



House of Representatives

General Assembly

File No. 161

January Session, 2007

House Bill No. 7067

House of Representatives, March 27, 2007

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE APPOINTMENT AND POWERS OF
CONSERVATORS AND SPECIAL LIMITED CONSERVATORS WITH
RESPECT TO PSYCHIATRIC TREATMENT.***

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

1 Section 1. Section 17a-543 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) No patient shall receive medication for the treatment of the
4 psychiatric disabilities of such patient without the informed consent of
5 such patient, except in accordance with procedures set forth in
6 subsections (b), (d), (e) and (f) of this section or in accordance with
7 section 17a-543a, 17a-566 or 54-56d.

8 (b) No medical or surgical procedures may be performed without
9 the patient's written informed consent or, if the patient has been
10 declared incapable of caring for himself or herself pursuant to sections
11 45a-644 to 45a-662, inclusive, and a conservator of the person has been
12 appointed pursuant to section 45a-650, the written consent of such

13 conservator. If the head of the hospital, in consultation with a
14 physician, determines that the condition of an involuntary patient not
15 declared incapable of caring for himself or herself pursuant to said
16 sections is of an extremely critical nature and [such] the patient is
17 incapable of informed consent, medical or surgical procedures may be
18 performed with the written informed consent of: (1) The patient's
19 health care representative; (2) the patient's conservator or guardian, if
20 he or she has one; (3) [such person's] the patient's next of kin; (4) a
21 person designated by the patient pursuant to section 1-56r; or (5) a
22 qualified physician appointed by a judge of the Probate Court.
23 Notwithstanding the provisions of this section, if obtaining the consent
24 provided for in this section would cause a medically harmful delay to
25 a voluntary or involuntary patient whose condition is of an extremely
26 critical nature, as determined by personal observation by a physician
27 or the senior clinician on duty, emergency treatment may be provided
28 without consent.

29 (c) No psychosurgery or shock therapy shall be administered to any
30 patient without [such] the patient's written informed consent, except as
31 provided in this subsection. Such consent shall be for a maximum
32 period of thirty days and may be revoked at any time. If it is
33 determined by the head of the hospital and two qualified physicians
34 that the patient has become incapable of giving informed consent,
35 shock therapy may be administered upon order of the Probate Court if,
36 after hearing, such court finds that the patient is incapable of informed
37 consent and there is no other, less intrusive beneficial treatment. An
38 order of the Probate Court authorizing the administration of shock
39 therapy pursuant to this subsection shall be effective for not more than
40 forty-five days.

41 (d) A facility may establish an internal procedure governing
42 decisions concerning involuntary medication treatment for inpatients.
43 Such procedure shall provide (1) that any decision concerning
44 involuntary medication treatment shall be made by a person who is
45 not employed by the facility in which the patient is receiving
46 treatment, provided the selection of such person shall not be made

47 until the patient's advocate has had reasonable opportunity to discuss
48 such selection with the facility, (2) written and oral notification to the
49 patient of available advocacy services, (3) notice to the patient and [his]
50 the patient's advocate, if one has been chosen, of any proceeding for
51 the determination of the necessity for involuntary treatment not less
52 than forty-eight hours prior to such proceeding, (4) the right of the
53 patient to representation during any such proceeding, (5) questioning
54 of any witness at any such proceeding including, if requested, one or
55 both of the physicians who made the determination pursuant to
56 subsection (e) of this section concerning the patient's capacity to give
57 informed consent and the necessity of medication for the patient's
58 treatment, and (6) a written decision. If a decision is made in
59 accordance with the standards set forth in this section that a patient
60 shall receive involuntary medication, and there is substantial
61 probability that without such medication for the treatment of the
62 psychiatric disabilities of [such] the patient the condition of the patient
63 will rapidly deteriorate, such involuntary medication may be provided
64 for a period not to exceed thirty days or until a decision is made by the
65 Probate Court under subsection (e) or (f) of this section, whichever is
66 sooner.

