



General Assembly

February Session, 2004

**Raised Bill No. 291**

LCO No. 1243

\*01243\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL.**

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

1 Section 1. Section 17a-540 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 [When] As used in sections 17a-540 to 17a-550, inclusive, and  
4 section 3 of this act, unless otherwise expressly stated or unless the  
5 context otherwise requires:

6 [(a)] (1) "Facility" means any inpatient or outpatient hospital, clinic  
7 [.] or other facility for the diagnosis, observation or treatment of  
8 persons with psychiatric disabilities;

9 [(b)] (2) "Patient" means any person being treated in a facility;

10 [(c)] (3) "Persons with psychiatric disabilities" means those children  
11 and adults who are suffering from one or more mental disorders, as  
12 defined in the most recent edition of the American Psychiatric  
13 Association's "Diagnostic and Statistical Manual of Mental Disorders";

14 [(d)] (4) "Voluntary patient" means any patient sixteen years of age  
15 or older who applies in writing for and is admitted to a hospital for  
16 observation, diagnosis or treatment of a mental disorder or any patient  
17 under sixteen years of age whose parent or legal guardian applies in  
18 writing for such observation, diagnosis or treatment;

19 [(e)] (5) "Involuntary patient" means any patient hospitalized  
20 pursuant to an order of a judge of the Probate Court after an  
21 appropriate hearing or a patient hospitalized for emergency diagnosis,  
22 observation or treatment upon certification of a qualified physician;

23 [(f)] (6) "Family" means spouse or next of kin;

24 [(g)] (7) "Head of the hospital" or "head of the facility" means the  
25 superintendent or medical director of a hospital or facility, or his  
26 designated delegate;

27 [(h)] (8) "Informed consent" means permission given competently  
28 and voluntarily after a patient has been informed of the reason for  
29 treatment, the nature of the proposed treatment, the advantages or  
30 disadvantages of the treatment, medically acceptable alternative  
31 treatment, the risks associated with receiving the proposed treatment  
32 and the risk of no treatment;

33 [(i)] (9) "Medically harmful" means capable of inflicting serious  
34 mental or physical injury on the patient, or producing in the patient a  
35 disturbed mental state or impaired judgment which may be grossly  
36 detrimental to his physical or mental well being;

37 [(j)] (10) "Psychosurgery" means those operations defined as  
38 lobotomy, psychiatric surgery, behavioral surgery [,] and all other  
39 forms of brain surgery, if the surgery is performed for the purpose of  
40 modification or control of thoughts, feelings, actions [,] or behavior  
41 rather than the treatment of a known and diagnosed physical disease  
42 of the brain;

43 [(k)] (11) "Shock therapy" means a form of psychiatric treatment in

44 which electric current, insulin, carbon dioxide [,] or indoklon, or other  
45 similar [agents] agent, is administered to the patient and results in a  
46 loss of consciousness or a convulsive or comatose reaction;

47 [(1)] (12) "Direct threat of harm" means that the patient's clinical  
48 history demonstrates a pattern of serious physical injury or life-  
49 threatening injury to self or to others which is caused by the  
50 psychiatric disabilities with which the patient has been diagnosed and  
51 is documented by objective medical and other factual evidence. Such  
52 evidence of past pattern of dangerous behavior shall be manifested in  
53 the patient's medical history and there shall exist a high probability  
54 that the patient will inflict substantial harm on himself or others; and

55 (13) "Special limited conservator" means a licensed health care  
56 provider with specialized training in the treatment of persons with  
57 psychiatric disabilities appointed by a judge of the Probate Court with  
58 specific authority to consent to the administration of medication to a  
59 defendant placed in the custody of the Commissioner of Mental Health  
60 and Addiction Services pursuant to section 54-56d, as amended.

