Senate

General Assembly

File No. 670

January Session, 2007

Substitute Senate Bill No. 1439

Senate, May 1, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CONSERVATORS AND APPEALS OF CONSERVATORSHIPS AND GUARDIANSHIPS.

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

Section 1. Section 45a-132a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

In any matter before a court of probate in which the capacity of a party to the action is at issue, the court may order an examination of **[**any**]** the allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state, except that a conserved person, as defined in section 45a-644, as amended by this act, the respondent to an application for involuntary representation made under section 45a-648, as amended by this act, or a respondent to an application for appointment of a temporary conservator made under section 45a-654, as amended by this act, may refuse to undergo an examination ordered by the court under this section. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such examination

or the estate of the [alleged] allegedly incapable party in such proportion as the judge of the court determines. If any such party is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the reasonable compensation shall be established by, and paid from funds appropriated to, the Judicial Department, [however,] except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

Sec. 2. Section 45a-186 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Any person aggrieved by any order, denial or decree of a court of probate in any matter, unless otherwise specially provided by law, may, not later than forty-five days after the mailing of an order, denial or decree for a matter heard under any provision of section 45a-593, as amended by this act, 45a-594, 45a-595, as amended by this act, or 45a-597, sections 45a-644 to 45a-677, inclusive, as amended by this act, or sections 45a-690 to 45a-705, inclusive, and not later than thirty days after mailing of an order, denial or decree for any other matter in a court of probate, appeal therefrom to the Superior Court. [in accordance with subsection (b) of this section. Except in the case of an appeal by the state, such person shall give security for costs in the amount of one hundred fifty dollars, which may be paid to the clerk, or a recognizance with surety annexed to the appeal and taken before the clerk or a commissioner of the Superior Court or a bond substantially in accordance with the bond provided for appeals to the Supreme Court.] Such an appeal shall be commenced by filing a complaint in the superior court in the judicial district in which such court of probate is located, except that (1) an appeal under subsection (b) of section 12-359, subsection (b) of section 12-367 or subsection (b) of subsection 12-395 shall be filed in the judicial district of Hartford, and (2) an appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the superior court for juvenile matters having jurisdiction over matters

arising in such probate district. The complaint shall state the reasons for appeal. A copy of the order, denial or decree appealed from shall be attached to the complaint. Appeals from any decision rendered in any case after a **[**record**]** recording is made of the proceedings under **[**sections**]** section 17a-498, 17a-685, 45a-650, as amended by this act, 51-72 **[**and**]** or 51-73 shall be on the record and shall not be a trial de novo.

[(b) Any such appeal shall be filed in the superior court for the judicial district in which such court of probate is located except that (1) any appeal under subsection (b) of section 12-359 or subsection (b) of section 12-367 or subsection (b) of section 12-395, shall be filed in the judicial district of Hartford and (2) any appeal in a matter concerning removal of a parent as guardian, termination of parental rights or adoption shall be filed in the superior court for juvenile matters having jurisdiction over matters arising in such probate district.**]**

(b) Each person who files an appeal pursuant to this section shall serve a copy of the complaint on the court of probate that rendered the order, denial or decree appealed from and on each interested party. The failure of any person to make such service shall not deprive the Superior Court of jurisdiction over the appeal. Notwithstanding the provisions of section 52-50, service of the copy of the complaint shall be by state marshal, constable or an indifferent person. Service shall be in hand or by leaving a copy at the court of probate that rendered the order being appealed, or by leaving a copy at the place of residence of the interested party being served or at the address for the interested party on file with said court of probate, except that service on a respondent or conserved person in an appeal from an action under part IV of chapter 802h shall be in hand by a state marshal, constable or an indifferent person.

(c) Not later than fifteen days after a person files an appeal under this section, the person who filed the appeal shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service, and (2) a statement of the date and manner in which a copy of the complaint

was served on the court of probate and each interested party.

(d) If service has not been made on an interested party, the Superior Court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify any necessary party not yet served.

(e) A hearing in an appeal from probate proceedings under section 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, as amended by this act, 45a-654, as amended by this act, 45a-660, as amended by this act, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-703 or 45a-717 shall commence, unless a stay has been issued pursuant to subsection (f) of this section, not later than ninety days after the appeal has been filed.

(f) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the Court of Probate or the Superior Court. The filing of a motion with the Court of Probate shall not preclude action by the Superior Court.

(g) Nothing in this section shall prevent any individual aggrieved by any order, denial or decree of a court of probate in any matter, unless otherwise specially provided by law, from filing a petition for a writ of habeas corpus, a petition for termination of involuntary representation or a petition for any other available remedy.

Sec. 3. (NEW) (*Effective October 1, 2007*) (a) In an appeal from an order, denial or decree of a Court of Probate made after a hearing that is on the record, not later than thirty days after service is made of an appeal under section 45a-186 of the general statutes, as amended by this act, or within such further time as may be allowed by the Superior Court, the Court of Probate shall transcribe any portion of the recording of the proceedings that has not been transcribed. The expense for such transcript shall be charged against the person who filed the appeal, except that if the person who filed the appeal is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the expense of the transcript shall

be paid by the Probate Court Administrator and paid from the Probate Court Administrator Fund.

(b) The Court of Probate shall transmit to the Superior Court the original or a certified copy of the entire record of the proceeding from which the appeal was taken. The record shall include, but not be limited to, the findings of fact and conclusions of law, separately stated, of the court of probate.

(c) An appeal from an order, denial or decree made after a hearing on the record shall be heard by the Superior Court without a jury, and may be referred to a state referee appointed under section 51-50*l* of the general statutes. The appeal shall be confined to the record. If alleged irregularities in procedure before the court of probate are not shown in the record or if facts necessary to establish such alleged irregularities in procedure are not shown in the record, proof limited to such alleged irregularities may be taken in the Superior Court. The Superior Court, on request of any party, shall hear oral argument and receive written briefs.

Sec. 4. (NEW) (*Effective October 1, 2007*) In an appeal taken under section 45a-186 of the general statutes, as amended by this act, from a matter heard on the record in the Court of Probate, the Superior Court shall not substitute its judgment for that of the court of probate as to the weight of the evidence on questions of fact. The Superior Court shall affirm the decision of the Court of Probate unless the Superior Court finds that substantial rights of the person appealing have been prejudiced because the findings, inferences, conclusions or decisions are: (1) In violation of the federal or state constitution or the general statutes, (2) in excess of the statutory authority of the court of probate, (3) made on unlawful procedure, (4) affected by other error of law, (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the Superior Court finds such prejudice, the Superior Court shall sustain the appeal and, if appropriate, may render a

judgment that modifies the court of probate's order, denial or decree or remand the case to the court of probate for further proceedings. For the purposes of this section, a remand is a final judgment.

Sec. 5. (NEW) (*Effective October 1, 2007*) (a) In an appeal taken under section 45a-186 of the general statutes, as amended by this act, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that such costs are allowed in judgments rendered by the Superior Court.

(b) If the appellant claims that such appellant cannot pay the costs of an appeal taken under section 45a-186 of the general statutes, as amended by this act, the appellant shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such costs, including the requirement of bond, if any. The application for waiver of such costs shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render judgment on the application for waiver of such costs, which judgment shall contain a statement of the facts found by the court and the court's conclusions based on the facts found. The filing of the application for the waiver of such costs shall toll the time limited for the filing of an appeal until such time as a judgment on such application is rendered. A fiduciary acting on an order of the court made after expiration of the period of appeal shall not be liable for actions made in good faith unless such fiduciary has actual notice of the tolling of the appeal period.

Sec. 6. Section 45a-199 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

As used in sections 45a-143, 45a-152, 45a-202 to 45a-208, inclusive, **[**and**]** 45a-242 to 45a-244, inclusive, <u>and section 5 of this act,</u> unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

Sec. 7. Section 45a-487c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

In connection with trust matters, to the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute: (1) A court-appointed conservator or guardian of the estate may represent and bind the estate that the conservator or guardian controls; (2) a court-appointed conservator or guardian of the person may represent and bind the ward or conserved person if a conservator or guardian of the ward's estate or conserved person's estate has not been appointed; (3) an agent having authority to do so may represent and bind the principal; (4) a trustee may represent and bind the beneficiaries of the trust; (5) an executor or administrator of a decedent's estate may represent and bind persons interested in the estate; and (6) if a conservator or guardian has not been appointed, a parent may represent and bind the parent's minor or unborn child.

Sec. 8. Section 45a-593 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) The Administrator of Veterans' Affairs, created by Act of the Congress of the United States, or **[**his**]** the administrator's successor, shall be a party in interest in any proceedings brought under any provision of the general statutes for the appointment of a guardian or conservator of a veteran of any war or other beneficiary on whose account benefits of compensation, adjusted compensation, pension or insurance or other benefits are payable by the Veterans' Administration.

(b) The Administrator of Veterans' Affairs, or **[**his**]** the administrator's successor, shall be an interested party in the administration of the estate of any ward or conserved person on whose account the benefits are payable or whose estate includes assets derived from benefits paid by the Veterans' Administration, its predecessor or successor.

(c) Written notice shall be given by regular mail, unless waived in writing, to the division of the office of the Veterans' Administration having jurisdiction over the area in which the court is located, of the time and place for a hearing on any petition or pleading or in connection with any proceeding pertaining to or affecting in any manner the administration of the estate of any beneficiary of the Veterans' Administration. Notice shall be mailed in time to reach such office not less than ten days before the date of the hearing or other proceeding.

Sec. 9. Section 45a-595 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

Upon application of a conservator or the guardian of the estate of a ward, conserved person or other incapable person, the Court of Probate may authorize the conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company authorized to conduct business in this state, on the life of the ward, conserved person or incapable person, or on the life of a person in whose life the ward, conserved person or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward, conserved person or incapable person whose funds are invested in it.

Sec. 10. Section 45a-644 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

For the purposes of sections 45a-644 to **[**45a-662**]** 45a-663, inclusive, as amended by this act, the following terms shall have the following meanings:

(a) "Conservator of the estate" means a person, a municipal or state official, or a private profit or nonprofit corporation except a hospital or nursing home as defined in section 19a-521, appointed by the Court of Probate under the provisions of sections 45a-644 to **[**45a-662**]** 45a-663,

inclusive, as amended by this act, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of section 45a-654, as amended by this act.

