



# House of Representatives

**File No. 755**

General Assembly

January Session, 2007

**(Reprint of File No. 161)**

House Bill No. 7067  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 4, 2007

**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 Section 17a-543 of the general statutes is repealed and the  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 provisions of section 45a-649 concerning  
177 issuance of a citation and notice, personal service and representation  
178 by, appointment of, and compensation of an attorney shall apply to  
179 any petition filed under this subsection as if such patient were a  
180 respondent under section 45a-649, except that (i) the court shall only be  
181 required to issue such citation and notice to the patient, the patient's  
182 attorney and any conservator appointed for the patient, and (ii) the  
183 court, in its discretion, may order notice as it directs to other persons

184 having an interest in the patient and to such persons the patient  
185 requests to be notified. The Probate Court may appoint a special  
186 limited conservator with such specific authority pursuant to this  
187 subparagraph if the court finds by clear and convincing evidence that  
188 the patient is incapable of giving informed consent to medication for  
189 the treatment of the patient's psychiatric disabilities and such  
190 medication is necessary for the patient's treatment. The Probate Court  
191 may grant the special limited conservator specific authority to consent  
192 to the release of the patient's medical records to such facility if the  
193 court finds by clear and convincing evidence that the patient is  
194 unwilling or unable to release such records and such records are  
195 necessary to make decisions concerning the patient's treatment.

196 (B) The special limited conservator shall meet with the patient and  
197 the physician, review the patient's written record and consider the  
198 risks and benefits from the medication, the likelihood and seriousness  
199 of adverse side effects, the preferences of the patient, the patient's  
200 religious views, and the prognosis with and without medication. After  
201 consideration of such information, the special limited conservator shall  
202 either consent to the patient receiving medication for the treatment of  
203 the patient's psychiatric disabilities or refuse to consent to the patient  
204 receiving such medication.

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

218 patient, special limited conservator and facility.

219 (3) The reasonable compensation of a special limited conservator  
220 appointed under this subsection shall be established by the Probate  
221 Court Administrator and paid from the Probate Court Administration  
222 Fund.

223 (b) (1) If it is determined by the head of the hospital and two  
224 qualified physicians that (A) a patient who is a defendant placed in the  
225 custody of the Commissioner of Mental Health and Addiction Services  
226 pursuant to section 54-56d is capable of giving informed consent but  
227 refuses to consent to medication for treatment of [such] the patient's  
228 psychiatric disabilities, (B) there is no less intrusive beneficial  
229 treatment, and (C) without medication, the psychiatric disabilities with  
230 which the patient has been diagnosed will continue unabated and  
231 place the patient or others in direct threat of harm, the facility in which  
232 [such] the patient is placed may petition the probate court for the  
233 district in which such facility is located to authorize the administration  
234 to the patient of medication for the treatment of the patient's  
235 psychiatric disabilities, despite the refusal of the patient to consent to  
236 such medication. The provisions of section 45a-649 concerning  
237 issuance of a citation and notice, personal service and representation  
238 by, appointment of, and compensation of an attorney shall apply to  
239 any petition filed under this subsection as if such patient were a  
240 respondent under section 45a-649, except that (i) the court shall only be  
241 required to issue such citation and notice to the patient, the patient's  
242 attorney and any conservator appointed for the patient, and (ii) the  
243 court, in its discretion, may order notice as it directs to other persons  
244 having an interest in the patient and to such persons the patient  
245 requests to be notified. The Probate Court may authorize the  
246 administration of medication to the patient if the court finds by clear  
247 and convincing evidence that (I) the patient is capable of giving  
248 informed consent but refuses to consent to medication for treatment of  
249 the patient's psychiatric disabilities, (II) there is no less intrusive  
250 beneficial treatment, and (III) without medication, the psychiatric  
251 disabilities with which the patient has been diagnosed will continue

252 unabated and place the patient or others in direct threat of harm.

