



General Assembly

February Session, 2004

Raised Bill No. 230

LCO No. 1189

01189_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING PROBATE COURT ADMINISTRATION AND PROCEEDINGS.

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

1 Section 1. Section 45a-25 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) A judge of probate shall not appear as attorney in any contested
4 matter in any court of probate.

5 (b) For the purposes of subsection (a) of this section, a matter before
6 a court of probate is a contested matter when any party to such matter
7 informs the court, orally or in writing, of any objection or opposition in
8 such matter, without regard to the apparent merit or lack of merit of
9 such objection or opposition.

10 Sec. 2. Section 45a-623 of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective October 1, 2004*):

12 In any proceeding under sections 45a-603 to 45a-622, inclusive, that
13 is contested, the Court of Probate shall, upon motion of any party other
14 than a party who made application for the removal of a parent as a

15 guardian, under rules adopted by the judges of the Supreme Court,
16 transfer the case to the Superior Court. In addition to the provisions of
17 this section, the Court of Probate may, on the court's own motion or
18 that of any interested party, transfer [the case] any proceeding under
19 sections 45a-603 to 45a-622, inclusive, to another judge of probate,
20 which judge shall be appointed by the Probate Court Administrator
21 from a panel of qualified probate judges who specialize in children's
22 matters. Such panel shall be proposed by the Probate Court
23 Administrator and approved by the executive committee of the
24 Connecticut Probate Assembly. [The location of the hearing shall be in
25 the original court of probate, except upon agreement of all parties and
26 the Department of Children and Families, where applicable.] If the
27 case is transferred and venue altered, the clerk of the Court of Probate
28 shall transmit to the clerk of the Superior Court or the probate court to
29 which the case was transferred the original files and papers in the case.

30 Sec. 3. Section 45a-650 of the general statutes is repealed and the
31 following is substituted in lieu thereof (*Effective October 1, 2004*):

32 (a) At any hearing for involuntary representation, the court shall
33 receive evidence regarding the condition of the respondent, including
34 a written report or testimony by one or more physicians licensed to
35 practice medicine in the state who have examined the respondent
36 within thirty days preceding the hearing. The report or testimony shall
37 contain specific information regarding the disability and the extent of
38 its incapacitating effect. The court may also consider such other
39 evidence as may be available and relevant, including but not limited to
40 a summary of the physical and social functioning level or ability of the
41 respondent, and the availability of support services from the family,
42 neighbors, community [] or any other appropriate source. Such
43 evidence may include, if available, reports from the social work service
44 of a general hospital, municipal social worker, director of social
45 service, public health nurse, public health agency, psychologist,
46 coordinating assessment and monitoring agencies, or such other
47 persons as the court deems qualified to provide such evidence. The

48 court may waive the requirement that medical evidence be presented if
49 it is shown that the evidence is impossible to obtain because of the
50 absence of the respondent or his or her refusal to be examined by a
51 physician or that the alleged incapacity is not medical in nature. If
52 [this] such requirement is waived, the court shall make a specific
53 finding in any decree issued on the petition stating why medical
54 evidence was not required. In any matter in which the Commissioner
55 of Social Services seeks the appointment of a conservator pursuant to
56 chapter 319dd and represents to the court that an examination by an
57 independent physician, psychologist or psychiatrist is necessary to
58 determine whether the elderly person is capable of managing his or
59 her personal or financial affairs, the court shall order such examination
60 unless the court determines that such examination is not in the best
61 interests of the elderly person. The court shall order such examination
62 notwithstanding any medical report submitted to the court by the
63 elderly person or the caretaker of such elderly person. Any medical
64 report filed with the court pursuant to this subsection shall be
65 confidential.

66 (b) Upon the filing of an application for involuntary representation
67 pursuant to section 45a-648, the court may issue an order for the
68 disclosure of the medical information required pursuant to subsection
69 (a) of this section.

70 ~~[(b)]~~ (c) Notwithstanding the provisions of section 45a-7, the court
71 may hold the hearing on the application at a place within the state
72 other than its usual courtroom if it would facilitate attendance by the
73 respondent.

74 ~~[(c)]~~ (d) If the court finds by clear and convincing evidence that the
75 respondent is incapable of managing his or her affairs, the court shall
76 appoint a conservator of his or her estate unless it appears to the court
77 that such affairs are being managed properly without the appointment
78 of a conservator. If the court finds by clear and convincing evidence
79 that the respondent is incapable of caring for himself or herself, the

80 court shall appoint a conservator of his or her person unless it appears
81 to the court that the respondent is being cared for properly without the
82 appointment of a conservator.

