER SCHOOL, OR INSTITUTE CHARTER SCHOOL OFFERS INSTRUCTION
16 IN COMPREHENSIVE HUMAN SEXUALITY EDUCATION PURSUANT TO SECTION
17 22-1-128, PROCEDURES ON HOW TO PROVIDE INFORMATION, AT LEAST
18 FIFTEEN DAYS PRIOR TO THE START OF INSTRUCTION, TO PARENTS
19 REGARDING HOW TO OPT OUT OF SUCH INSTRUCTION;

20 (e) PROCEDURES BY WHICH A PARENT WILL BE NOTIFIED AT LEAST
21 FIFTEEN DAYS IN ADVANCE OF AND GIVEN THE OPPORTUNITY TO
22 WITHDRAW HIS OR HER MINOR CHILD FROM ANY INSTRUCTION OR
23 PRESENTATION REGARDING HUMAN SEXUALITY IN COURSES OTHER THAN
24 A FORMAL COMPREHENSIVE HUMAN SEXUALITY EDUCATION PURSUANT TO
25 SECTION 22-1-128;

26 (f) PROCEDURES BY WHICH A PARENT CAN LEARN ABOUT THE
27 NATURE AND PURPOSE OF CLUBS AND ACTIVITIES THAT ARE PART OF THE

1 SCHOOL CURRICULUM, AS WELL AS EXTRACURRICULAR CLUBS AND
2 ACTIVITIES THAT HAVE BEEN APPROVED BY THE SCHOOL AT LEAST FIFTEEN
3 DAYS IN ADVANCE AND GIVEN THE OPPORTUNITY TO WITHDRAW HIS OR
4 HER MINOR CHILD FROM ANY CLUBS OR ACTIVITIES; AND

5 (g) PROCEDURES BY WHICH A PARENT CAN LEARN ABOUT THE
6 PARENTAL RIGHTS AND RESPONSIBILITIES UNDER THE LAWS OF THE STATE,
7 INCLUDING THE RIGHT TO:

8 (I) OPT OUT OF A COMPREHENSIVE HUMAN SEXUALITY EDUCATION
9 CURRICULUM IF ONE IS PROVIDED BY THE SCHOOL DISTRICT;

10 (II) OBTAIN INFORMATION CONCERNING SCHOOL CHOICE OPEN
11 ENROLLMENT RIGHTS;

12 (III) OPT OUT OF AN ASSIGNMENT PURSUANT TO THIS SECTION;

13 (IV) BE EXEMPT FROM ANY IMMUNIZATION LAW OF THE STATE;

14 (V) RECEIVE INFORMATION CONCERNING THE MINIMUM COURSE OF
15 STUDY AND COMPETENCY REQUIREMENTS FOR GRADUATION FROM HIGH
16 SCHOOL;

17 (VI) ACCESS AND REVIEW SCHOOL RECORDS;

18 (VII) HAVE HIS OR HER CHILD PARTICIPATE IN GIFTED AND
19 TALENTED PROGRAMS;

20 (VIII) INSPECT INSTRUCTIONAL MATERIALS USED IN CONNECTION
21 WITH ANY RESEARCH OR EXPERIMENTATION PROGRAM OR PROJECT;

22 (IX) RECEIVE INFORMATION RELATED TO ATTENDANCE
23 REQUIREMENTS SET FORTH IN THE "SCHOOL ATTENDANCE LAW OF 1963",
24 ARTICLE 33 OF TITLE 22;

25 (X) PUBLIC REVIEW OF TEXTBOOKS AND COURSES OF STUDY;

26 (XI) RECEIVE POLICIES RELATED TO PARENTAL INVOLVEMENT
27 PURSUANT TO THIS SECTION;

1 (XII) PARTICIPATE IN PARENT TEACHER ASSOCIATIONS AND
2 ORGANIZATIONS THAT ARE SANCTIONED BY THE BOARD OF EDUCATION OF
3 A SCHOOL DISTRICT; AND

4 (XIII) OPT OUT OF ANY DATA COLLECTION INSTRUMENT AT THE
5 DISTRICT LEVEL THAT WOULD CAPTURE DATA FOR INCLUSION IN THE STATE
6 LONGITUDINAL STUDENT DATA SYSTEM, EXCEPT WHAT IS NECESSARY AND
7 ESSENTIAL FOR ESTABLISHING A STUDENT'S PUBLIC SCHOOL RECORD.