61 Sec. 2. Section 17a-543 of the general statutes, as amended by section  
62 1 of public act 03-31, is repealed and the following is substituted in lieu  
63 thereof (*Effective October 1, 2004*):

64 (a) No patient shall receive medication for the treatment of the  
65 psychiatric disabilities of such patient without the informed consent of  
66 such patient, except in accordance with procedures set forth in  
67 subsections (b), (d), (e) and (f) of this section or in accordance with  
68 section 3 of this act or section 17a-566 or 54-56d, as amended.

69 (b) No medical or surgical procedures may be performed without  
70 the patient's written informed consent or, if the patient has been  
71 declared incapable of caring for himself or herself pursuant to sections  
72 45a-644 to 45a-662, inclusive, and a conservator of the person has been  
73 appointed pursuant to section 45a-650, the written consent of such  
74 conservator. If the head of the hospital, in consultation with a

75 physician, determines that the condition of an involuntary patient not  
76 declared incapable of caring for himself or herself pursuant to said  
77 sections is of an extremely critical nature and such patient is incapable  
78 of informed consent, medical or surgical procedures may be performed  
79 with the written informed consent of: (1) The patient's conservator or  
80 guardian, if he or she has one; (2) such person's next of kin; (3) a  
81 person designated by the patient pursuant to section 1-56r, as  
82 amended; or (4) a qualified physician appointed by a judge of the  
83 Probate Court. Notwithstanding the provisions of this section, if  
84 obtaining the consent provided for in this section would cause a  
85 medically harmful delay to a voluntary or involuntary patient whose  
86 condition is of an extremely critical nature, as determined by personal  
87 observation by a physician or the senior clinician on duty, emergency  
88 treatment may be provided without consent.

89 (c) No psychosurgery or shock therapy shall be administered to any  
90 patient without such patient's written informed consent, except as  
91 provided in this subsection. Such consent shall be for a maximum  
92 period of thirty days and may be revoked at any time. If it is  
93 determined by the head of the hospital and two qualified physicians  
94 that the patient has become incapable of giving informed consent,  
95 shock therapy may be administered upon order of the [Court of]  
96 Probate Court if, after hearing, such court finds that the patient is  
97 incapable of informed consent and there is no other, less intrusive  
98 beneficial treatment. An order of the [Court of] Probate Court  
99 authorizing the administration of shock therapy pursuant to this  
100 subsection shall be effective for not more than forty-five days.

101 (d) A facility may establish an internal procedure governing  
102 decisions concerning involuntary medication treatment for inpatients.  
103 [This] Such procedure shall provide (1) that any decision concerning  
104 involuntary medication treatment shall be made by a person who is  
105 not employed by the facility in which the patient is receiving  
106 treatment, provided the selection of such person shall not be made  
107 until the patient's advocate has had reasonable opportunity to discuss

108 such selection with the facility, (2) written and oral notification to the  
109 patient of available advocacy services, (3) notice to the patient and his  
110 advocate, if one has been chosen, of any proceeding for the  
111 determination of the necessity for involuntary treatment not less than  
112 forty-eight hours prior to such proceeding, (4) the right of the patient  
113 to representation during any such proceeding, (5) questioning of any  
114 witness at any such proceeding including, if requested, one or both of  
115 the physicians who made the determination pursuant to subsection (e)  
116 of this section concerning the patient's capacity to give informed  
117 consent and the necessity of medication for the patient's treatment, and  
118 (6) a written decision. If a decision is made in accordance with the  
119 standards set forth in this section that a patient shall receive  
120 involuntary medication, and there is substantial probability that  
121 without such medication for the treatment of the psychiatric  
122 disabilities of such patient the condition of the patient will rapidly  
123 deteriorate, such involuntary medication may be provided for a period  
124 not to exceed thirty days or until a decision is made by the Probate  
125 Court under subsection (e) or (f) of this section, whichever is sooner.