(b) "Conservator of the person" means a person, a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home as defined in section 19a-521, appointed by the **[**Probate**]** Court of Probate under the provisions of sections 45a-644 to **[**45a-662**]** 45a-663, inclusive, as amended by this act, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of section 45a-654, as amended by this act.

(c) "Incapable of caring for one's self" or "incapable of caring for himself or herself" means that a person has a mental, emotional or physical condition **[**resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health**]** that results in such person being unable to receive and evaluate information or make or communicate decisions to such an extent that the person is unable, even with appropriate assistance, to meet essential requirements for personal needs.

(d) "Incapable of managing his or her affairs" means that a person has a mental, emotional or physical condition **[**resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which prevents that person from

performing**]** that results in such person being unable to receive and evaluate information or make or communicate decisions to such an extent that the person is unable, even with appropriate assistance, to perform the functions inherent in managing his or her affairs, and the person has property **[**which**]** that will be wasted or dissipated unless **[**proper**]** adequate property management is provided, or that funds are needed for the support, care or welfare of the person or those entitled to be supported by **[**that**]** the person and that the person is unable to take the necessary steps to obtain or provide funds **[**which are**]** needed for the support, care or welfare of the person or those entitled to be supported by **[**such**]** the person.

(e) "Involuntary representation" means the appointment of a conservator of the person or a conservator of the estate, or both, after a finding by the Court of Probate that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

(f) "Respondent" means an adult person for whom an application for involuntary representation has been filed or an adult person who has requested voluntary representation.

(g) "Voluntary representation" means the appointment of a conservator of the person or a conservator of the estate, or both, upon request of the respondent, without a finding that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

(h) **[**"Ward"**]** "Conserved person" means a person for whom involuntary representation is granted under sections 45a-644 to **[**45a-662**]** 45a-663, inclusive, as amended by this act.

(i) "Personal needs" means the needs of a person including, but not limited to, the need for food, clothing, shelter, health care and safety.

(j) "Property management" means actions to (1) obtain, administer, manage, protect and dispose of real and personal property, intangible property, business property, benefits and income, and (2) deal with

financial affairs.

(k) "Least restrictive means of intervention" means intervention for a conserved person that is sufficient to provide, within the resources available to the conserved person either from the conserved person's own estate or from private or public assistance, for a conserved person's personal needs or property management while affording the conserved person the greatest amount of independence and self-determination.

Sec. 11. (NEW) (*Effective October 1, 2007*) Each Court of Probate shall cause a recording to be made of all proceedings held under sections 45a-644 to 45a-663, inclusive, of the general statutes, as amended by this act. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator.

Sec. 12. Section 45a-645 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Any person who has attained at least eighteen years of age, and who is of sound mind, may designate in writing a person or persons whom he or she desires to be appointed as conservator of his or her person or estate or both, if he or she is thereafter found to be incapable of managing his or her affairs or incapable of caring for himself or herself.

(b) The designation shall be executed, witnessed and revoked in the same manner as provided for wills in sections 45a-251 and 45a-257, **[**; provided,**]** except that any person who is so designated as a conservator shall not qualify as a witness.

(c) Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of section 45a-650, as amended by this act, if appointed thereafter as a conservator.

Sec. 13. Section 45a-648 of the general statutes is repealed and the

following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and stating the reasons for the alleged incapability. The application shall be filed in the court of probate in the district in which the respondent resides, **[**or has his domicile**]** is domiciled or is located at the time of the filing of the application.

(b) An application for involuntary representation for a nondomiciliary of the state made pursuant to subsection (a) of this section shall not be granted unless the court finds the (1) respondent is presently located in the probate district in which the application is filed; (2) applicant has made reasonable efforts to provide notice to individuals and applicable agencies listed in subsection (a) of section 45a-649, as amended by this act, concerning the respondent; (3) respondent has been provided an opportunity to return to the respondent's place of domicile, and has been provided the financial means to return to the respondent's place of domicile within the respondent's resources, and has declined to return, or the applicant has made reasonable but unsuccessful efforts to return the respondent to such respondent's place of domicile; and (4) requirements of this chapter for the appointment of a conservator pursuant to an application for involuntary representation have been met.

(c) If, after the appointment of a conservator for a nondomiciliary of the state the nondomiciliary becomes domiciled in this state, the provisions of this section regarding involuntary representation of a nondomiciliary shall no longer apply.

(d) The court shall review any involuntary representation of a nondomiciliary ordered by the court pursuant to subsection (b) of this section every sixty days. Such involuntary representation shall expire sixty days after the date such involuntary representation was ordered by the court or sixty days after the most recent review ordered by the court, whichever is later, unless the court finds the (1) conserved

person is presently located in the state; (2) conservator has made reasonable efforts to provide notice to individuals and applicable agencies listed in subsection (a) of section 45a-649, as amended by this act, concerning the respondent; (3) conserved person has been provided an opportunity to return to the conserved person's place of domicile and has been provided the financial means to return to the conserved person's place of domicile within the conserved person's resources, and has declined to return, or the conservator has made reasonable but unsuccessful efforts to return the conserved person to the conserved person's place of domicile; and (4) requirements of this chapter for the appointment of a conservator pursuant to an application for involuntary representation have been met. As part of its review under this subsection, the court shall receive and consider reports from the conservator and from the attorney for the conserved person regarding the requirements of this subsection.

[(b) Any**]** (e) A person **[**who**]** is guilty of fraudulent or malicious application or false testimony when such person (1) wilfully files a fraudulent or malicious application for involuntary representation or appointment of a temporary conservator, **[**or any person who**]** (2) conspires with another person to file or cause to be filed such an application, or **[**any person who**]** (3) wilfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in sections 45a-644 to **[**45a-662**]** 45a-663, inclusive, as amended by this act. **[**, shall be fined not more than one thousand dollars or imprisoned not more than one year or both.**]** Fraudulent or malicious application or false testimony is a class D felony.

Sec. 14. Section 45a-649 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) (1) Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least **[**seven**]** ten days before the hearing date,

or in the case of an application made pursuant to section 17a-543 or 17a-543a, at least seven days before the hearing date, which date in any event shall not be more than thirty days after the receipt of the application by the Court of Probate unless continued for cause shown. Notice of the hearing shall be sent within thirty days after receipt of the application.

[(1)**]** (2) The court shall direct that personal service of the citation be made, by a state marshal, constable or an indifferent person, upon the following: **[**(A)**]** The respondent **[**, except that if the court finds personal service on the respondent would be detrimental to the health or welfare of the respondent, the court may order that such service be made upon counsel for the respondent, if any, and if none, upon the attorney appointed under subsection (b) of this section; (B)**]** and the respondent's spouse, if any, if the spouse is not the applicant, except that in cases where the application is for involuntary representation pursuant to section 17b-456, and there is no spouse, the court shall order notice by certified mail to the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives, and if none, the next of kin of such respondent.

[(2)**]** (3) The court shall order such notice as it directs to the following: (A) The applicant; (B) the person in charge of welfare in the town where the respondent is domiciled or resident and, if there is no such person, the first selectman or chief executive officer of the town if the respondent is receiving assistance from the town; (C) the Commissioner of Social Services, if the respondent is in a state-operated institution or receiving aid, care or assistance from the state; (D) the Commissioner of Veterans' Affairs if the respondent is receiving veterans' benefits or the Veterans' Home, or both, if the respondent is receiving aid or care from such home, or both; (E) the Commissioner of Administrative Services, if the respondent is receiving aid or care from the state; (F) the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives; (G) the person in

charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution.

[(3)**]** (4) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent and to such persons the respondent requests be notified.

(5) If personal service of the notice required in subsection (b) of this section is not made as required in subdivision (2) of this subsection, the court shall be deprived of jurisdiction over the application.

(b) **[**(1)**]** The notice required by subdivision **[**(1)**]** (2) of subsection (a) of this section shall specify (A) the nature of involuntary representation sought and the legal consequences thereof, (B) the facts alleged in the application, **[**and**]** (C) the time and place of the hearing, **[**. (2) The notice shall further state**]** and (D) that the respondent has a right to be present at the hearing and has a right to be represented by an attorney of the respondent's choice at **[**his or her**]** the respondent's own expense. The notice shall also include a statement in boldface type of a minimum size of twelve points in substantially the following form:

"POSSIBLE CONSEQUENCES OF THE APPOINTMENT OF A CONSERVATOR FOR YOU

This court has received an application to appoint a conservator for you. A conservator is a court-appointed legal guardian who may be assigned important decision-making authority over your affairs. If the application is granted and a conservator is appointed for you, you will lose some of your rights.

A permanent conservator may only be appointed for you after a court hearing. You have the right to attend the hearing on the application for appointment of a permanent conservator. If you are not able to access the court where the hearing will be held, you may request that the hearing be moved to a convenient location, even to your place of residence.

You should have an attorney represent you at the hearing on the

application. If you are unable to obtain an attorney to represent you at the hearing, the court will appoint an attorney for you. If you are unable to pay for representation by an attorney, the court will pay attorney fees as permitted by the court's rules. Even if you qualify for payment of an attorney on your behalf, you may choose an attorney if the attorney will accept the attorney fees permitted by the court's rules.

If, after a hearing on the application, the court decides that you lack the ability to care for yourself, pay your bills or otherwise manage your affairs, the court may review any alternative plans you have to get assistance to handle your own affairs that do not require appointment of a conservator. If the court decides that there are no adequate alternatives to the appointment of a conservator, the court may appoint a conservator and assign the conservator responsibility for some or all of the duties listed below. While the purpose of a conservator is to help you, you should be aware that the appointment of a conservator limits your rights. Among the areas that may be affected are:

- Accessing and budgeting your money

- Deciding where you live

- Making medical decisions for you

- Paying your bills

- Managing your real and personal property

You may participate in the selection of your conservator. If you have already designated a conservator or if you inform the court of your choice for a conservator, the court must honor your request unless the court decides that the person designated by you is not appropriate.