83 [(d)] (e) When determining whether a conservator should be
84 appointed and in selecting a conservator to be appointed for the
85 respondent, the court shall be guided by the best interests of the
86 respondent. In making such determination, the court shall consider
87 whether the respondent had previously made alternative
88 arrangements for the care of his person or for the management of his
89 affairs, including, but not limited to, the execution of a valid durable
90 power of attorney, the appointment of a health-care agent or other
91 similar document. The respondent may, by oral or written request, if at
92 the time of the request he or she has sufficient capacity to form an
93 intelligent preference, nominate a conservator who shall be appointed
94 unless the court finds the appointment of the nominee is not in the best
95 interests of the respondent. In such case, or in the absence of any such
96 nomination, the court may appoint any qualified person, authorized
97 public official or corporation in accordance with subsections (a) and (b)
98 of section 45a-644.

99 [(e)] (f) Upon the request of the respondent or his or her counsel,
100 made within thirty days of the date of the decree, the court shall make
101 and furnish findings of fact to support its conclusion.

102 [(f)] (g) If the court appoints a conservator of the estate of the
103 respondent, it shall require a probate bond. The court may, if it deems
104 it necessary for the protection of the respondent, require a bond of any
105 conservator of the person appointed [hereunder] under this section.

106 [(g)] (h) The court may limit the powers and duties of either the
107 conservator of the person or the conservator of the estate, to include
108 some, but not all, of the powers and duties set forth in subsections (a)
109 and (b) of section 45a-644 [,] and sections 45a-655 and 45a-656, and
110 shall make specific findings to justify such a limitation, in the best
111 interests of the ward. In determining whether or not any such

112 limitations should be imposed, the court shall consider the abilities of
113 the ward, the prior appointment of any attorney-in-fact, health care
114 agent, trustee or other fiduciary acting on behalf of the ward, any
115 support services which are otherwise available to the ward, and any
116 other relevant evidence. The court may modify its decree upon any
117 change in circumstances.

118 Sec. 4. Subsection (b) of section 45a-654 of the general statutes is
119 repealed and the following is substituted in lieu thereof (*Effective*
120 *October 1, 2004*):

121 (b) Except as provided in subsection (e) of this section, an
122 appointment of a temporary conservator shall not be made unless a
123 report is presented to the judge, signed by a physician licensed to
124 practice medicine or surgery in this state, stating: (1) That the
125 physician has examined [such person] the respondent and the date of
126 such examination, which shall not be more than three days prior to the
127 date of presentation to the judge; (2) that it is the opinion of the
128 physician that the respondent is incapable of managing his affairs or of
129 caring for himself; and (3) the reasons for such opinion. Any
130 physician's report filed with the court pursuant to this subsection shall
131 be confidential. The court may issue an order for the disclosure of the
132 medical information required pursuant to this subsection.

133 Sec. 5. Subsection (c) of section 45a-660 of the general statutes is
134 repealed and the following is substituted in lieu thereof (*Effective*
135 *October 1, 2004*):

136 (c) The court shall review each conservatorship at least every three
137 years, and shall either continue, modify or terminate the order for
138 conservatorship. The court shall receive and review written evidence
139 as to the condition of the ward. The conservator, the attorney for the
140 ward and a physician licensed to practice medicine in this state, shall
141 each submit a written report to the court within forty-five days of the
142 court's request for such report. If the ward is unable to request or
143 obtain an attorney, the court shall appoint an attorney. If the ward is

144 unable to pay for the services of the attorney, the reasonable
145 compensation of such attorney shall be established by, and paid from
146 funds appropriated to, the Judicial Department. [however, if] If funds
147 have not been included in the budget of the Judicial Department for
148 such purposes, such compensation shall be established by the Probate
149 Court Administrator and paid from the Probate Court Administration
150 Fund. The physician shall examine the ward within the forty-five-day
151 period preceding the date of submission of his report. Any physician's
152 report filed with the court pursuant to this subsection shall be
153 confidential. The court may issue an order for the disclosure of medical
154 information required pursuant to this subsection.