253 (2) An order authorizing the administration of medication under  
 254 subdivision (1) of this subsection shall be effective for not more than  
 255 one hundred twenty days. In the case of continuous hospitalization of  
 256 the patient beyond such one hundred twenty days, if the head of the  
 257 hospital and two qualified physicians determine that (A) the patient  
 258 continues to be capable of giving informed consent but refuses to  
 259 consent to medication for treatment of [such] the patient's psychiatric  
 260 disabilities, (B) there is no less intrusive beneficial treatment, and (C)  
 261 without medication, the psychiatric disabilities with which the patient  
 262 has been diagnosed will continue unabated and place the patient or  
 263 others in direct threat of harm, the order may be extended for a period  
 264 not to exceed one hundred twenty days by order of the Probate Court  
 265 without a hearing. Prompt notice of the order shall be given to the  
 266 patient and facility.

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

275 (d) Nothing in this section shall be construed to limit the application  
 276 of sections 45a-644 to 45a-663, inclusive, except as specifically provided  
 277 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

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:

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***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.

House "A" clarifies that the usual requirements for appointment of conservators are applicable to special limited conservators.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****HB 7067 (as amended by House "A")\******AN ACT CONCERNING THE APPOINTMENT AND POWERS OF CONSERVATORS AND SPECIAL LIMITED CONSERVATORS WITH RESPECT TO PSYCHIATRIC TREATMENT.*****SUMMARY:**

This bill specifies that criminal defendants who cannot or will not consent to take psychiatric medication needed to treat their condition are entitled to legal representation in matters involving petitions to subject them to forced medication. It also sets notice and hearing rules governing their involuntary medication proceedings.

It also specifies that probate court orders on this issue and on the issue of involuntarily releasing any psychiatric patient's medical records must be supported by clear and convincing evidence.

Current law has no legal representation provision or explicit legal standard for ordering forced medication, but clear and convincing evidence is the standard apparently applied in practice. Current law also has no procedure or standards for releasing medical records when defendants are unable or unwilling to give permission on their own.

\*House Amendment "A" adds the legal representation and notice provisions.

EFFECTIVE DATE: October 1, 2007

**LEGAL REPRESENTATION**

The bill specifies that a criminal defendant who is unwilling or unable to consent to the administration of psychiatric medication is entitled to legal representation at probate court hearings involving

petitions to administer the medication involuntarily. It requires the probate court to appoint the attorney if the defendant is indigent or unable to request or obtain one. The court must pay the attorney if the defendant cannot. The bill specifies that funds come from the Judicial Department if the department has appropriated money for this purpose; otherwise the funds must come from the Probate Court Administration Fund.

## **HEARING CITATIONS AND NOTICES**

### ***Citations***

The bill requires the probate court to have a marshal or other disinterested person personally serve citations on the defendant unless the court determines this would adversely affect the person's health and his or her attorney and conservator. Citations must inform them that they must appear at a court hearing and specify the hearing's time and location. They must be served at least seven days before the scheduled hearing date. The hearing date must be scheduled for no more than 30 days after the court receives the application.

### ***Notices***

The bill requires the court to send notices to the people listed above within 30 days of receiving the application. This appears to allow hearings to be held before the notices are received, since the bill requires the court to schedule the hearing for a date no more than 30 days after receiving the application. The bill requires notices to contain the same information courts include in notices involving applications seeking the involuntary appointment of a conservator. This information is:

1. the nature of involuntary representation sought and its legal consequences (however, the hearings covered in the bill concern the appropriateness of involuntary medication, not conservator appointments);
2. the facts alleged in the application; and

3. the hearing's date and time.

The bill also allows the court to notify people, in the manner it directs (1) with an interest in the defendant and (2) whom the patient requests about hearing dates and locations.

### **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 of 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 person'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 or her own and (2) the records are needed to make treatment decisions.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 38 Nay 0 (03/14/2007)