The conservator appointed for you may be a lawyer, a public official or someone whom you did not know before the appointment. The conservator will be required to make regular reports to the court about

you. The conservator may charge you a fee, under the supervision of the court, for being your conservator."

(c) Notice to all other persons required by this section shall only be required to state that involuntary representation is sought, the nature of the involuntary representation sought, the legal consequences of the involuntary representation and the date, time and place of the hearing on the application for involuntary representation.

(d) If the respondent is unable to request or obtain **[**counsel**]** an attorney for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. If the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, **[**however,**]** except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

(e) If the respondent notifies the court in any manner that **[**he or she**]** the respondent wants to attend the hearing on the application but is unable to do so, **[**because of physical incapacity,**]** the court shall schedule the hearing on the application at a place **[**which**]** that would facilitate attendance by the respondent. **[**but if not practical, then the judge shall visit the respondent, if he or she is in the state of Connecticut, before the hearing. Notice to all other persons required by this section shall state only the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.**]**

Sec. 15. (NEW) (*Effective October 1, 2007*) (a) A respondent, as defined in section 45a-644 of the general statutes, as amended by this act, or a conserved person, as defined in section 45a-644 of the general statutes, as amended by this act, who is subject to proceedings subsequent to the appointment of a conservator pursuant to an application for involuntary representation shall have the right to be

represented by an attorney of the respondent's or conserved person's choosing at the expense of the respondent or conserved person or, if the respondent or conserved person is indigent, within the payment guidelines of the Court of Probate.

(b) If the Court of Probate finds the respondent or conserved person is indigent or otherwise unable to pay for an attorney, the court shall appoint an attorney for the respondent or conserved person unless the respondent or conserved person refuses to be represented by an attorney and the court finds that the respondent or conserved person understands the nature of the refusal. The court shall appoint an attorney from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator in accordance with regulations issued under section 45a-77 of the general statutes.

(c) An attorney appointed pursuant to this section shall represent the respondent or conserved person in proceedings under sections 45a-644 to section 45a-663, inclusive, of the general statutes, as amended by this act, and shall consult with the conserved person regarding bringing an appeal to the Superior Court under section 45a-186 of the general statutes, as amended by this act. Upon the request of the conserved person, the attorney for the conserved person shall assist in the filing and commencing of an appeal to the Superior Court. An attorney's assistance in filing such an appeal shall not obligate the attorney to appear in or prosecute the appeal. A conservator may not deny the conserved person access to the person's resources needed for an appeal.

(d) Nothing in this section shall impair, limit or diminish the right of a respondent or conserved person to replace the attorney for such respondent or conserved person with a different attorney whom such respondent or conserved person chooses in accordance with this section. Fees of an attorney chosen by the respondent or conserved person shall be approved by the Court of Probate or, if an appeal is taken, by the Superior Court.

(e) If the respondent or conserved person is indigent, an attorney

appointed under this section shall be paid a reasonable rate of compensation. Rates of compensation for such appointed attorneys shall be established by the Office of the Probate Court Administrator. Such compensation shall be paid from funds appropriated to the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be paid from the Probate Court Administration Fund.

(f) An attorney representing a respondent or conserved person subject to proceedings under chapter 802h of the general statutes shall not accept appointment as guardian ad litem or conservator of the person or estate for the same person unless such attorney has been nominated by the respondent or conserved person pursuant to section 45a-645 of the general statutes, as amended by this act, or similar instrument, including, but not limited to, a trust or an advance directive pursuant to section 19a-580e of the general statutes, as amended by this act, or section 19a-580g of the general statutes, or is nominated by the respondent or conserved person pursuant to section 45a-650 of the general statutes, as amended by this act.

(g) An attorney for the respondent or conserved person, on presentation of proof of authority, shall have access to all information pertinent to proceedings under title 45a of the general statutes, including immediate access to medical records available to the respondent's or conserved person's treating physician.

Sec. 16. Section 45a-650 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) At any hearing <u>on an application</u> for involuntary representation, <u>before the court receives any evidence regarding the condition of the respondent or of the respondent's affairs, the court shall require clear and convincing evidence that the court has jurisdiction, that the respondent has been given notice as required in section 45a-649, as amended by this act, and that the respondent has been advised of the right to retain an attorney pursuant to section 15 of this act and is either represented by an attorney or has waived the right to be</u>

represented by an attorney. The respondent shall have the right to attend any hearing held under this section.

(b) The rules of evidence in civil actions adopted by the judges of the Superior Court shall apply to all hearings pursuant to this section. All testimony at a hearing held pursuant to this section shall be given under oath or affirmation.

(c) After making the findings required under subsection (a) of this section, the court shall receive evidence regarding the respondent's condition, the capacity of the respondent **[**, including a written report or testimony by**]** to care for himself or herself or to manage his or her affairs, and the ability of the respondent to meet his or her needs without the appointment of a conservator. Unless waived by the court pursuant to this subsection, evidence shall be introduced from one or more physicians licensed to practice medicine in the state who have examined the respondent within **[**thirty**]** forty-five days preceding the hearing. The **[**report or testimony**]** evidence shall contain specific information regarding the **[**disability and the extent of its incapacitating effect**]** respondent's condition and the effect of the respondent's condition on the respondent's ability to care for himself or herself or to manage his or her affairs. The court may also consider such other evidence as may be available and relevant, including, but not limited to, a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community or any other appropriate source. Such evidence may include, if available, reports from the social work service of a general hospital, municipal social worker, director of social service, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court **[**deems**]** considers qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or **[**his or her**]** the respondent's refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If such requirement is waived, the

court shall make a specific finding in any decree issued on the [petition] application stating why medical evidence was not required. [In any matter in which the Commissioner of Social Services seeks the appointment of a conservator pursuant to chapter 319dd and represents to the court that an examination by an independent physician, psychologist or psychiatrist is necessary to determine whether the elderly person is capable of managing his or her personal or financial affairs, the court shall order such examination unless the court determines that such examination is not in the best interests of the elderly person. The court shall order such examination notwithstanding any medical report submitted to the court by the elderly person or the caretaker of such elderly person. Any medical] Any hospital, psychiatric or medical record or report filed with the court pursuant to this subsection shall be confidential.

[(b)] (d) Upon the filing of an application for involuntary representation pursuant to section 45a-648, as amended by this act, the court [may] shall issue an order for the disclosure of the medical information required pursuant to [subsection (a) of] this section to the respondent's attorney and, upon request, to the respondent. The court may issue an order for the disclosure of such medical information to any other person as the court determines necessary.

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

[(d)] (f) (1) If the court finds by clear and convincing evidence that the respondent is incapable of managing [his or her] the respondent's affairs, that the respondent's affairs cannot be managed adequately without the appointment of a conservator and that the appointment of a conservator is the least restrictive means of intervention available to assist the respondent in managing the respondent's affairs, the court [shall] may appoint a conservator of his or her estate [unless it appears to the court that such affairs are being managed properly without the

appointment of a conservator**]** after considering the factors set forth in subsection (g) of this section.

(2) If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself, that the respondent cannot be cared for adequately without the appointment of a conservator and that the appointment of a conservator is the least restrictive means of intervention available to assist the respondent in caring for himself or herself, the court **[**shall**]** may appoint a conservator of his or her person **[**unless it appears to the court that the respondent is being cared for properly without the appointment of a conservator**]** after considering the factors set forth in subsection (g) of this section.

(3) No conservator may be appointed if the respondent's personal needs and property management are being met adequately by an agency or individual appointed pursuant to section 1-43, 19a-575a, 19a-577, 19a-580e, as amended by this act, or 19a-580g.

[(e)**]** (g) When determining whether a conservator should be appointed **[**and in selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. In making such determination, the court shall consider whether the respondent had previously made alternative arrangements for the care of his or her person or for the management of his or her affairs, including, but not limited to, the execution of a valid durable power of attorney, the appointment of a health-care agent or other similar document**]** the court shall consider the following factors: (1) The abilities of the respondent; (2) the respondent's capacity to understand and articulate an informed preference regarding the care of his or her person or the management of his or her affairs; (3) any relevant and material information obtained from the respondent; (4) evidence of the respondent's past preferences and life style choices; (5) the respondent's cultural background; (6) the desirability of maintaining continuity in the respondent's life and environment; (7) whether the respondent had previously made adequate alternative

arrangements for the care of his or her person or for the management of his or her affairs, including, but not limited to, the execution of a durable power of attorney, springing power of attorney, the appointment of a health care representative or health care agent, the execution of a living will or trust or the execution of any other similar document; (8) any relevant and material evidence from the respondent's family and any other person regarding the respondent's past practices and preferences; and (9) any supportive services, technologies or other means that are available to assist the respondent in meeting his or her needs.

(h) The respondent or conserved person may **[**, by oral or written request, if at the time of the request he or she has sufficient capacity to form an intelligent preference,**]** appoint, designate or nominate a conservator pursuant to section 19a-580e, as amended by this act, 19a-580g or 45a-645, as amended by this act, or may, orally or in writing, nominate a conservator who shall be appointed unless the court finds that the **[**appointment of the**]** appointee, designee or nominee is **[**not in the best interests of the respondent. In such case, or in the absence of any such nomination**]** unwilling or unable to serve or there is substantial evidence to disqualify such person. If there is no such appointment, designation or nomination or if the court does not appoint the person appointed, designated or nominated by the respondent or conserved person, the court may appoint any qualified person, authorized public official or corporation in accordance with subsections (a) and (b) of section 45a-644, as amended by this act. In considering who to appoint as conservator, the court shall consider (1) the extent to which a proposed conservator has knowledge of the respondent's or conserved person's preferences regarding the care of his or her person or the management of his or her affairs, (2) the ability of the proposed conservator to carry out the duties, responsibilities and powers of a conservator, (3) the cost of the proposed conservatorship to the estate of the respondent or conserved person, (4) the proposed conservator's commitment to promoting the respondent's or conserved person's welfare and independence, and (5) any existing or potential conflicts of interest of the proposed

conservator.

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

[(g)**]** (i) If the court appoints a conservator of the estate of the respondent, **[**it**]** the court shall require a probate bond. The court may, if it **[**deems**]** considers it necessary for the protection of the respondent, require a bond of any conservator of the person appointed under this section.