155 Sec. 6. Subsection (g) of section 45a-715 of the general statutes is
156 repealed and the following is substituted in lieu thereof (*Effective*
157 *October 1, 2004*):

158 (g) Before a hearing on the merits in any case in which a petition for
159 termination of parental rights is contested in a court of probate, the
160 court of probate shall, on the motion of any legal party except the
161 petitioner, or may on its own motion or that of the petitioner, under
162 rules adopted by the judges of the Supreme Court, transfer the case to
163 the Superior Court. In addition to the provisions of this section, the
164 probate court may, on the court's own motion or that of any interested
165 party, transfer [the] any termination of parental rights case to another
166 judge of probate, which judge shall be appointed by the Probate Court
167 Administrator from a panel of qualified probate judges who specialize
168 in children's matters. Such panel shall be proposed by the Probate
169 Court Administrator and approved by the executive committee of the
170 Connecticut Probate Assembly. [The location of the hearing shall be in
171 the original probate court, except upon agreement of all parties and the
172 Department of Children and Families, where applicable.] If the case is
173 transferred, the clerk of the court of probate shall transmit to the clerk
174 of the superior court or the probate court to which the case was
175 transferred, the original files and papers in the case. The superior court
176 or the probate court to which the case was transferred, upon hearing

177 after notice as provided in sections 45a-716 and 45a-717, may grant the
178 petition as provided in section 45a-717.

179 Sec. 7. (NEW) (*Effective October 1, 2004*) In any proceeding before a
180 court of probate, the court may issue an order for the disclosure of
181 medical information relevant to the determination of the matter before
182 the court. The order may require the disclosure of such medical
183 information to: (1) The court; (2) any executor, administrator,
184 conservator, guardian or trustee appointed by the court; (3) any
185 attorney representing the individual who is the subject of such medical
186 information; (4) any guardian ad litem for the individual who is the
187 subject of such medical information; (5) any physician, psychiatrist or
188 psychologist who has been ordered by the court to conduct an
189 examination of such individual; or (6) any other party to the
190 proceeding determined by the court to require such medical
191 information in the interests of justice. Any such medical information
192 filed with the court shall be confidential.

193 Sec. 8. Subsection (a) of section 45a-243 of the general statutes is
194 repealed and the following is substituted in lieu thereof (*Effective from*
195 *passage*):

196 (a) When any fiduciary has been removed [for cause] by a court of
197 probate, as provided in section 45a-242, the fiduciary may appeal from
198 such order of removal in the manner provided in sections 45a-186 to
199 45a-193, inclusive. In the event of an appeal from the order of removal
200 taken by the fiduciary who has been removed, the appointment of a
201 successor shall not be stayed by the appeal but shall be a temporary
202 appointment. Such successor fiduciary shall act during the pendency
203 of the appeal and until the appeal is withdrawn or final judgment
204 entered thereon.

205 Sec. 9. Subsection (b) of section 17a-685 of the general statutes is
206 repealed and the following is substituted in lieu thereof (*Effective*
207 *October 1, 2004*):

208 (b) The application shall allege that the person is an
 209 alcohol-dependent person or a drug-dependent person who is
 210 dangerous to himself or herself or dangerous to others when he or she
 211 is an intoxicated person or who is gravely disabled. The application
 212 shall contain a statement that the applicant has arranged for treatment
 213 in a treatment facility. A statement to that effect from such facility shall
 214 be attached to the application. [The application shall also be
 215 accompanied by] At or before the hearing on the application, there
 216 shall be filed with the court a certificate of a licensed physician who
 217 has examined the person within two days before submission of the
 218 application. The physician's certificate shall set forth the physician's
 219 findings, including clinical observation or information, or the person's
 220 medical history, in support of the allegations of the application, and a
 221 finding of whether the person presently needs and is likely to benefit
 222 from treatment, and shall include a recommendation as to the type and
 223 length of treatment and inpatient facilities available for such treatment.
 224 A physician employed by the private treatment facility to which the
 225 person is to be committed is not eligible to be the certifying physician.
 226 An application filed by a person other than the certifying physician
 227 shall set forth the facts and information upon which the applicant
 228 bases his or her allegations and the names and addresses of all
 229 physicians. Upon the filing of an application under this section, the
 230 court may issue an order for the disclosure of the medical information
 231 required pursuant to this subsection.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>October 1, 2004</i>
Sec. 7	<i>October 1, 2004</i>
Sec. 8	<i>from passage</i>
Sec. 9	<i>October 1, 2004</i>

Statement of Purpose:

To facilitate the transfer of children's matters, to clarify the prohibition against judges of probate practicing law in other courts of probate in contested matters and to conform certain probate statutes to the federal Health Insurance Accountability and Reportability Act of 1996.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]