

## SB16-026 – Protection of the rights of protected persons

Summary for House Judiciary Committee of Testimony of  
John DeBruyn, May 5, 2016

Inspired by the bill title – protection of the rights of protected persons, I prepared the amendment which became sections 3 and 4 of SB16-026, and with the assistance of Richard Sweetman of the drafting office, put the amendment in final form as it was put forward by Senator Woods to the Senate Judiciary Committee.

Section 3, on page 9 of the bill, adds new section 15-14-102.7 to the Uniform Guardianship and Protective Proceedings Act, article 14 of the Probate Code, which is the revised uniform act adopted by Colorado in 2000 to deal with guardian and conservator matters.

- Subsection (1) of the new section requires courts to construe and apply the Act in a manner what maximizes the protection of protected persons. *personal rights.*
- Subsection (2) of new section declares that courts should embrace the comments of the Uniform Law Commission to the Act issued in 1997 and revised in 1998 which are supportive of the personal rights of protected persons.

Section 4, beginning on page 9 of the bill, adds new section 15-14-102(10.5) which defines “personal rights of a protected person” to mean the right to personal autonomy and other constitutional rights under the United States and Colorado Constitutions and rights under federal and Colorado law.

Simply stated, to the extent a protected person is able, they retain the right to decide matters affecting them including who they want to associate and communicate with. When they are not able to decide, the matter is not a matter of best interest when their “reasonable expectations” with respect to the matter may be determined.

The concept of “reasonable expectations” coming ahead of “best interests” is a principle that the Colorado General Assembly confirmed in 2009 when it adopted Uniform Power of Attorney Act. This principle is explained in the comments of the Uniform Law Commission to the Uniform Power of Attorney Act, which ties into guardian and conservator matters, as follows:

**The mandatory duties—acting in accordance with the principal’s reasonable expectations, if known, and otherwise in the principal’s best interest; acting in good faith; and acting only within the scope of authority granted—may not be altered in the power of attorney. Establishing the principal’s reasonable expectations as the primary guideline for agent conduct is consistent with a policy preference for “substituted judgment” over “best interest” as the surrogate decision-making standard that better protects an incapacitated person’s self-determination interests. See Wingspan—The Second National Guardianship Conference, Recommendations, 31 Stetson L. Rev. 595, 603 (2002). See also Unif. Guardianship & Protective Proc. Act § 314(a)(1997).**