[(h) The court may limit the powers and duties of either the conservator of the person or the conservator of the estate, to include some, but not all, of the powers and duties set forth in subsections (a) and (b) of section 45a-644 and sections 45a-655 and 45a-656, and shall make specific findings to justify such a limitation, in the best interests of the ward. In determining whether or not any such limitations should be imposed, the court shall consider the abilities of the ward, the prior appointment of any attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the ward, any support services which are otherwise available to the ward, and any other relevant evidence. The court may modify its decree upon any change in circumstances.**]**

(j) Absent the court's order to the contrary and except as otherwise provided in subsection (b) of section 19a-580e, as amended by this act, a conservator appointed pursuant to this section shall be bound by all health care decisions properly made by the conserved person's health care representative.

(k) A conserved person shall retain all rights and authority not expressly assigned to the conservator.

(l) The court shall assign to a conservator appointed under this section only the duties and authority that are the least restrictive means of intervention necessary to meet the needs of the conserved

person. The court shall find by clear and convincing evidence that such duties and authority restrict the decision-making authority of the conserved person only to the extent necessary to provide for the personal needs or property management of the conserved person. Such personal needs and property management shall be provided in a manner appropriate to the conserved person. The court shall make a finding of the clear and convincing evidence that supports the need for each duty and authority assigned to the conservator.

(m) Nothing in this chapter shall impair, limit or diminish a conserved person's right to retain an attorney to represent such person or to seek redress of grievances in any court or administrative agency, including proceedings in the nature of habeas corpus arising out of any limitations imposed on the conserved person by court action taken under this chapter, chapter 319i, chapter 319j or section 45a-242. In any other proceeding in which the conservator has retained counsel for the conserved person, the conserved person may request the Court of Probate to direct the conservator to substitute an attorney chosen by the conserved person.

Sec. 17. Section 45a-653 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) If an application for the appointment of a conservator has been made, and if, while the application is pending, the applicant records a notice of the application certified by the court with the town clerk of any town within which real property of the alleged incapable person is situated and with the town clerk of the town in which the alleged incapable person resides, any conveyance of such real property by such person and any contract made by such person between the time the notice of the application is recorded and the time of the adjudication of the court upon the application shall not be valid without the approval of the court.

(b) If, during the pendency of the application, the applicant lodges with any bank, trust company or other depositary a notice of the application certified by the court, such bank, trust company or

depositary shall not allow any funds of the [alleged] allegedly incapable person to be withdrawn, between the time the notice of the application is lodged and the time of the adjudication of the court upon the application, without the approval of the court.

(c) [A] The original copy of the notice of the application shall be filed with the court. The notice [recorded or lodged pursuant to this section] may not be recorded or lodged elsewhere unless it is a copy certified by the court. The notice shall state that an application for appointment of a conservator is pending and shall include the name of the [alleged] allegedly incapable person, the name of the applicant, the probate district in which the application is pending, and the date of application. The notice shall be signed and acknowledged by the applicant. The notice shall not include the allegation of facts on which the application is based.

Sec. 18. Section 45a-654 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Upon written application for appointment of a temporary conservator brought by any person [deemed] considered by the court to have sufficient interest in the welfare of the respondent, including, but not limited to, the spouse or any relative of the respondent, the first selectman, chief executive officer or head of the department of welfare of the town of residence or domicile of any respondent, the Commissioner of Social Services, the board of directors of any charitable organization, as defined in section 21a-190a, or the chief administrative officer of any nonprofit hospital or such officer's designee, the Court of Probate may appoint a temporary conservator if the court finds by clear and convincing evidence that: (1) The respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, [and] (2) immediate and irreparable [injury] harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed, [pursuant to this section] and (3) appointment of a temporary conservator is the least restrictive means of intervention

available to prevent such harm. The court [may, in its discretion,] shall require the temporary conservator to give a probate bond. The court shall limit the duties [, responsibilities and powers] and authority of the temporary conservator to the circumstances that gave rise to the application and shall make specific findings, [to justify such limitation] by clear and convincing evidence, of the immediate and irreparable harm that will be prevented by the appointment of a temporary conservator and that support the appointment of a temporary conservator. In making such specific findings, the court shall consider the present and previously expressed wishes of the respondent, the abilities of the respondent, any prior appointment of an attorney-in-fact, health care representative, trustee or other fiduciary acting on behalf of the respondent, any support service otherwise available to the respondent and any other relevant evidence. In appointing a temporary conservator pursuant to this section, the court shall set forth each duty or authority of the temporary conservator. The temporary conservator shall have charge of the property or of the person of the [respondent] conserved person, or both, for such period [of time] or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than thirty days, unless at any time while the appointment of a temporary conservator is in effect, an application is filed for appointment of a conservator of the person or estate under section 45a-650, as amended by this act. The court may (A) extend the appointment of the temporary conservator until the disposition of such application under section 45a-650, as amended by this act, or for an additional thirty days, whichever occurs first, or (B) terminate the appointment of a temporary conservator upon a showing that the circumstances that gave rise to the application for appointment of a temporary conservator no longer exist. No appointment of a temporary conservator under this section may be in effect for more than sixty days from the date of the initial appointment.

(b) [Except as provided in] Unless the court waives the medical evidence requirement pursuant to subsection (e) of this section, an appointment of a temporary conservator shall not be made unless a report is [presented to the judge] filed with the application for

appointment of a temporary conservator, signed by a physician licensed to practice medicine or surgery in this state, stating: (1) That the physician has examined the respondent and the date of such examination, which shall not be more than three days prior to the date of presentation to the judge; (2) that it is the opinion of the physician that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself; and (3) the reasons for such opinion. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court **[**may issue an order**]** shall provide for the disclosure of the medical information required pursuant to this subsection to the respondent on the respondent's request, the respondent's attorney and to any other party considered appropriate by the court.

(c) Upon receipt of an application for the appointment of a temporary conservator, the court shall issue notice to the respondent, appoint counsel for the respondent and conduct a hearing on the application in the manner set forth in section 15 of this act and sections 45a-649 and 45a-650, as amended by this act, except that (1) notice to the respondent shall be given not less than five days before the hearing, which shall be conducted not later than seven days after the application is filed, excluding Saturdays, Sundays and holidays, or (2) where an application has been made ex parte for a temporary conservator, notice shall be given to the respondent not more than forty-eight hours after the ex parte appointment of a temporary conservator, with the hearing on such ex parte appointment to be conducted not later than three days after the ex parte appointment, excluding Saturdays, Sundays and holidays. Service on the respondent of the notice of the application for the appointment of a temporary conservator shall be in hand and shall be made by a state marshal, constable or an indifferent person. Notice shall include (A) a copy of the application for appointment of a temporary conservator and any physician's report filed with the application pursuant to subsection (b) of this section, (B) a copy of an ex parte decree, if any, appointing a temporary conservator, and (C) the date, place and time of the hearing on the application for the appointment of a temporary conservator.

The court may not appoint a temporary conservator until the court has made the findings required in this section and held a hearing on the application, except as provided in subsection (d) of this section. If notice is provided to the next of kin with respect to an application filed under this section, the physician's report shall not be disclosed to the next of kin except by order of the court.

[(c)**]** (d) (1) If the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent as required in subsection **[**(d)**]** (c) of this section would cause immediate and irreparable **[**injury**]** harm to the mental or physical health or financial or legal affairs of the respondent, the court may, ex parte and without prior notice to the respondent, appoint a temporary conservator upon receiving evidence and making the findings required in subsection (a) of this section, provided the court makes a specific finding in any decree issued on the application stating the immediate or irreparable **[**injury**]** harm that formed the basis for the court's determination and why such hearing and appointment was not required before making an ex parte appointment. If an ex parte order of appointment of a temporary conservator is made, a hearing on the application for appointment of a temporary conservator shall be commenced not later than three days after the ex parte order was issued, excluding Saturdays, Sundays and holidays. An ex parte order shall expire not later than three days after the order was issued unless a hearing on the order that commenced prior to the expiration of the three-day period has been continued for good cause.

[(2) After making such ex parte appointment, the court shall immediately: (A) Appoint an attorney to represent the respondent, provided if the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund; (B) schedule the date, place and

time of a hearing to be held not later than seventy-two hours after the issuance of the court's decree, excluding Saturdays, Sundays and holidays; and (C) give notice by mail, or such other notice as the court deems appropriate, to the respondent, the respondent's next of kin and such attorney, which notice shall include: (i) A copy of the application for appointment of temporary conservator and the accompanying physician's report; (ii) a copy of the decree appointing a temporary conservator; and (iii) the date, place and time of the hearing scheduled pursuant to subparagraph (B) of this subdivision, except that if the court determines that notice to the respondent under this subdivision would be detrimental to the health or welfare of the respondent, the court may give such notice only to the respondent's next of kin and the respondent's attorney.**]**

[(3)**]** (2) After **[**such**]** a hearing held under this subsection, the court **[**shall**]** may appoint a temporary conservator or may confirm or revoke the ex parte appointment of the temporary conservator or may modify the duties **[**, responsibilities or powers**]** and authority assigned under such appointment.

[(d) If the court determines that an ex parte appointment of a temporary conservator pursuant to subsection (c) of this section is not appropriate but finds substantial evidence that appointment of a temporary conservator may be necessary, the court shall hold a hearing on the application. Unless continued by the court for cause, such hearing shall be held not later than seventy-two hours after receipt of the application, excluding Saturdays, Sundays and holidays. Prior to such hearing, the court shall appoint an attorney to represent the respondent in accordance with subsection (c) of this section and shall give such notice as it deems appropriate to the respondent, the respondent's next of kin and such attorney, which notice shall include a copy of the application for appointment of a temporary conservator and the accompanying physician's report. After hearing and upon making the findings required in subsection (a) of this section, the court may appoint a temporary conservator.**]**

(e) The court may waive the medical evidence requirement under subsection (b) of this section if the court finds that the evidence is impossible to obtain because of the refusal of the respondent to be examined by a physician. In any such case the court may, in lieu of medical evidence, accept other competent evidence. In any case in which the court waives the medical evidence requirement as provided in this subsection, the court may not appoint a temporary conservator unless the court finds, by clear and convincing evidence, that (1) the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, and (2) immediate and irreparable harm to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed pursuant to this section. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court shall **[**(1)**]** make a specific finding in any decree issued on the application stating why medical evidence was not required. **[**, and (2) schedule a hearing in accordance with subsection (c) or (d) of this section, which hearing shall take place not later than seventy-two hours after the issuance of the court's decree.**]**

[(f) Except as provided in subsection (g) of this section, a temporary conservator may not change the respondent's residence unless a court specifically finds, after a hearing, that such change is necessary.