8 (2) THE BOARD OF EDUCATION OF A SCHOOL DISTRICT MAY ADOPT
9 A POLICY TO PROVIDE PARENTS WITH THE INFORMATION REQUIRED BY THIS
10 SECTION IN ELECTRONIC FORM.

11 (3) A REQUEST FOR INFORMATION PURSUANT TO THIS SECTION
12 MUST BE SUBMITTED IN WRITING BY A PARENT DURING REGULAR BUSINESS
13 HOURS TO EITHER THE SCHOOL PRINCIPAL OR THE SUPERINTENDENT OF THE
14 SCHOOL DISTRICT. WITHIN TWO BUSINESS DAYS AFTER RECEIVING THE
15 INFORMATION REQUEST THE SCHOOL PRINCIPAL OR DISTRICT
16 SUPERINTENDENT SHALL DELIVER THE REQUESTED INFORMATION TO THE
17 PARENT.

18 **14-16-105. Parental rights related to health care of a minor**
19 **child - exceptions - penalty.** (1) EXCEPT AS OTHERWISE PROVIDED BY
20 LAW, NO PERSON, CORPORATION, ASSOCIATION, ORGANIZATION,
21 STATE-SUPPORTED INSTITUTION, OR INDIVIDUAL EMPLOYED BY ANY OF
22 THESE ENTITIES MAY PROCURE, SOLICIT TO PERFORM, ARRANGE FOR THE
23 PERFORMANCE OF, PERFORM SURGICAL PROCEDURES, OR PERFORM A
24 PHYSICAL EXAMINATION UPON A MINOR CHILD OR PRESCRIBE ANY
25 PRESCRIPTION DRUGS TO A MINOR CHILD WITHOUT FIRST OBTAINING
26 WRITTEN CONSENT FROM THE MINOR CHILD'S PARENT.

27 (2) A HOSPITAL OR MEDICAL CENTER SHALL NOT PERMIT A

1 SURGICAL PROCEDURE TO BE PERFORMED UPON A MINOR CHILD IN ITS
2 FACILITIES WITHOUT FIRST RECEIVING WRITTEN CONSENT FROM THE MINOR
3 CHILD'S PARENT.

4 (3) THE PROVISIONS OF THIS SECTION DO NOT APPLY WHEN A
5 PHYSICIAN DETERMINES THAT A MEDICAL EMERGENCY EXISTS AND THAT
6 IT IS NECESSARY TO PERFORM A SURGICAL PROCEDURE FOR THE
7 TREATMENT OF AN INJURY OR OF DRUG ABUSE, OR TO SAVE THE LIFE OF
8 THE MINOR CHILD, OR WHEN THE MINOR CHILD'S PARENT CANNOT BE
9 LOCATED OR CONTACTED AFTER REASONABLY DILIGENT EFFORTS.

10 (4) A PERSON WHO VIOLATES A PROVISION OF THIS SECTION IS
11 GUILTY OF AN UNCLASSIFIED MISDEMEANOR, PUNISHABLE BY A FINE OF
12 NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONMENT OF NOT
13 MORE THAN ONE YEAR, OR BOTH.

14 **SECTION 2. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2020 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.

Rule 33. Bond and Surety

A fiduciary must file any required bond, or complete other arrangements for security before letters are issued. If there is a substantial deviation in the value of assets under protection or administration the fiduciary must petition the court for a review of the bond.

Source: Entire chapter amended and adopted June 28, 2018, effective September 1, 2018.

Rule 34. Reserved

Rule 35. Reserved

Rule 36. Reserved

Rule 37. Reserved

Rule 38. Reserved

Rule 39. Reserved

PART 5. CONTESTED PROCEEDINGS

Rule 40. Discovery

(a) This rule establishes the provisions and structure for discovery in all proceedings seeking relief under Title 15, C.R.S. Nothing in this rule will alter the court's authority and ability to direct proportional limitations on discovery or to impose a case management structure or enter other discovery orders. Upon appropriate motion or sua sponte, the court may apply the Colorado Rules of Civil Procedure in whole or in part, may fashion discovery rules applicable to specific proceedings, and may apply different discovery rules to different parts of the proceeding.