126 (e) (1) If it is determined by the head of the hospital and two  
127 qualified physicians that a patient is incapable of giving informed  
128 consent to medication for the treatment of such patient's psychiatric  
129 disabilities and such medication is deemed to be necessary for such  
130 patient's treatment, a facility may utilize the procedures established in  
131 subsection (d) of this section and may apply to the [Court of] Probate  
132 Court for appointment of a conservator of the person with specific  
133 authority to consent to the administration of medication or, in a case  
134 where a conservator of the person has previously been appointed  
135 under section 45a-650, the facility or the conservator may petition the  
136 Probate Court to grant such specific authority to the conservator. The  
137 conservator shall meet with the patient and the physician, review the  
138 patient's written record and consider the risks and benefits from the  
139 medication, the likelihood and seriousness of adverse side effects, the  
140 preferences of the patient, the patient's religious views, and the  
141 prognosis with and without medication. After consideration of such

142 information, the conservator shall either consent to the patient  
143 receiving medication for the treatment of the patient's psychiatric  
144 disabilities or refuse to consent to the patient receiving such  
145 medication.

146 (2) The authority of a conservator to consent to the administration of  
147 medication under subdivision (1) of this subsection shall be effective  
148 for [no] not more than one hundred twenty days. In the case of  
149 continuous hospitalization of the patient beyond such one hundred  
150 twenty days, if the head of the hospital and two qualified physicians  
151 determine that the patient continues to be incapable of giving  
152 informed consent to medication for the treatment of such patient's  
153 psychiatric disabilities and such medication is deemed to be necessary  
154 for such patient's treatment, the authority of the conservator to consent  
155 to the administration of medication may be extended for a period not  
156 to exceed one hundred twenty days by order of the Probate Court  
157 without a hearing upon application by the head of the hospital.  
158 Prompt notice of the order shall be given to the patient, conservator  
159 and facility.

160 (f) (1) If it is determined by the head of the hospital and two  
161 qualified physicians that (A) a patient is capable of giving informed  
162 consent but refuses to consent to medication for treatment of such  
163 patient's psychiatric disabilities, (B) there is no less intrusive beneficial  
164 treatment, and (C) without medication, the psychiatric disabilities with  
165 which the patient has been diagnosed will continue unabated [,] and  
166 place the patient or others in direct threat of harm, [as defined in  
167 subsection (l) of section 17a-540,] the facility may utilize the  
168 procedures established in subsection (d) of this section and may apply  
169 to the [Court of] Probate Court to authorize the administration to the  
170 patient of medication for the treatment of the patient's psychiatric  
171 disabilities, despite the refusal of the patient to consent to such  
172 medication.

173 (2) An order authorizing the administration of medication under

174 subdivision (1) of this subsection shall be effective for [no] not more  
175 than one hundred twenty days. In the case of continuous  
176 hospitalization of the patient beyond such one hundred twenty days, if  
177 the head of the hospital and two qualified physicians determine that  
178 (A) the patient continues to be capable of giving informed consent but  
179 refuses to consent to medication for treatment of such patient's  
180 psychiatric disabilities, (B) there is no less intrusive beneficial  
181 treatment, and (C) without medication, the psychiatric disabilities with  
182 which the patient has been diagnosed will continue unabated [,] and  
183 place the patient or others in direct threat of harm, [as defined in  
184 subsection (l) of section 17a-540,] the order may be extended for a  
185 period not to exceed one hundred twenty days by order of the Probate  
186 Court without a hearing. Prompt notice of the order shall be given to  
187 the patient and facility.

188 (g) If a decision has been made to administer involuntary  
189 medication to a patient pursuant to subsection (d) of this section, the  
190 patient may petition the [Court of] Probate Court to expedite the  
191 hearing on an application filed by the facility pursuant to subsection  
192 (e) or (f) of this section or, if no application has been filed, to hold a  
193 hearing to decide whether to allow the administration of involuntary  
194 medication. Either hearing shall be held within fifteen days after the  
195 date of the patient's petition.

196 (h) For the purposes of this section, "voluntary patient" means any  
197 patient sixteen years of age or older who applies in writing for, and is  
198 admitted to, a hospital for observation, diagnosis or treatment of a  
199 mental disorder.