(g) (1) If the temporary conservator determines it is necessary to cause the respondent to be placed in an institution for long-term care, the temporary conservator may make such placement after the temporary conservator files a report of such intended placement with the probate court that appointed the temporary conservator, except that if the placement results from the respondent's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the respondent would result from filing the report before making such placement, the temporary conservator shall make the placement before filing the report provided the temporary conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the

hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the temporary conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the respondent's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The temporary conservator shall give notice of the placement and a copy of such report to the respondent and any other interested parties as determined by the court.

(3) Upon the request of the respondent or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the respondent's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the respondent, either through the respondent's own estate or through private or public assistance, the court shall order that the respondent be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.**]**

[(h)**]** (f) Upon the termination of the temporary conservatorship, the temporary conservator shall file a written report with the court and, if applicable, a final accounting as directed by the court, of his or her

actions as temporary conservator.

Sec. 19. Section 45a-655 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) A conservator of the estate appointed under section 45a-646, 45a-650, as amended by this act, or 45a-654, as amended by this act, shall, within two months after the date of **[**his or her**]** the conservator's appointment, make and file in the Court of Probate, an inventory, under penalty of false statement, of the estate of **[**his or her ward**]** the conserved person, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of **[**his or her**]** the conservator's appointment. Such inventory shall include the value of the **[**ward's**]** conserved person's interest in all property in which the **[**ward**]** conserved person has a legal or equitable present interest, including, but not limited to, the **[**ward's**]** conserved person's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the **[**ward**]** conserved person and those members of the **[**ward's**]** conserved person's family whom **[**he or she**]** the conserved person has the legal duty to support and to pay the **[**ward's**]** conserved person's debts, and may sue for and collect all debts due the **[**ward**]** conserved person. The conservator shall use the least restrictive means of intervention in the exercise of the conservator's duties and authority.

(b) Any conservator of the estate of a married person may apply such portion of the property of the **[**ward**]** conserved person to the support, maintenance and medical treatment of the **[**ward's**]** conserved person's spouse which the Court of Probate, upon hearing after notice, decides to be proper under the circumstances of the case.

(c) Notwithstanding the provisions of section 45a-177, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to

notice under section 45a-649, as amended by this act.

(d) In the case of any person receiving public assistance, state-administered general assistance or Medicaid, the conservator of the estate shall apply toward the cost of care of such person any assets exceeding limits on assets set by statute or regulations adopted by the Commissioner of Social Services. Notwithstanding the provisions of subsections (a) and (b) of this section, in the case of an institutionalized person who has applied for or is receiving such medical assistance, no conservator shall apply and no court shall approve the application of (1) the net income of the **[**ward**]** conserved person to the support of the **[**ward's**]** conserved person's spouse in an amount that exceeds the monthly income allowed a community spouse as determined by the Department of Social Services pursuant to 42 USC 1396r-5(d)(2)-(4), or (2) any portion of the property of the **[**ward**]** conserved person to the support, maintenance and medical treatment of the **[**ward's**]** conserved person's spouse in an amount that exceeds the amount determined allowable by the department pursuant to 42 USC 1396r-5(f)(1) and (2), notwithstanding the provisions of 42 USC 1396r-5(f)(2)(A)(iv), unless such limitations on income would result in significant financial duress.

(e) Upon application of a conservator of the estate, after hearing with notice to the Commissioner of Administrative Services, the Commissioner of Social Services and to all parties who may have an interest as determined by the court, the court may authorize the conservator to make gifts or other transfers of income and principal from the estate of the **[**ward**]** conserved person in such amounts and in such form, outright or in trust, whether to an existing trust or a court-approved trust created by the conservator, as the court orders to or for the benefit of individuals, including the **[**ward**]** conserved person, and to or for the benefit of charities, trusts or other institutions described in Sections 2055(a) and 2522(a) of the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts or transfers shall be authorized only if the court finds that: (1) In the case of individuals not related to the **[**ward**]** conserved person by blood or marriage, the **[**ward**]** conserved

person had made a previous gift to that unrelated individual prior to being declared incapable; (2) in the case of a charity, either (A) the [ward] conserved person had made a previous gift to such charity, had pledged a gift in writing to such charity, or had otherwise demonstrated support for such charity prior to being declared incapable; or (B) the court determines that the gift to the charity is in the best interests of the [ward] conserved person, is consistent with proper estate planning, and there is no reasonable objection by a party having an interest in the [ward's] conserved person's estate as determined by the court; (3) the estate of the [ward] conserved person and any proposed trust of which the [ward] conserved person is a beneficiary is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such [ward] conserved person in accordance with such [ward's] conserved person's established standard of living and for the support of persons the [ward] conserved person is legally obligated to support; (4) the purpose of the gifts is not to diminish the estate of the [ward] conserved person so as to qualify the [ward] conserved person for federal or state aid or benefits; and (5) in the case of a [ward] conserved person capable of making an informed decision, the [ward] conserved person has no objection to such gift. The court shall give consideration to the following: (A) The medical condition of the [ward] conserved person, including the prospect of restoration to capacity; (B) the size of the [ward's] conserved person's estate; (C) the provisions which, in the judgment of the court, such [ward] conserved person would have made if [he or she] such conserved person had been capable, for minimization of income and estate taxes consistent with proper estate planning; and (D) in the case of a trust, whether the trust should be revocable or irrevocable, existing or created by the conservator and court approved. The court should also consider the provisions of an existing estate plan, if any. In the case of a gift or transfer in trust, any transfer to a court-approved trust created by the conservator shall be subject to continuing probate court jurisdiction in

the same manner as a testamentary trust including periodic rendering of accounts pursuant to section 45a-177. Notwithstanding any other provision of this section, the court may authorize the creation and funding of a trust that complies with section 1917(d)(4) of the Social Security Act, 42 USC 1396p(d)(4), as from time to time amended. The provisions of this subsection shall not be construed to validate or invalidate any gifts made by a conservator of the estate prior to October 1, 1998.

Sec. 20. Section 45a-656 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) The conservator of the person shall have the duties and authority expressly assigned by the court pursuant to section 45a-650, as amended by this act, which duties and authority may include: (1) The duty and responsibility for the general custody of the **[**respondent**]** conserved person; (2) the **[**power**]** authority to establish **[**his or her place of abode**]** the conserved person's residence within the state, subject to the provisions of section 21 of this act; (3) the **[**power**]** authority to give consent for **[**his or her**]** the conserved person's medical or other professional care, counsel, treatment or service; (4) the duty to provide for the care, comfort and maintenance of the **[**ward;**]** conserved person; and (5) the duty to take reasonable care of the **[**respondent's**]** conserved person's personal effects. **[**; and (6) the duty to**]**

(b) In carrying out the duties and authority assigned by the court, the conservator of the person shall exercise such duties and authority in a manner that is the least restrictive means of intervention and shall (1) assist the conserved person in removing obstacles to independence, (2) assist the conserved person in achieving self-reliance, (3) ascertain the conserved person's views, (4) make decisions in conformance with the conserved person's reasonable and informed expressed preferences, (5) make all reasonable efforts to ascertain the health care instructions and other wishes of the conserved person, and (6) make decisions in conformance with the conserved person's expressed health

care preferences, including health care instructions and other wishes authorized in section 19a-580e, as amended by this act, except as otherwise provided in subsection (b) of section 19a-580e, as amended by this act, and section 19a-580g. The conservator shall afford the conserved person the opportunity to participate meaningfully in decision-making in accordance with the conserved person's abilities and shall delegate to the conserved person reasonable responsibility for decisions affecting such conserved person's well-being.

(c) The conservator shall report at least annually to the probate court **[**which**]** that appointed the conservator regarding the condition of the **[**respondent**]** conserved person, the efforts made to encourage the independence of the conserved person and the conservator's statement on whether the appointment of the conservator is the least restrictive means of intervention for managing the conserved person's needs. The **[**preceding**]** duties, responsibilities and **[**powers**]** authority assigned pursuant to section 45a-650, as amended by this act, or set forth in this section shall be carried out within the **[**limitations of the**]** resources available to the **[**ward**]** conserved person, either through the **[**ward's**]** conserved person's own estate or through private or public assistance.

[(b)**]** (d) The conservator of the person shall not have the power or authority to cause the respondent to be committed to any institution for the treatment of the mentally ill except under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 359.

[(c) (1) If the conservator of the person determines it is necessary to cause the ward to be placed in an institution for long-term care, the conservator may make such placement after the conservator files a report of such intended placement with the probate court that appointed the conservator, except that if the placement results from the ward's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the ward

would result from filing the report before making such placement, the conservator shall make the placement before filing the report provided the conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the ward's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement and a copy of such report to the ward and any other interested parties as determined by the court.

(3) Upon the request of the ward or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the ward's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the ward, either through the ward's own estate or through private or public assistance, the court shall order that the ward be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.**]**

Sec. 21. (NEW) (*Effective October 1, 2007*) (a) Except as provided in

subsections (b), (c), (d), (e) and (f) of this section, a conservator may not terminate a tenancy or lease of a conserved person, as defined in section 45a-644 of the general statutes, as amended by this act, sell or dispose of any real property or household furnishings of the conserved person, or change the conserved person's residence unless a Court of Probate finds, after a hearing, that such change is necessary or that the conserved person agrees to such action.