(b) Unless otherwise ordered by the court, the parties may engage in the discovery provided by C.R.C.P. 27 through 36. Any discovery conducted in Title 15 proceedings prior to the issuance of a case management or other discovery order will be subject to C.R.C.P. 26(a)(2)(A), 26(a)(2)(B), 26(a)(4) and (5), and 26(b) through (g). However, due to the unique, expedited and often exigent circumstances in

which probate proceedings take place, C.R.C.P. 16, 16.1, 16.2, and 26(a)(1) do not apply to probate proceedings unless ordered by the court or stipulated to by the parties.

(c) C.R.C.P. 37, 45, and 121 § 1-12 are applicable to proceedings under Title 15.

(d) Notwithstanding subsections (a) through (c) of this rule, subpoenas and discovery directed to a respondent in proceedings under Title 15, Article 14, Part 3, must not be permitted without leave of court, or until a petition for appointment of a guardian has been granted under § 15-14-311, C.R.S.

Source: Entire chapter amended and adopted June 28, 2018, effective September 1, 2018.

Rule 41. Jury Trial – Demand and Waiver

If a jury trial is permitted by law, any jury demand must be filed with the court, and the requisite fee paid, before the matter is first set for trial. The demanding party must pay the requisite jury fee upon the filing of the demand. Failure of a party to file and serve a demand for jury trial and pay the requisite fee as provided in this rule will constitute a waiver of trial by jury as provided in C.R.C.P. 38(e).

Source: Entire chapter amended and adopted June 28, 2018, effective September 1, 2018.

Rule 42. Objections to Accounting, Final Settlement, Distribution or Discharge

(a) If any interested person desires to object to any accounting, the final settlement or distribution of an estate, the discharge of a fiduciary, or any other matter, the interested person must file specific written objections at or before the hearing thereon, and shall serve all interested persons with copies of the objections.

(b) If the matter is uncontested and set for a hearing without appearance, any interested person wishing to object must file specific written objections with the court at or before the hearing, and must serve all interested persons with copies of the specific written objections. An objector must set an appearance hearing in accordance with Rule 24.

C.R.P.P. 40:

Rule 40. Discovery and Disclosures.

- (a) This rule establishes the provisions and structure for discovery and disclosures in all proceedings seeking relief under Title 15, C.R.S. Nothing in this rule will alter the court's authority and ability to direct proportional limitations on discovery or to impose a case management structure or enter other discovery orders. Upon appropriate motion or sua sponte, the court may apply the Colorado Rules of Civil Procedure in whole or in part, may fashion discovery and disclosure rules applicable to specific proceedings, and may apply different discovery and disclosure rules to different parts of the proceeding.
- (b) Unless otherwise ordered by the court or stipulated by the parties, the expert disclosure provisions of C.R.C.P. 26(a)(2)(A) and 26(a)(2)(B) apply to proceedings seeking relief under Title 15, C.R.S. The timing of expert disclosures shall be established by order of the court or stipulation of the parties. The disclosure requirements of C.R.C.P. 26(a)(1) do not apply to probate proceedings unless ordered by the court or stipulated by the parties.
- (c) Unless otherwise ordered by the court, the parties may engage in the discovery provided by C.R.C.P. 27 through 36. Any discovery conducted in Title 15 proceedings prior to the issuance of a case management or other discovery order will be subject to 26(a)(4) and (5), and 26(b) through (g). However, due to the unique, expedited and often exigent circumstances in which probate proceedings take place, C.R.C.P. 16, 16.1, and 16.2 do not apply to probate proceedings unless ordered by the court or stipulated to by the parties.
- (d) C.R.C.P. 37, 45, and 121 § 1-12 are applicable to proceedings under Title 15.
- (e) Notwithstanding subsections (a) through (c) of this rule, subpoenas and discovery propounded ~~directed~~ to a respondent in proceedings under Title 15, Article 14, Part 3, are prohibited without leave of court, or until a petition for appointment of a guardian has been granted under § 15-14-311, C.R.S. The limits in this subsection do not apply to subpoenas or discovery propounded to a respondent's agent under medical or financial powers of attorney.
- (f) Notwithstanding subsections (a) through (d) of this rule, subpoenas and discovery propounded ~~directed~~ to a respondent in proceedings under Title 15, Article 14, Part 4, are prohibited without leave of court, or until a petition for appointment of a conservator has been granted under § 15-14-409, C.R.S. The limits in this subsection do not apply to subpoenas or discovery propounded to a respondent's agent under medical or financial powers of attorney.

