



Senate

General Assembly

File No. 392

February Session, 2000

Substitute Senate Bill No. 594

Senate, April 4, 2000

The Committee on Judiciary reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

An Act Concerning The Responsibilities Of The Office Of Protection And Advocacy For Persons With Disabilities.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-694 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 Upon such application for a determination of an individual's ability
4 to give informed consent to sterilization being filed, the court shall
5 appoint legal counsel to represent any respondent who has not
6 selected a counsel to represent [him] such respondent in response to
7 the application. Such legal counsel shall be from a panel of attorneys
8 admitted to practice in this state provided by the Probate Court
9 Administrator in accordance with regulations promulgated by the
10 Probate Court Administrator in accordance with section 45a-77. In
11 establishing such panel, the Probate Court Administrator shall seek
12 recommendations from the Office of Protection and Advocacy, [of the
13 Department of Consumer Protection,] which may be included in such

14 panel. The reasonable compensation of an appointed legal counsel
15 shall be established by the court. Such compensation shall be charged
16 to the respondent provided, if the court finds such respondent is
17 unable to pay such compensation, it shall be paid from [funds
18 appropriated to the Department of Social Services] the Probate Court
19 Administration Fund.

20 Sec. 2. Section 45a-695 of the general statutes, as amended by section
21 30 of public act 99-84, is repealed and the following is substituted in
22 lieu thereof:

23 At any hearing upon such application, the court shall receive
24 evidence concerning the respondent's ability to give informed consent.
25 Such evidence shall include, but shall not be limited to, reports in
26 writing signed under penalty of false statement from an
27 interdisciplinary team of at least three impartial panel members
28 appointed by the court from a panel of physicians, psychologists,
29 educators, social and residential workers [provided by the Office of
30 Protection and Advocacy for Persons with Disabilities] who have
31 personally observed, examined or worked with such respondent at
32 some time during the twelve months preceding such hearing. Such
33 appointments shall be made in accordance with regulations to be
34 promulgated by the Probate Court Administrator in accordance with
35 section 45a-77. The reasonable compensation of such appointed panel
36 members shall be established by the court. Such compensation shall be
37 charged to the respondent provided, if the court finds such respondent
38 is unable to pay such compensation, it shall be paid from [funds
39 appropriated to said advocacy office] the Probate Court
40 Administration Fund. Each such appointed panel member shall make
41 his or her written report under penalty of false statement on a separate
42 form provided for that purpose by [said advocacy office] the court and
43 shall answer such questions as may be set forth on such form as fully
44 and completely as reasonably possible. The reports shall contain
45 specific information regarding the respondent's ability to give

46 informed consent and shall indicate the specific aspects of informed
47 consent which the respondent lacks. Each such appointed panel
48 member shall state upon the forms the reasons for his or her opinion.
49 Such respondent or his or her counsel shall have the right to present
50 evidence and cross-examine witnesses who testify at any hearing on
51 the application. If such respondent or his or her counsel notifies the
52 court not less than three days before the hearing that he or she wishes
53 to cross-examine the appointed panel members, the court shall order
54 such members to appear.

Statement of Legislative Commissioners:

In section 2, "funds of the court" was changed to "the Probate Court Administration Fund" for statutory consistency.

JUD Committee Vote: Yea 40 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Minimal

Affected Agencies: Office of Protection and Advocacy for Persons with Disabilities, Probate Court (Judicial Department), and the Department of Social Services

Municipal Impact: None

Explanation

State Impact:

This bill transfers responsibility of paying expert witness in proceedings to determine competency in sterilization cases from the Office of Protection and Advocacy for Persons with Disabilities to the Probate Court Administrator. This will result in a minimal cost savings to Protection and Advocacy and a corresponding minimal cost to the Probate Court Administration Fund (PCAF). Protection and Advocacy FY 99 costs for expert witness for sterilization cases was \$419 and as of March FY 00 costs are \$810.

In addition, it makes the PCAF responsible for paying court-appointed attorneys in these proceedings. These attorneys are paid at a rate of \$25 per hour. Current law requires the Department of Social Services (DSS) to pay the court-appointed attorney fees. A transfer of this responsibility from DSS to the PCAF would result in a minimal

fiscal impact to both agencies since the number of these types of cases is minimal as well.

OLR Bill Analysis

sSB 594

AN ACT CONCERNING THE RESPONSIBILITIES OF THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES.**SUMMARY:**

This bill eliminates a requirement that the Office of Protection and Advocacy for Persons with Disabilities (P&A) designate a panel of experts which probate court judges must use in proceedings to determine whether a person is competent to give informed consent to sterilization. Currently, judges appoint at least three experts from P&A's list of physicians, psychologists, educators, and social and residential workers. They must have recently observed, examined, or worked with the person whose ability to consent to the procedure is at issue, and must give the court written opinions about the person's competency. The bill does not specify how probate judges will select these experts once P&A stops designating them.

When the affected person cannot afford it, the bill makes the probate court, rather than P&A, responsible for paying these experts. It also makes the Probate Court Administration Fund (PCAF), rather than the Department of Social Services, responsible for paying court-appointed attorneys in these proceedings. And it removes an obsolete reference to the Department of Consumer Protection, to which P&A was assigned for administrative purposes until 1994.

EFFECTIVE DATE: October 1, 2000

BACKGROUND***Appearance of Agency Conflict***

An apparent conflict may arise under current law between P&A's roles as advocate and expert panel designator/payor. With their permission, P&A may act as advocate, provide legal representation, or intervene in

court, agency, board, or commission proceedings affecting the interests of people with disabilities. When doing so in sterilization proceedings, it may have to challenge or attempt to discredit the testimony of experts the court selected from its panel, while at the same time having to pay their fees.

The PCAF

The PCAF is a pool of money collected by probate courts from user fees and assessed costs. Individual probate judges keep a specified amount as salary and allowable expense reimbursements and pay the rest to the state treasurer, who administers the fund.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 40 Nay 0