(b) If the conservator determines it is necessary to cause the conserved person to be placed in an institution for long-term care or to change the conserved person's residence, the conservator shall file a report of the intended placement in an institution for long-term care or change of residence with the court of probate that appointed the conservator. The court shall hold a hearing to consider the report. If, after the hearing, the conservator obtains permission of the court for the intended placement or change of residence, the conservator may make such a placement. The hearing shall be held not less than five days after the filing of the report, excluding Saturdays, Sundays and holidays, and not less than seventy-two hours before the placement in the institution for long-term care or the change of residence, except that if the placement in an institution for long-term care results from the conserved person's discharge from a hospital, the conservator may make the placement before filing the report, provided the conservator (1) files the report not later than forty-eight hours, excluding Saturdays, Sundays and holidays, after making such placement, and (2) includes in the report a statement as to the hospital discharge and related circumstances requiring the placement of the conserved person in the institution for long-term care. No such placement made before the filing of the report of the conservator shall continue unless ordered by the Court of Probate after a hearing held pursuant to this section.

(c) A report filed under subsection (b) of this section with respect to placement in an institution for long-term care shall set forth the basis for the conservator's determination, what community resources are available and have been considered to avoid the placement, and the reasons why the conserved person's physical, mental and psychosocial

needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613 of the general statutes, any residential care home or any congregate or subsidized housing. The conservator shall give notice of the placement of the conserved person in an institution for long-term care and a copy of such report to the conserved person, the conserved person's attorney and any interested parties as determined by the court. Service shall be by first-class mail. The conservator shall provide a certification to the court that service was made in the manner prescribed by this subsection.

(d) The conserved person may, at any time, request a hearing by the court on the person's placement in an institution for long-term care which hearing may determine the availability of a less restrictive alternative for the person's placement. On request of the conserved person made after the initial hearing held under subsection (b) of this section, the court shall hold a hearing on the placement not later than ten days, excluding Saturdays, Sundays and holidays, after receipt by the court of such request. The court shall not be required to conduct a hearing under this subsection more than three times in any twelve-month period following the hearing held under subsection (b) of this section authorizing the initial placement, except that the court shall conduct a hearing whenever information not previously available to the court is submitted with a request for a hearing.

(e) After the initial hearing held under subsection (b) of this section, the court may hold a hearing on a conservator's report and the placement of the conserved person in an institution for long-term care in any case even if no request for a hearing is made.

(f) If the court, after a hearing on the placement of the conserved person in an institution for long-term care, determines that the

conserved person's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the resources available to the conserved person, either through the conserved person's own estate or through private or public assistance, the court shall order that the conserved person be placed and maintained in a less restrictive and more integrated setting.

(g) A conserved person may waive the right to a hearing required under this section if the conserved person's attorney has consulted with the conserved person and the attorney has filed with the court a record of the waiver. Such a waiver shall be invalid if the waiver does not represent the conserved person's own wishes.

(h) For purposes of this section, an "institution for long-term care" means a facility that has been federally-certified as a skilled nursing facility, an intermediate care facility, a residential care home, an extended care facility, a nursing home, a rest home and a rehabilitation hospital or facility.

Sec. 22. Section 45a-659 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) If any person not domiciled **[**out of**]** in this state and owning real property or tangible personal property in this state is incapable of managing his or her affairs, the court of probate for the district in which the property or some part of it is situated may, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of the incapable person in the state where the incapable person is domiciled and after notice pursuant to section 45a-649, as amended by this act, or such reasonable notice as the court may order, and a hearing as required pursuant to section 45a-650, as amended by this act, appoint a conservator of the estate for the real property and tangible personal property in this state of the incapable person pursuant to section 45a-650, as amended by this act. If an application for appointment of a conservator is made pursuant to this section, the court of probate may not act on the application until an attorney is appointed to represent

the person in the manner set forth in section 15 of this act.

(b) If a conservator of the estate has been appointed for such an incapable person in the state of such person's domicile, (1) the court may, on application of the out-of-state conservator to act as conservator for real or tangible personal property of the incapable person in this state, appoint such person as conservator of the estate without a hearing, on presentation to the court of a certified copy of the conservator's appointment in the state of the incapable person's domicile, and (2) if the application is for the appointment of a person other than the out-of-state conservator to act as conservator of the estate, the court, at its hearing on the application, may accept a certified copy of the out-of-state appointment of a conservator as evidence of incapacity. As used in this subsection, a "conservator of the estate" in an out-of-state jurisdiction includes any person serving in the equivalent capacity in such state.

(c) The conservator of the estate for the property in this state shall give a probate bond, and shall, within two months after the date of his or her appointment, make and file in the court of probate, under penalty of false statement, an inventory of all the real property and tangible personal property in this state of the incapable person, appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment.

(d) The proceeds of any sale of **[**either**]** the real or tangible personal property, or **[**both**]** the tangible personal property itself, may be transferred to the conservator, committee or guardian having charge of the person and estate of the incapable person in the state where the incapable person is domiciled, following the application and proceedings which are required by section 45a-635.

Sec. 23. Section 45a-660 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) (1) A conserved person may, at any time, petition the court of probate having jurisdiction for the termination of a conservatorship. A

petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved person shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the Court of Probate, unless the hearing is continued for good cause. If such hearing is not held within such thirty-day period, the conservatorship shall terminate. If the court of probate having jurisdiction finds a [ward] conserved person to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a [ward] conserved person is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of [his or her] the conserved person's property be restored to the [ward] conserved person. (2) If the court finds upon hearing and after notice which the court prescribes[,] that a [ward] conserved person has no assets of any kind remaining except for that amount allowed by subsection (c) of section 17b-80, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept or the conservator is the Commissioner of Social Services, to some suitable person, to be determined by the court, to hold for the benefit of the [ward] conserved person, upon such conservator or person giving such probate bond, if any, as the court orders. (3) If any [ward] conserved person having a conservator dies, [his or her] the conserved person's property other than property which has accrued from the sale of [his or her] the conserved person's real property shall be delivered to [his or her] the conserved person's executor or administrator. The unexpended proceeds of [his or her] the conserved person's real property sold as aforesaid shall go into the hands of the executor or administrator, to be distributed as such real property would have been.

(b) (1) In any case under subsection (a) of this section the

conservator shall file in the court [his or her] the conservator's final account, and the court shall audit the account and allow the account if it is found to be correct. If the [ward] conserved person is living, the [ward] conserved person and [his or her] the conserved person's attorney, if any, shall be entitled to notice by [regular] first class mail of any hearing held on the final account. (2) The court of probate having jurisdiction shall send written notice annually to the [ward] conserved person and [his or her] the conserved person's attorney that the [ward] conserved person has a right to a hearing under this section. Upon receipt of request for such hearing the court shall set a time and date for the hearing, which date shall not be more than thirty days from the receipt of the [application] request unless continued for cause shown.

(c) The court shall review each conservatorship [at least] not later than one year after the conservatorship was ordered, and not less than every three years [and shall either] after such initial one-year review. After each such review, the court shall continue, modify or terminate the order for conservatorship. The court shall receive and review written evidence as to the condition of the [ward] conserved person. The conservator [, the attorney for the ward] and a physician licensed to practice medicine in this state shall each submit a written report to the court within forty-five days of the court's request for such report. On receipt of a written report from the conservator or a physician, the court shall provide a copy of the report to the conserved person and the attorney for the conserved person. If the [ward] conserved person is unable to request or obtain an attorney, the court shall appoint an attorney. If the [ward] conserved person is unable to pay for the services of the attorney, the reasonable rates of compensation of such attorney shall be established by, and the attorney shall be paid from funds appropriated to, the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such rates of compensation shall be established by the Probate Court Administrator and the attorney shall be paid from the Probate Court Administration Fund. The physician shall examine the [ward] conserved person within the forty-five-day period preceding the date of submission of the physician's report. Any physician's report filed

with the court pursuant to this subsection shall be confidential. The court may issue an order for the disclosure of medical information required pursuant to this subsection, except that the court shall issue an order for the disclosure of medical information to the conserved person's attorney. Not later than thirty days after receipt of the conservator's report and the physician's report, the attorney for the conserved person shall notify the court that the attorney has met with the conserved person and shall inform the court as to whether a hearing is being requested. Nothing in this section shall prevent the conserved person or the conserved person's attorney from requesting a hearing at any other time as permitted by law.

(d) If the court **[**determines**]** finds, after receipt of the reports from the attorney for the **[**ward**]** conserved person, the physician and the conservator, **[**that there has been no change in the condition of the ward since the last preceding review by the court, a hearing on the condition of the ward shall not be required, but the court, in its discretion, may hold such hearing. If the attorney for the ward, the physician**]** by clear and convincing evidence, that the conserved person continues to be incapable of managing his or her affairs and that there are no less restrictive means available to assist the conserved person in managing his or her affairs, the court shall continue or modify the conservatorship under the terms and conditions of the appointment of the conservator under section 45a-650, as amended by this act. If the court does not make such a finding of continued incapacity by clear and convincing evidence, the court shall terminate the conservatorship. A hearing on the condition of the conserved person shall not be required under this subsection, except that the court may hold a hearing in its discretion and shall hold a hearing if the conserved person, conserved person's attorney or conservator requests a hearing, in which case the court shall hold a hearing within thirty days of such request.

Sec. 24. (NEW) (*Effective October 1, 2007*) (a) An individual subject to a guardianship or involuntary representation under chapter 802h of the general statutes may apply for and is entitled to the benefit of the

writ of habeas corpus without having previously exhausted other available remedies including, but not limited to, the right to appeal the order of guardianship or involuntary representation. The question of the legality of such guardianship or involuntary representation shall be determined by the court or judge issuing such writ.

(b) A writ of habeas corpus shall be directed to the guardian of the person or the estate of the ward or to the conservator of the conserved person and if illegality or invalidity of the guardianship or involuntary representation is alleged in such writ, a copy shall also be directed to the judge of the court that issued the order as to such claim.

(c) An application for a writ of habeas corpus under this section shall be brought to either the Superior Court or the Court of Probate.

(d) If such application has been brought in the Court of Probate, the Probate Court Administrator shall appoint a three-judge court to hear such application from among the judges of probate who are approved to hear such applications by the Chief Justice of the Supreme Court. The judge of the court of probate who issued the order shall not be a member of the three-judge court. No such application shall be denied without the vote of at least two judges of the three-judge court. The judges of such three-judge court shall designate a chief judge from among their members. The three-judge court shall cause a recording to be made of all proceeding held under this section. The recording shall be part of the court record and shall be made and retained in a manner approved by the Probate Court Administrator. All records for any case before the three-judge court shall be maintained in the court of probate in which the conservator or guardian was appointed.