General Concerns:

The bill appears to address an allegation that Adult Protective Service elects to petition to serve as guardian or conservator for minors, IDD or at-risk adults when another person or individual in the community may be otherwise willing to serve or assist.

- The bill represents a “one-size-fits-all” solution:
 - Is not narrowly tailored to ensure the best interests and rights of the respondent are tantamount to all else
 - Does not create a meaningful opportunity to educate family, friends and individuals about:
 - Their rights or rights of the respondent
 - The guardianship or conservator process
 - The least restrictive means available to protect an individual’s autonomy, health, safety, welfare and finances
 - Dispute resolution
 - The sufficiency or adequacy of the proposed petition.
- There is not delineation between adults and minors in this provision. The bill should not apply to minors, as the bill would require a minor to attend the proposed conference.

The bill does not address the following:

- How the pre-conference might conflict with matters in which the court has jurisdiction but the respondent may not be physically present or otherwise unavailable (*e.g.*, mental health treatment, rehabilitation, incarceration, comatose, suffering from serious medical complications, undisclosed location due to risk of domestic violence or exploitation, etc.).
- Situations in which the respondent may refuse to meet with family, friends or the petitioner.
- Situations in which the respondent, members of the respondent’s family or the respondent’s friend may be a threat to the respondent.
- Where petitioner may not have the resources to provide a suitable and safe location for the meeting or technology to facilitate remote access to have a “robust and meaningful conversation.”
- The weight of the report to be filed in the pre-hearing conference and whether there are penalties for deliberate misrepresentations.
- How an untrained pro se petitioner is to safely and meaningfully facilitate a “robust conversation” regarding the petition.
- How to maintain privacy and autonomy of the respondent when the petitioner is to circulate the petition to all interested persons, which necessarily includes private information.

Comments addressing Section 1.

- The prefatory language is unclear and confuses the terms of art. Clarification is needed.
- Statutory placement should be in Title 15 not Title 19.
- Legal definitions need refinement.
- The conference is not a pre-hearing conference but a pre-filing conference.

- The bill would likely have a chilling effect on the filing of guardianships and conservatorships and places a strain on a family conference.
- The respondent can often be unconscious or otherwise non-verbal. A meeting as contemplated would not be effective or worse, upsetting and agitating for the compromised individual.
- CRS 15-14-305 and 406 require a court appointment visitor in all guardianship and conservatorship proceedings. After a petition is filed and before a hearing, the court-appointed visitor serves as a neutral party to explain the petitions to the respondent and then provide a report to the court about the respondent's position and their understanding of the proceedings (including if they object, if they want an attorney, or if a guardian ad litem should be appointed for them). The court-appointed visitor also interviews family members and other interested parties to gather their respective input on the respondent's need for a guardian or conservator as well as their respective positions on the person(s) nominated. This statutorily required conference serves much of the same purpose of what is proposed in the bill, except the proposed "conference" expands the number of people involved who may or not have relevant input.
- The proposed pre-hearing conference lacks jurisdiction and will increase the expense of proceedings, as well as stress for family members and respondents.
- The pre-hearing conference presupposes parties have the ability to communicate coherently and cooperate, otherwise acting as reasonable and rational adults. Protections currently are built into statute, such as the court visitor, guardian ad litem and the appointment of counsel.
- The bill is in conflict with the statutory mandate to consider the wishes of the respondent, not only in the appointment of the fiduciary but also in the limitations or restrictions to be placed on the fiduciary's authority.
- The term "pre-hearing conference" is misleading, as a petition has not been filed requesting a hearing at the stage in proceeding contemplated.
- There are no details or specifications regarding the pre-hearing conference and the manner of notice and timing.
- "Relatives, friends and interested persons" is an overly broad category of interested individuals.
- Respondent should be excused for good cause.
- Robust is not defined and is a poor choice in statutory construction, given the subjectivity of the word.
- The bill needs additional explanation regarding the "report concerning what happened at the pre-trial conference." There is no stated purpose of this report.
- Any individual is allowed to speak and ask questions at the proposed legal proceeding. There is no threshold explanation as to such a person's standing to advocate or affect the outcome of the respondent's proceeding.