200 (i) Unless there is a serious risk of harm to the patient or others,  
201 based upon the patient's past history or current condition, nothing in  
202 this section authorizes any form of involuntary medical, psychological  
203 or psychiatric treatment of any patient who in the sincere practice of  
204 his or her religious beliefs is being treated by prayer alone in  
205 accordance with the principles and practices of a church or religious

206 denomination by a duly accredited practitioner or ordained minister,  
207 priest or rabbi thereof. The Department of Mental Health and  
208 Addiction Services shall adopt regulations, in accordance with chapter  
209 54, to implement the purposes of this subsection.

210       Sec. 3. (NEW) (*Effective October 1, 2004*) (a) (1) If it is determined by  
211 the head of the hospital and two qualified physicians that a patient  
212 who is a defendant placed in the custody of the Commissioner of  
213 Mental Health and Addiction Services pursuant to section 54-56d of  
214 the general statutes, as amended, is incapable of giving informed  
215 consent to medication for the treatment of such patient's psychiatric  
216 disabilities and such medication is deemed to be necessary for such  
217 patient's treatment, the facility in which such patient is placed may  
218 petition the probate court for the district in which such facility is  
219 located for appointment of a special limited conservator with specific  
220 authority to consent to the administration of medication. The special  
221 limited conservator shall meet with the patient and the physician,  
222 review the patient's written record and consider the risks and benefits  
223 from the medication, the likelihood and seriousness of adverse side  
224 effects, the preferences of the patient, the patient's religious views, and  
225 the prognosis with and without medication. After consideration of  
226 such information, the special limited conservator shall either consent  
227 to the patient receiving medication for the treatment of the patient's  
228 psychiatric disabilities or refuse to consent to the patient receiving  
229 such medication.

230       (2) The authority of a special limited conservator to consent to the  
231 administration of medication under subdivision (1) of this subsection  
232 shall be effective for not more than one hundred twenty days. In the  
233 case of continuous hospitalization of the patient beyond such one  
234 hundred twenty days, if the head of the hospital and two qualified  
235 physicians determine that the patient continues to be incapable of  
236 giving informed consent to medication for the treatment of such  
237 patient's psychiatric disabilities and such medication is deemed to be  
238 necessary for such patient's treatment, the authority of the special

239 limited conservator to consent to the administration of medication may  
240 be extended for a period not to exceed one hundred twenty days by  
241 order of the Probate Court without a hearing upon application by the  
242 head of the hospital. Prompt notice of the order shall be given to the  
243 patient, special limited conservator and facility.

244 (3) If a special limited conservator has been appointed for a patient  
245 under this subsection, upon the termination of such patient's  
246 placement in the custody of the Commissioner of Mental Health and  
247 Addiction Services pursuant to section 54-56d of the general statutes,  
248 as amended, the commissioner, or the commissioner's designee, shall  
249 notify the Probate Court and the court shall order the termination of  
250 such appointment.

251 (4) The reasonable compensation of a special limited conservator  
252 appointed under this subsection shall be established by the Probate  
253 Court Administrator and paid from the Probate Court Administration  
254 Fund.

255 (b) (1) If it is determined by the head of the hospital and two  
256 qualified physicians that (A) a patient who is a defendant placed in the  
257 custody of the Commissioner of Mental Health and Addiction Services  
258 pursuant to section 54-56d of the general statutes, as amended, is  
259 capable of giving informed consent but refuses to consent to  
260 medication for treatment of such patient's psychiatric disabilities, (B)  
261 there is no less intrusive beneficial treatment, and (C) without  
262 medication, the psychiatric disabilities with which the patient has been  
263 diagnosed will continue unabated and place the patient or others in  
264 direct threat of harm, the facility in which such patient is placed may  
265 petition the probate court for the district in which such facility is  
266 located to authorize the administration to the patient of medication for  
267 the treatment of the patient's psychiatric disabilities, despite the refusal  
268 of the patient to consent to such medication.