67 (e) (1) (A) If it is determined by the head of the hospital and two
68 qualified physicians that a patient is incapable of giving informed
69 consent to medication for the treatment of [such] the patient's
70 psychiatric disabilities and such medication is deemed to be necessary
71 for [such] the patient's treatment, a facility may utilize the procedures
72 established in subsection (d) of this section and may apply to the
73 Probate Court for appointment of a conservator of the person with
74 specific authority to consent to the administration of medication or, in
75 a case where a conservator of the person has previously been
76 appointed under section 45a-650, the facility or the conservator may
77 petition the Probate Court to grant such specific authority to the
78 conservator. The Probate Court may appoint a conservator with such
79 specific authority pursuant to this subparagraph if the court finds by
80 clear and convincing evidence that the patient is incapable of giving
81 informed consent to medication for the treatment of the patient's

82 psychiatric disability and such medication is necessary for the patient's
83 treatment.

84 (B) The conservator shall meet with the patient and the physician,
85 review the patient's written record and consider the risks and benefits
86 from the medication, the likelihood and seriousness of adverse side
87 effects, the preferences of the patient, the patient's religious views, and
88 the prognosis with and without medication. After consideration of
89 such information, the conservator shall either consent to the patient
90 receiving medication for the treatment of the patient's psychiatric
91 disabilities or refuse to consent to the patient receiving such
92 medication.

93 (2) The authority of a conservator to consent to the administration of
94 medication under subdivision (1) of this subsection shall be effective
95 for not more than one hundred twenty days. In the case of continuous
96 hospitalization of the patient beyond such one hundred twenty days, if
97 the head of the hospital and two qualified physicians determine that
98 the patient continues to be incapable of giving informed consent to
99 medication for the treatment of [such] the patient's psychiatric
100 disabilities and such medication is deemed to be necessary for [such]
101 the patient's treatment, the authority of the conservator to consent to
102 the administration of medication may be extended for a period not to
103 exceed one hundred twenty days by order of the Probate Court
104 without a hearing upon application by the head of the hospital.
105 Prompt notice of the order shall be given to the patient, conservator
106 and facility.

107 (f) (1) If it is determined by the head of the hospital and two
108 qualified physicians that (A) a patient is capable of giving informed
109 consent but refuses to consent to medication for treatment of [such] the
110 patient's psychiatric disabilities, (B) there is no less intrusive beneficial
111 treatment, and (C) without medication, the psychiatric disabilities with
112 which the patient has been diagnosed will continue unabated and
113 place the patient or others in direct threat of harm, the facility may
114 utilize the procedures established in subsection (d) of this section and

115 may apply to the Probate Court to authorize the administration to the
116 patient of medication for the treatment of the patient's psychiatric
117 disabilities, despite the refusal of the patient to consent to such
118 medication. The Probate Court may authorize the administration of
119 medication to the patient pursuant to this subdivision if the court finds
120 by clear and convincing evidence that (i) the patient is capable of
121 giving informed consent but refuses to consent to medication for
122 treatment of the patient's psychiatric disabilities, (ii) there is no less
123 intrusive beneficial treatment, and (iii) without medication, the
124 psychiatric disabilities with which the patient has been diagnosed will
125 continue unabated and place the patient or others in direct threat of
126 harm.

127 (2) An order authorizing the administration of medication under
128 subdivision (1) of this subsection shall be effective for not more than
129 one hundred twenty days. In the case of continuous hospitalization of
130 the patient beyond such one hundred twenty days, if the head of the
131 hospital and two qualified physicians determine that (A) the patient
132 continues to be capable of giving informed consent but refuses to
133 consent to medication for treatment of [such] the patient's psychiatric
134 disabilities, (B) there is no less intrusive beneficial treatment, and (C)
135 without medication, the psychiatric disabilities with which the patient
136 has been diagnosed will continue unabated and place the patient or
137 others in direct threat of harm, the order may be extended for a period
138 not to exceed one hundred twenty days by order of the Probate Court
139 without a hearing. Prompt notice of the order shall be given to the
140 patient and facility.

141 (g) If a decision has been made to administer involuntary
142 medication to a patient pursuant to subsection (d) of this section, the
143 patient may petition the Probate Court to expedite the hearing on an
144 application filed by the facility pursuant to subsection (e) or (f) of this
145 section or, if no application has been filed, to hold a hearing to decide
146 whether to allow the administration of involuntary medication. Either
147 hearing shall be held within fifteen days after the date of the patient's
148 petition.