Comments addressing Section 2.

- The court already has the authority to rule on any emergency motions immediately if such action is necessary. Upon filing of a petition for removal under CRS 15-10-503(4) already restrains the fiduciary from acting except to preserve the estate or correct maladministration.
- Section 2 appears to mirror the rights under CRS 15-10-312(1) for objection to emergency guardian appointment. These concepts should not be tied together.

- The court has the ability to protect the respondent by immediately suspending the fiduciary's authority if the high burden of proving imminent risk of substantial harm is met.
- Removal of the fiduciary requires due process, notice and hearing

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

UNEDITED
UNREVISED
DRAFT
1.6.20

DRAFT

LLS NO. 20-0003.01 Jerry Barry x4341

SENATE BILL

SENATE SPONSORSHIP

Holbert,

HOUSE SPONSORSHIP

(None),

BILL TOPIC: "Protection Of Individuals Subject To A Fiducuary"

DEADLINES: Finalize by: JAN 7, 2020 File by: JAN 10, 2020

A BILL FOR AN ACT

101 CONCERNING THE PROTECTION OF INDIVIDUALS SUBJECT TO A
102 FIDUCIARY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

For petitions for wards or conservators, the bill requires a petitioner to conduct a pre-hearing conference with the minor or potentially incapacitated person and persons who may assist the minor or potentially incapacitated person. The petitioner must include a report of the pre-hearing conference with the petition and mail the petition and report to any person who participated in the pre-hearing conference.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Current law allows a court on its own motion or at the request of an interested person to conduct an emergency review of a fiduciary's actions. The bill requires the judge to rule on the motion or request within 14 days.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, part 1 of article 10
3 of title 19, **add** 19-10-109.5 as follows:

4 **19-10-109.5. Pre-hearing conference - notice.** (1) PRIOR TO
5 FILING A PETITION PURSUANT TO SECTION 15-14-204, 15-14-312,
6 15-14-405, 15-14-406, OR 15-14-412, A PETITIONER SHALL CONDUCT A
7 PRE-HEARING CONFERENCE TO DETERMINE IF ANY RELATIVE OR
8 INTERESTED PERSON IS INTERESTED IN ASSISTING THE MINOR OR
9 POTENTIALLY INCAPACITATED PERSON. THE PETITIONER SHALL MAKE
10 EVERY EFFORT TO IDENTIFY AND NOTIFY THE MINOR'S OR POTENTIALLY
11 INCAPACITATED PERSON'S RELATIVES, FRIENDS, AND INTERESTED PERSONS
12 OF THE CONFERENCE AND THAT REMOTE PARTICIPATION IS AVAILABLE.
13 THE RESPONDENT MUST BE PRESENT DURING THE PRE-HEARING
14 CONFERENCE.

15 (2) THE PETITIONER SHALL ARRANGE ANY REQUESTED REMOTE
16 PARTICIPATION. DURING THE PRE-HEARING CONFERENCE, THE PETITIONER
17 SHALL ENSURE THAT THERE IS A FULL AND ROBUST CONVERSATION
18 REGARDING THE PETITION. ANYONE PRESENT MUST BE ALLOWED TO SPEAK
19 AND ASK QUESTIONS.

20 (3) AT THE TIME THE PETITION IS FILED, THE PETITIONER SHALL:

21 (a) INCLUDE A REPORT CONCERNING WHAT HAPPENED AT THE
22 PRE-HEARING CONFERENCE; AND

23 (b) SEND A COPY OF THE PETITION AND REPORT TO ALL PERSONS

1 WHO PARTICIPATED IN THE PRE-HEARING CONFERENCE.

2 **SECTION 2.** In Colorado Revised Statutes, 15-10-503, **amend**
3 (1) as follows:

4 **15-10-503. Power of a court to address the conduct of a**
5 **fiduciary - emergencies - nonemergencies. (1) Emergency situations**
6 **- court action without the requirement of prior notice or hearing.** If
7 it appears to a court that an emergency exists because a fiduciary's actions
8 or omissions pose an imminent risk of substantial harm to a ward's or
9 protected person's health, safety, or welfare or to the financial interests of
10 an estate, the court may, on its own motion or upon the request of an
11 interested person, without a hearing and without following any of the
12 procedures authorized by section 15-10-502, order the immediate
13 restraint, restriction, or suspension of the powers of the fiduciary; direct
14 the fiduciary to appear before the court; or take such further action as the
15 court deems appropriate to protect the ward or protected person or the
16 assets of the estate. If a court restrains, restricts, or suspends the powers
17 of a fiduciary, the court shall set a hearing and direct that notice be given
18 pursuant to section 15-10-505. The clerk of the court shall immediately
19 note the restraint, restriction, or suspension on the fiduciary's letters, if
20 any. Any action for the removal, surcharge, or sanction of a fiduciary
21 shall be governed by this section. THE COURT SHALL RULE ON ITS MOTION
22 OR THE INTERESTED PERSON'S REQUEST WITHIN FOURTEEN DAYS AFTER
23 THE MOTION OR REQUEST IS MADE.

24 **SECTION 3. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect September 1, 2020; except that,
26 if a referendum petition is filed pursuant to section 1 (3) of article V of
27 the state constitution against this act or an item, section, or part of this act

1 within the ninety-day period after final adjournment of the general
2 assembly, then the act, item, section, or part will not take effect unless
3 approved by the people at the general election to be held in November
4 2020 and, in such case, will take effect on the date of the official
5 declaration of the vote thereon by the governor.

6 (2) This act applies to petitions filed on or after the applicable
7 effective date of this act.

8 <{*Sen. Holbert: Would you like a safety clause or the above 90-day*
9 *referendum language?*>

**CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
MINUTES**

December 4, 2019

1. Introductions

Chair Molly Zwerdinger called the meeting to order at 1:39p.m. There were introductions from those in attendance and on the phone/online.

2. Approval of November 6, 2019 Minutes

The minutes from the November 6, 2019 meeting were unanimously approved.

3. Announcements

We have received some feedback that the meeting materials are hard to access on the website. We will email the materials to members ahead of the meeting in addition to posting them online.

There will be no meeting in January due to the holiday.

Alison Leary made an announcement on behalf of the New Lawyers Committee. They are having a happy hour from 5:00 -7:00pm at Fire in the ART hotel. All are welcome to attend.

4. Legislative Report

Amy Larson from the CBA gave the report. New CBA Legislative Director Andy White has joined the CBA. He will work with us on strategy, presentation and preparation of bills. He can be reached at awhite@cobar.org and 303-824-5309.

Subcommittee chairs, please reach out to Andy to get him up to speed on each subcommittee's issue.

5. SRC Approved Proposals

a. Active Matters - Work to Finalize Required

(i) None

b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons

(i) **Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)ⁱ**

Information regarding CEPAEPA has been moved to an end note but will remain on the agenda. Special thanks to Frank Hill for drafting the end note.

Tim Bounds presented to the Committee draft amendments to the ethical rules implicated by CEPAEPA (Exhibit D of the materials). Proposed changes to Ethical Rules 1.15A(d), 1.15A(e), C.R.C.P. 251.32(i) and Ethical Rule 1.16A new comment 6 were all unanimously approved.

6. Unapproved Matters under Consideration by SRC - Reports from Subcommittees

a. UTC Subcommittee Part 5 (Connie Eyster, Co-Chair)

The subcommittee met today and are making good progress. They have approved section 5.03 and discussed 5.04 and will also be looking at section 4.11 since they have identified a potential problem with special needs supplemental needs trust.

b. Legislation Review Joint Subcommittee (Michael D. Holder, Chair)

No report.

c. Advance Legislative Response Team (Marco Chayet and Letty Maxfield, Co-Chairs)

No report.

d. ADR Legislation (C. Jean Stewart, Chair)

No report.

e. Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda)

The subcommittee has completed part 5 and starting part 6. They hope to finish parts 6-8 by March, 2020.

f. Child Support in Probate Subcommittee (Pat Mellen, Chair)

No report.

g. Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)