(e) Hearing under this section shall be heard not later than ten days, excluding Saturdays, Sundays and holidays, after return of service of the writ.

(f) If the court or judge before whom such a writ is brought decides that the guardianship or involuntary representation is not illegal, such decision shall be considered a final judgment and subject to appeal.

(g) If the court or judge before whom such case is brought decides that the guardianship or involuntary representation is not illegal, such decision shall not bar issuance of such a writ again, provided it is claimed that such person is no longer subject to the condition for which the person was conserved or such application is based on a ground different from that relied on in an earlier application. Such writ may be applied for by an individual subject to guardianship or involuntary representation or on the behalf of such individual by any relative, friend or person interested in such individual's welfare.

(h) An appeal to the Superior Court of a decision rendered by a three-judge court under this section shall be filed in the judicial district in which the court of probate that issued the order appointing a guardian or conservator is located. Such appeal shall be heard not later than thirty days of the return of service of the appeal.

Sec. 25. (NEW) (*Effective October 1, 2007*) An individual confined in a hospital or inpatient treatment facility for treatment of alcohol or drug dependency in this state may seek a writ of habeas corpus in the Superior Court. The question of the legality of such confinement shall be determined by the court or judge issuing such writ. The writ shall be directed to the superintendent or director of the hospital or treatment facility and, if illegality or invalidity of the commitment is alleged in such writ, a copy shall also be directed to the judge of the committing court as to such claim. Such judge shall be represented by the state's attorney for the judicial district in which such committing court is located. If the court or judge before whom such case is brought decides that the confinement is not illegal, such decision shall not bar issuance of such writ again, provided it is claimed that such individual is no longer subject to the condition for which the individual was confined. Such writ may be sought by the confined individual or on behalf of the individual by any relative, friend or person interested in the individual's welfare. Court fees may not be charged against the superintendent or director of the hospital or the judge.

Sec. 26. Section 45a-151 of the general statutes is repealed and the

following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Upon application by executors, guardians, conservators, administrators and trustees appointed, or whose appointment has been approved, by the Court of Probate, the court may, after such notice as the court shall direct and hearing, authorize such fiduciaries to compromise and settle any doubtful or disputed claims or actions, or any appeal from probate in favor of or against the estates or persons represented by them.

(b) In order to accomplish such compromise or settlement, the court may, after deduction of attorney's fees and costs, authorize such settlement as proposed by the fiduciary in a lump sum or in periodic payments to the estate, to an existing trust or to a newly created trust for the benefit of those represented by the fiduciary. Such trusts may include those created in compliance with Section 1917(d)(4) of the Social Security Act, 42 USC 1396p(d)(4), as from time to time amended. In the case of a gift or transfer in trust, any transfer to a court-approved trust created by a fiduciary shall be subject to continuing Probate Court jurisdiction as if it were a testamentary trust. In deciding whether the net settlement as proposed by the fiduciary is beneficial, the court shall consider the best interests of those represented by the fiduciary, and in the case of a decedent's estate, the intention of the decedent. The court may also authorize the conveyance, with or without requiring a bond, of the whole or any part of, or any easement or other interest in, any real property situated in this state forming part of the trust estate or owned by any such trustee, executor or administrator or owned by any deceased person, ward, conserved person or incapable person for whom such an executor, guardian, conservator or administrator was appointed.

Sec. 27. Section 45a-662 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

The court of probate in which **[**the**]** a conservator **[**of any incapable person**]** has been appointed may, concurrently with courts of equity, order such conservator to convey the interest of **[**his ward**]** the

conserved person in any real property which ought in equity to be conveyed to another person.

Sec. 28. Section 45a-663 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

If a **[**ward**]** conserved person is unable to pay for the services of a conservator appointed pursuant to the provisions of sections 45a-593 to 45a-700, inclusive, as amended by this act, the reasonable compensation of such conservator shall be paid from the Probate Court Administration Fund established under section 45a-82, pursuant to rules and regulations and at rates established by the Probate Court Administrator.

Sec. 29. Section 45a-679 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

If a ward or conserved person has both a plenary guardian or limited guardian of the person with mental retardation and a conservator of the estate or person or a temporary conservator who are not the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the court of probate making the appointment of such guardian or conservator and such court shall, after a hearing, order the course of action which in its discretion is in the best interest of the ward or conserved person.

Sec. 30. Section 49-11 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

The executor of the will or administrator of the estate of any deceased mortgagee, or the spouse or next of kin, or other suitable person whom the court **[**deems**]** considers to have a sufficient interest, to whom a decree is issued under section 45a-273, and any guardian **[**or conservator**]** whose ward, or conservator whose conserved person, as defined in section 45a-644, as amended by this act, is a mortgagee, may, on the payment, satisfaction or sale of the mortgage debt, release

the legal title to the party entitled thereto.

Sec. 31. Section 12-45 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

Each sole trustee residing in this state, having in his hands personal property liable to taxation belonging to the trust estate, shall make return thereof to the assessors of the town where he resides. If such personal property is in the hands of more than one trustee, if they all reside in the same town, they shall cause such return to be made by one of their number in such town; if they do not all reside in the same town, they shall cause such return to be made by one of their number, residing in the town in which the affairs of such trust are managed and administered, to the assessors of such town; but, if none of such trustees resides in such town, they shall designate one of their number who shall make such return to the assessors of the town where he resides. Each guardian or conservator shall make return of the personal estate of **[**his**]** the guardian's ward or the conservator's conserved person to the assessors of the town in which such ward or conserved person resides.

Sec. 32. Section 19a-580e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Except as authorized by a court of competent jurisdiction, a conservator shall comply with a **[**ward's**]** conserved person's individual health care instructions and other wishes, if any, expressed while the **[**ward**]** conserved person had capacity and to the extent known to the conservator, and the conservator may not revoke the **[**ward's**]** conserved person's advance health care directive unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a health care decision of a health care representative takes precedence over that of a conservator, except under the following circumstances: (1) When the health care decision concerns a person who is subject to the provisions of section 17a-566, 17a-587, 17a-588 or 54-56d; (2) when a conservator has been

appointed [to a ward] for a conserved person who is subject to an order authorized under subsection (e) of section 17a-543, for the duration of the [ward's] conserved person's hospitalization; or (3) when a conservator has been appointed [to a ward] for a conserved person subject to an order authorized under section 17a-543a.

Sec. 33. Sections 45a-191 and 45a-192 of the general statutes are repealed. (*Effective October 1, 2007*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2007*	45a-132a
Sec. 2	*October 1, 2007*	45a-186
Sec. 3	*October 1, 2007*	New section
Sec. 4	*October 1, 2007*	New section
Sec. 5	*October 1, 2007*	New section
Sec. 6	*October 1, 2007*	45a-199
Sec. 7	*October 1, 2007*	45a-487c
Sec. 8	*October 1, 2007*	45a-593
Sec. 9	*October 1, 2007*	45a-595
Sec. 10	*October 1, 2007*	45a-644
Sec. 11	*October 1, 2007*	New section
Sec. 12	*October 1, 2007*	45a-645
Sec. 13	*October 1, 2007*	45a-648
Sec. 14	*October 1, 2007*	45a-649
Sec. 15	*October 1, 2007*	New section
Sec. 16	*October 1, 2007*	45a-650
Sec. 17	*October 1, 2007*	45a-653
Sec. 18	*October 1, 2007*	45a-654
Sec. 19	*October 1, 2007*	45a-655
Sec. 20	*October 1, 2007*	45a-656
Sec. 21	*October 1, 2007*	New section
Sec. 22	*October 1, 2007*	45a-659
Sec. 23	*October 1, 2007*	45a-660
Sec. 24	*October 1, 2007*	New section
Sec. 25	*October 1, 2007*	New section
Sec. 26	*October 1, 2007*	45a-151
Sec. 27	*October 1, 2007*	45a-662
Sec. 28	*October 1, 2007*	45a-663

Sec. 29	*October 1, 2007*	45a-679
Sec. 30	*October 1, 2007*	49-11
Sec. 31	*October 1, 2007*	12-45
Sec. 32	*October 1, 2007*	19a-580e
Sec. 33	*October 1, 2007*	Repealer section

JUD *Joint Favorable Subst.*

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:

Agency Affected	Fund-Effect	FY 08 $	FY 09 $
Probate Court	PCAF - See Below	Minimal	Minimal

Note: PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill alters the process for filing an appeal from the probate court, eliminates the motion for appeal, and allows an appeal to be made directly with the Superior Court. Currently, the probate courts assess a $50 fee when an appeal is made. This would result in a revenue loss to the Probate Court Administration Fund (PCAF) of approximately $2,500 annually[1].

Additionally, the bill requires the court to make a recording (which shall be part of the record) during conservatorship proceedings. Only a limited number of courts are equipped with recording devices. It is estimated to cost up to $15,000 to provide all courts with a recording device. The bill also requires that in the case of an appeal from a matter that was on record, the cost of the transcript shall be charged to the party appealing. However, if the party making the appeal is indigent, the cost would be borne by the PCAF. It is unknown the cost to produce the transcripts; however, since there are few appeals filed annually[1], it is anticipated that the cost would be minimal.

The bill is not anticipated to result in a fiscal impact to the various state agencies that are involved in conservator or guardianship proceedings.

[1] In calendar year 2006 there were 50 appeals made in probate courts.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, except for the purchase of recording equipment, which would be a one-time cost.

OLR Bill Analysis

sSB 1439

AN ACT CONCERNING CONSERVATORS AND APPEALS OF CONSERVATORSHIPS AND GUARDIANSHIPS.

SUMMARY:

The law allows the probate court to appoint a conservator of the estate for someone who cannot manage his or her affairs and a conservator of the person for someone incapable of caring for himself of herself. This bill changes procedures for appointing conservators and designating their powers and sets procedures for appealing probate court decisions and filing habeas corpus petitions.