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

153 (i) Unless there is a serious risk of harm to the patient or others,
154 based upon the patient's past history or current condition, nothing in
155 this section authorizes any form of involuntary medical, psychological
156 or psychiatric treatment of any patient who in the sincere practice of
157 his or her religious beliefs is being treated by prayer alone in
158 accordance with the principles and practices of a church or religious
159 denomination by a duly accredited practitioner or ordained minister,
160 priest or rabbi thereof. The Department of Mental Health and
161 Addiction Services shall adopt regulations, in accordance with chapter
162 54, to implement the purposes of this subsection.

163 Sec. 2. Section 17a-543a of the general statutes is repealed and the
164 following is substituted in lieu thereof (*Effective October 1, 2007*):

165 (a) (1) (A) If it is determined by the head of the hospital and two
166 qualified physicians that a patient who is a defendant placed in the
167 custody of the Commissioner of Mental Health and Addiction Services
168 pursuant to section 54-56d is incapable of giving informed consent to
169 medication for the treatment of [such] the patient's psychiatric
170 disabilities and such medication is deemed to be necessary for [such]
171 the patient's treatment, the facility in which [such] the patient is placed
172 may petition the probate court for the district in which such facility is
173 located for appointment of a special limited conservator with specific
174 authority to consent to the administration of medication, provided an
175 employee of such facility shall not be appointed or serve as the special
176 limited conservator. The Probate Court may appoint a special limited
177 conservator with such specific authority pursuant to this subparagraph
178 if the court finds by clear and convincing evidence that the patient is
179 incapable of giving informed consent to medication for the treatment
180 of the patient's psychiatric disabilities and such medication is
181 necessary for the patient's treatment. The Probate Court may grant the

182 special limited conservator specific authority to consent to the release
183 of the patient's medical records to such facility if the court finds by
184 clear and convincing evidence that the patient is unwilling or unable to
185 release such records and such records are necessary to make decisions
186 concerning the patient's treatment.

187 (B) The special limited conservator shall meet with the patient and
188 the physician, review the patient's written record and consider the
189 risks and benefits from the medication, the likelihood and seriousness
190 of adverse side effects, the preferences of the patient, the patient's
191 religious views, and the prognosis with and without medication. After
192 consideration of such information, the special limited conservator shall
193 either consent to the patient receiving medication for the treatment of
194 the patient's psychiatric disabilities or refuse to consent to the patient
195 receiving such medication.

196 (2) The authority of a special limited conservator to consent to the
197 administration of medication under subdivision (1) of this subsection
198 shall be effective for not more than one hundred twenty days. In the
199 case of continuous hospitalization of the patient beyond such one
200 hundred twenty days, if the head of the hospital and two qualified
201 physicians determine that the patient continues to be incapable of
202 giving informed consent to medication for the treatment of [such] the
203 patient's psychiatric disabilities and such medication is deemed to be
204 necessary for [such] the patient's treatment, the authority of the special
205 limited conservator to consent to the administration of medication may
206 be extended for a period not to exceed one hundred twenty days by
207 order of the Probate Court without a hearing upon application by the
208 head of the hospital. Prompt notice of the order shall be given to the
209 patient, special limited conservator and facility.

210 (3) The reasonable compensation of a special limited conservator
211 appointed under this subsection shall be established by the Probate
212 Court Administrator and paid from the Probate Court Administration
213 Fund.