The subcommittee is working on part 4 and they are on track to complete their review by May.

h. Witness Requirements in Advanced Directives (Carl Stevens)

The subcommittee presentation of draft legislation is currently on hold as they review recommendations to make consistent witness requirements for wills, living wills, and powers of attorney. They are considering dividing the witness requirements into two different statutes based on the type of document. They have also run into the issue of whether a notary can/should determine capacity of a signer.

i. Changes to Conservator's Report (Lindsay Andrew)

No report.

j. Uniform Probate Code (UPC) 2019 Revisions (Bette Heller)

The subcommittee has started their review and went through terms that were changed to make things more gender neutral. They will be going through definitions today and welcome additional help. There will need to be a philosophical discussion within the subcommittee regarding the many references to the Uniform Parentage Act of 2017, which was not passed in Colorado and the Family Law Section still actively opposes. Darla Daniels will be taking talking points to the Uniform Law Commission meeting and will ask them to give us time to study the new Act.

7. Inactive Matters

None at this time.

8. Report from Elder Law Section

No report.

9. Report from Other Sections of the Bar

No report.

10. New Matters

a. Psychiatric Advance Directive (Jonathan Culwell)

No report.

b. Bill next session regarding human composting at death

It has come to our attention that there may be a bill introduced next session which may effect this section. We are aware of the situation and will be keeping an eye on it.

11. Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation

- a. **Bankruptcy/Inherited IRAs (approved in 2015-2016)**
- b. **Changes to the Uniform Power of Appointment Act (approved in 2015-2016)**
- c. **Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams)**
- d. **Uniform Directed Trust Act Subcommittee (Kevin Millard, Co-Chair, and Kelly Cooper, Co-Chair)**

Molly Zwerdinger adjourned the meeting at 2:24pm.

Respectfully submitted,
/s/ Lauren da Cunha

**CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
AGENDA**

February 5, 2020

- 1. Introductions**
- 2. Approval of December 4, 2019 Minutes**
- 3. Announcements**
- 4. Legislative Report**
- 5. SRC Approved Proposals**
 - a. Active Matters - Work to Finalize Required**
 - (i) None
 - b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**
 - (i) Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)ⁱ
- 6. Unapproved Matters under Consideration by SRC - Reports from Subcommittees**
 - a. UTC Subcommittee Part 5 (Connie Eyster, Co-Chair)**
 - b. Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**
 - c. Advance Legislative Response Team (Marco Chayet and Letty Maxfield, Co-Chairs)**
 - d. ADR Legislation (C. Jean Stewart, Chair)**
 - e. Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda)**
 - f. Child Support in Probate Subcommittee (Pat Mellen, Chair)**
 - g. Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)**
 - h. Witness Requirements in Advanced Directives (Carl Stevens)**

- i. Changes to Conservator’s Report (Lindsay Andrew)**
 - j. Uniform Probate Code (UPC) 2019 Revisions (Bette Heller)**
- 7. Inactive Matters**
- 8. Report from Elder Law Section**
- 9. Report from Other Sections of the Bar**
- 10. New Matters**
 - a. CRPP 40 (Kathy Seidel)**
 - b. SB 129 (Letty Maxfield)**
- 11. Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**
 - a. Bankruptcy/Inherited IRAs (approved in 2015-2016)**
 - b. Changes to the Uniform Power of Appointment Act (approved in 2015-2016)**
 - c. Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams)**
 - d. Uniform Directed Trust Act Subcommittee (Kevin Millard, Co-Chair, and Kelly Cooper, Co-Chair)**

ⁱ Judicial (State Court Administrator) would only agree to become the sponsoring agency of this legislation if the seven separate categories under the definition of “original estate planning document” was pared down to the single category of “will documents.” This was insisted upon to minimize the size of the “pilot program” Judicial envisioned would be needed to initially implement the legislation in partnership with (and utilizing the technological resources of) the Colorado State Archives office. Once Judicial has completed it’s pilot program and the electronic document upload, storage, and retrieval system for “will documents” is operating as intended under the statute, the other six categories of “original estate planning documents” as they appear in § 15-23-103(14) in HB19-1229 as originally introduced on March 8, 2019 should be restored to the Act by amendment. See <https://leg.colorado.gov/bills/hb19-1229>.