269 (2) An order authorizing the administration of medication under  
270 subdivision (1) of this subsection shall be effective for not more than

271 one hundred twenty days. In the case of continuous hospitalization of  
272 the patient beyond such one hundred twenty days, if the head of the  
273 hospital and two qualified physicians determine that (A) the patient  
274 continues to be capable of giving informed consent but refuses to  
275 consent to medication for treatment of such patient's psychiatric  
276 disabilities, (B) there is no less intrusive beneficial treatment, and (C)  
277 without medication, the psychiatric disabilities with which the patient  
278 has been diagnosed will continue unabated and place the patient or  
279 others in direct threat of harm, the order may be extended for a period  
280 not to exceed one hundred twenty days by order of the Probate Court  
281 without a hearing. Prompt notice of the order shall be given to the  
282 patient and facility.

283 (c) Unless there is a serious risk of harm to the patient or others,  
284 based upon the patient's past history or current condition, nothing in  
285 this section authorizes any form of involuntary medical, psychological  
286 or psychiatric treatment of any patient who in the sincere practice of  
287 his or her religious beliefs is being treated by prayer alone in  
288 accordance with the principles and practices of a church or religious  
289 denomination by a duly accredited practitioner or ordained minister,  
290 priest or rabbi thereof.

291 (d) Nothing in this section shall be construed to limit the application  
292 of sections 45a-644 to 45a-663, inclusive, of the general statutes, except  
293 as specifically provided in this section.

294 Sec. 4. Section 4-141 of the general statutes is repealed and the  
295 following is substituted in lieu thereof (*Effective October 1, 2004*):

296 As used in this chapter: "Claim" means a petition for the payment or  
297 refund of money by the state or for permission to sue the state; "just  
298 claim" means a claim which in equity and justice the state should pay,  
299 provided the state has caused damage or injury or has received a  
300 benefit; "person" means any individual, firm, partnership, corporation,  
301 limited liability company, association or other group, including  
302 political subdivisions of the state; "state agency" includes every

303 department, division, board, office, commission, arm, agency and  
304 institution of the state government, whatever its title or function, and  
305 "state officers and employees" includes every person elected or  
306 appointed to or employed in any office, position or post in the state  
307 government, whatever such person's title, classification or function  
308 and whether such person serves with or without remuneration or  
309 compensation, including judges of probate courts, [and] employees of  
310 such courts and special limited conservators appointed by such courts  
311 pursuant to section 3 of this act. In addition to the foregoing, "state  
312 officers and employees" includes attorneys appointed as victim  
313 compensation commissioners, attorneys appointed by the Public  
314 Defenders Services Commission as public defenders, assistant public  
315 defenders or deputy assistant public defenders, and attorneys  
316 appointed by the court as special assistant public defenders, the  
317 Attorney General, the Deputy Attorney General and any associate  
318 attorney general or assistant attorney general, any other attorneys  
319 employed by any state agency, any commissioner of the Superior  
320 Court hearing small claims matters or acting as a fact-finder, arbitrator  
321 or magistrate or acting in any other quasi-judicial position, any person  
322 appointed to a committee established by law for the purpose of  
323 rendering services to the Judicial Department including, but not  
324 limited to, the Legal Specialization Screening Committee, the State-  
325 Wide Grievance Committee, the Client Security Fund Committee, and  
326 the State Bar Examining Committee, any member of a  
327 multidisciplinary team established by the Commissioner of Children  
328 and Families pursuant to section 17a-106a, and any physicians or  
329 psychologists employed by any state agency. "State officers and  
330 employees" shall not include any medical or dental intern, resident or  
331 fellow of The University of Connecticut when (1) the intern, resident or  
332 fellow is assigned to a hospital affiliated with the university through  
333 an integrated residency program, and (2) such hospital provides  
334 protection against professional liability claims in an amount and  
335 manner equivalent to that provided by the hospital to its full-time  
336 physician employees.

337 **Statement of Purpose:**

338 To establish an alternative process for medicating persons with  
339 psychiatric disabilities who are found not competent to stand trial in a  
340 criminal proceeding and who are incapable of giving informed consent  
341 regarding their treatment or refuse to consent to treatment.  
342

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

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>