214 (b) (1) If it is determined by the head of the hospital and two

215 qualified physicians that (A) a patient who is a defendant placed in the
216 custody of the Commissioner of Mental Health and Addiction Services
217 pursuant to section 54-56d is capable of giving informed consent but
218 refuses to consent to medication for treatment of [such] the patient's
219 psychiatric disabilities, (B) there is no less intrusive beneficial
220 treatment, and (C) without medication, the psychiatric disabilities with
221 which the patient has been diagnosed will continue unabated and
222 place the patient or others in direct threat of harm, the facility in which
223 [such] the patient is placed may petition the probate court for the
224 district in which such facility is located to authorize the administration
225 to the patient of medication for the treatment of the patient's
226 psychiatric disabilities, despite the refusal of the patient to consent to
227 such medication. The Probate Court may authorize the administration
228 of medication to the patient if the court finds by clear and convincing
229 evidence that (i) the patient is capable of giving informed consent but
230 refuses to consent to medication for treatment of the patient's
231 psychiatric disabilities, (ii) there is no less intrusive beneficial
232 treatment, and (iii) without medication, the psychiatric disabilities
233 with which the patient has been diagnosed will continue unabated and
234 place the patient or others in direct threat of harm.

235 (2) An order authorizing the administration of medication under
236 subdivision (1) of this subsection shall be effective for not more than
237 one hundred twenty days. In the case of continuous hospitalization of
238 the patient beyond such one hundred twenty days, if the head of the
239 hospital and two qualified physicians determine that (A) the patient
240 continues to be capable of giving informed consent but refuses to
241 consent to medication for treatment of [such] the patient's psychiatric
242 disabilities, (B) there is no less intrusive beneficial treatment, and (C)
243 without medication, the psychiatric disabilities with which the patient
244 has been diagnosed will continue unabated and place the patient or
245 others in direct threat of harm, the order may be extended for a period
246 not to exceed one hundred twenty days by order of the Probate Court
247 without a hearing. Prompt notice of the order shall be given to the
248 patient and facility.

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

257 (d) Nothing in this section shall be construed to limit the application
258 of sections 45a-644 to 45a-663, inclusive, except as specifically provided
259 in this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	17a-543
Sec. 2	<i>October 1, 2007</i>	17a-543a

JUD *Joint Favorable*

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill specifies the probate court's authority in cases where forced medication is administered to individuals with mental illness, and the involuntary release of their medical records. The bill is not anticipated to result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 7067*****AN ACT CONCERNING THE APPOINTMENT AND POWERS OF CONSERVATORS AND SPECIAL LIMITED CONSERVATORS WITH RESPECT TO PSYCHIATRIC TREATMENT.*****SUMMARY:**

This bill specifies that probate court orders involving forced medication of people with mental illnesses or involuntary release of their medical records must be supported by clear and convincing evidence. Current law has no explicit legal standard for ordering forced medication, but clear and convincing evidence is the standard apparently applied in practice. The law also has no procedure for releasing confidential medical records when patients are unable or unwilling to give permission on their own.

The bill applies when psychiatric patients cannot or will not agree to (1) take medication needed to treat their condition or (2) release medical records needed for treatment decisions. By law, in the case of incompetent criminal defendants, most criminal defendants are placed in the Department of Mental Health and Addiction Services' custody following a criminal court's determination that efforts intended to restore them to competency for purposes of standing trial are inappropriate or no longer legally permitted.

EFFECTIVE DATE: October 1, 2007

FORCED MEDICATION – PATIENT UNABLE TO GIVE CONSENT

Probate court judges can appoint special limited conservators and authorize them to make medication decisions on behalf of incompetent psychiatric patients. The bill specifies that clear and convincing evidence is the standard of proof the court must apply to existing

criteria for ordering forced medication, namely that (1) medication is necessary to treat the patient’s condition and (2) the patient is unable to give knowing and voluntary consent.

FORCED MEDICATION—PATIENT WITHHOLDS CONSENT

The bill also makes clear and convincing evidence the standard for probate court orders to forcibly medicate patients who are able but unwilling to consent. As under existing law, the findings required for issuing these orders are:

1. the patient is capable of giving informed consent but refuses to consent to medication for treatment psychiatric disabilities,
2. there is no less intrusive beneficial treatment, and
3. without medication, the patient’s psychiatric condition will not improve and will place the patient or others in direct threat of harm.

RELEASING MEDICAL RECORDS

The bill authorizes court-appointed conservators to release an incompetent defendant’s otherwise-confidential medical records. It requires the probate court judge’s determination to issue such orders be supported by clear and convincing evidence that (1) the patient is unable or unwilling to give consent on his own and (2) the records are needed to make treatment decisions.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 38 Nay 0 (03/14/2007)