Among the bill's most important changes, it:

1. requires the probate court to record proceedings on appointing conservators, setting their powers and duties, and terminating conservatorships;

2. requires appeals of hearings appointing a conservator to be on record and sets the standard for court review;

3. changes the definitions of incapacity, which is required for the court to find appointment of a conservator necessary;

4. includes specific language for a notice to the person who is the subject of a petition for appointment of a conservator;

5. adds specific provisions about the right to an attorney and to choose an attorney, for a person who has a conservator appointed for him or her or is the subject of a petition for the appointment of one;

6. requires the probate court to consider certain factors and changes the standard the court must apply before deciding to appoint a conservator, including requiring a finding that appointing the conservator is the least restrictive intervention available to assist the person;

7. requires the probate court to give a conservator only the least restrictive duties and authority necessary to meet the person's needs, and the court must make specific findings on the need for each duty or authority;

8. requires a conservator to carry out the duties and authority assigned by the court in a manner that is the "least restrictive means of intervention" (§§ 19-20);

9. makes a number of similar changes to provisions on appointing a temporary conservator;

10. imposes specific requirements on the conservator of the person, including assisting in removing obstacles to the conserved person's independence, ascertaining the person's views, and making decisions that conform with the person's reasonable and informed preferences;

11. creates a procedure for the probate court to hold a hearing on changing a conserved person's residence similar to the provisions in current law for a conservator placing a person in a long-term care institution; and

12. allows a conserved person to petition the probate court to terminate the conservatorship at any time.

The bill defines "least restrictive means of intervention" as intervention for a conserved person that is sufficient to provide, within the available resources of the person's estate or public or private assistance, for the person's personal needs or property management while allowing the greatest amount of independence and self-determination (§ 10).

The bill also changes the term of someone who is subject to involuntary representation by a conservator from ward to a conserved person (§ 10). It makes numerous technical and conforming changes (§§ 7-9, 12, 26-32).

EFFECTIVE DATE: October 1, 2007

§ 1 — REFUSING MEDICAL EXAMS

By law, the probate court can order an examination by a physician, psychiatrist, or psychologist in any matter where a party's capacity is at issue. The bill allows someone who is under involuntary representation by a conservator to refuse an examination. It specifies that someone who is the subject of an application for involuntary representation by a conservator or temporary conservator can refuse. Current law already allows them to refuse as part of the court proceedings on the application.

§§ 2-6, 33 — APPEALING PROBATE ORDERS

§ 2 — Time for Appeal

The bill imposes new requirements on appeals to the Superior Court from probate orders, denials, or decrees when another law does not specify otherwise. It requires the appeal within 45 days after mailing the order, denial, or decree if it concerns (1) appointing a guardian or conservator for a veteran or beneficiary of veterans' benefits; (2) compensation of a guardian or conservator of a social services beneficiary or veteran; (3) investment of funds in insurance and annuity contracts by a conservator or guardian of the estate of a ward, conserved person, or incapable person; (4) payment by a guardian or conservator of administrative expenses of a deceased protected person; (5) many provisions regarding conservators such as naming a conservator for future incapacity, applying for and release from voluntary representation, appointment of involuntary representation, appointing temporary conservators, duties of conservators, and terminating conservatorship; (6) appointing guardians of mentally retarded people, their powers and duties; (7) sterilization; and (8) a guardian's or conservator's petition on competency to vote.

For other matters unless another statute applies, the bill requires the appeal within 30 days of mailing the order, denial, or decree.

§ 2 — Service

Under the bill, someone who files an appeal under these provisions must have a state marshal, constable, or indifferent person serve a copy of the complaint on the relevant probate court and all interested parties. Failure to do so does not deprive the Superior Court of jurisdiction. Service must be in hand but a copy can be left at the probate court or at an interested party's residence or address on file at the probate court. Service must be in hand for a conserved person or someone who is subject to a petition for conservatorship for matters relating to conservators.

Within 15 days of filing the appeal, the bill requires the person who filed the appeal to file with the Superior Court clerk a document with the name, address, and signature of the person who served the complaint and the date and manner of service. If an interested party has not been served, on motion, the Superior Court must require notice as reasonably calculated to notify them.

§ 2 — Hearings

The bill requires a hearing on an appeal in the following matters to begin within 90 days of its filing unless a stay is issued:

1. commitment of a mentally ill child and status review of a voluntarily committed mentally ill child;

2. commitment of a person with psychiatric disabilities, their release or transfer; their medication, treatment, psychotherapy, or shock therapy; and medication of criminal defendants in Department of Mental Heath and Addiction Services' (DMHAS) custody;

3. involuntary commitment for alcohol or drug dependency;

4. appointing a conservator, appointing a temporary conservator,

and terminating conservatorship;

5. appointing a guardian, plenary guardian, limited guardian, temporary limited guardian for a mentally retarded person, and court review of guardians or limited guardians;

6. hearings on sterilization;

7. a guardian's or conservator's petition on competency to vote; and

8. termination of parental rights.

§ 2 — Effect of Appeal

Under the bill, filing the appeal does not stay enforcement of an order, denial, or decree. The bill allows an appealing party to file a motion for a stay with the probate court or Superior Court, and filing with the probate court does not prevent action by the Superior Court.

The bill provides that these procedures do not prevent someone aggrieved by the order, denial, or decree from filing a petition for habeas corpus, terminating involuntary conservatorship, or any other remedy, unless a law provides otherwise.

§§ 2-3 — Appeals on the Record

Under current law, an appeal in a case where the parties agreed to have a record made is based on the record and is not a new trial. The bill requires appeals on the record if a recording is made of proceedings (1) appointing conservators (the bill requires these proceedings to be recorded) and (2) committing someone with psychiatric disabilities or for drug or alcohol treatment.

When the appeal is based on a hearing that was on the record, the bill requires the probate court to transcribe any portion that has not been transcribed within 30 days of service, unless the Superior Court allows additional time. The person filing the appeal is charged the expense. If the person is unable to pay and files an affidavit showing it, the probate court administrator pays the expenses from the probate

court administrator fund.

The bill requires the probate court to send the original or a certified copy of the entire record (including the probate court's separately stated findings of fact and conclusions of law) to the Superior Court.

Under the bill, the appeals are heard by the Superior Court without a jury and can be referred to a state referee (a judge past the mandatory retirement age of 70 who continues to serve).

Under the bill, the scope of the appeal is limited to the materials in the probate court record. The court can accept proof limited to alleged irregularities in procedure if the alleged irregularities or necessary facts to show it are not in the record. The Superior Court must hear oral argument and accept written briefs on a party's request.

§ 4 — Standard Of Review When Proceedings Are On The Record

When the appeal is based on a hearing that was on the record, the bill prohibits the Superior Court from substituting its judgment for the probate court's on the weight of evidence on a question of fact. It requires the Superior Court to affirm the probate court's decision unless the substantial rights of the person appealing were prejudiced because the probate judge's findings, inferences, conclusions, or decisions:

1. violate the state or federal constitution or state statutes;

2. exceed the probate court's statutory authority;

3. were based on illegal procedures;

4. were affected by legal errors;

5. were clearly erroneous based on the reliable, probative, and substantial evidence on the whole record; or

6. were arbitrary, capricious, an abuse of discretion, or a clearly unwarranted exercise of discretion.

If prejudice is found, the Superior Court can return the case to the probate court for further proceedings or modify the probate court order, denial, or decree. A remand is a final judgment.

§ 5 — Costs for Appeals

The bill allows a prevailing party to receive costs as in other Superior Court judgments.

If the person appealing cannot pay the costs of the appeal, he or she can (within the time allowed for the appeal) file an application with the court clerk to waive costs including bond. The application must conform with Superior Court rules. The court can hold a hearing if necessary and rule on the application, stating its findings of fact and conclusions.

The waiver application tolls the time for filing the appeal until the court renders judgment.

A fiduciary acting on a court order made after the appeal period expires is not liable for good faith actions unless the fiduciary has actual notice of the tolling of the appeal period. A fiduciary includes a conservator or guardian.

§ 33 — Repealed Provisions

The bill deletes provisions requiring (1) an appeal from probate or the actions of commissioners to state the interest of the appellant in the motion unless the interest is apparent from the probate court's proceedings and records and (2) the probate court to order notice of appeal to interested person as reasonable and the court to hear the appeal without further notice.

§ 10 — DEFINING INCAPACITY

For purposes of the provisions on conservators, current law defines a person as "incapable of caring for himself or herself" if the person has a mental, emotional, or physical condition: (1) resulting from mental illness, mental deficiency, physical illness or disability, chronic drug or alcohol use, or confinement; (2) that makes the person unable

to provide medical care for physical or mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene, and protection from physical abuse or harm; and (3) endangers the person's health.

The bill changes this and defines a person as "incapable of caring for himself or herself" if the person has a mental, emotional, or physical condition that makes him or her unable to receive and evaluate information or make or communicate decisions so that he or she cannot, even with appropriate assistance, meet essential requirements for personal needs. "Personal needs" include the need for food, clothing, shelter, health care, and safety.

The bill makes a similar change to the definition of a person who is "incapable of managing his or her affairs." Under current law, this is when a person (1) has a mental, emotional, or physical condition; (2) resulting from mental illness, mental deficiency, physical illness or disability, chronic drug or alcohol use, or confinement; and (3) that prevents the person from managing his or her affairs regarding property. The bill instead defines it as when the person has a mental, emotional, or physical condition that results in being unable to receive and evaluate information or make or communicate decisions to an extent that he or she is unable, even with appropriate assistance, to manage his or her affairs regarding property.

It defines "property management" as actions to (1) obtain, administer, manage, protect, and dispose of real and personal property, intangible property, business property, benefits, and income and (2) deal with financial affairs.

§ 11 — RECORDING PROCEEDINGS

The bill requires the probate court to record all proceeding regarding appointing and paying conservators, setting their powers and duties, and terminating conservatorships. The recording is part of the court record and must be made and maintained in the manner set by the probate court administrator.

§ 13 — APPLICATIONS REGARDING A PERSON NOT DOMICILED IN CONNECTICUT

Under current law, an application for involuntary representation by a conservator must be filed in the probate district where the person resides or has his domicile. The bill also allows an application in the district where the person is located at the time of filing.

The bill prohibits granting an application regarding someone who does not have a domicile in Connecticut unless:

1. the person is presently in the probate district where the application is filed;

2. the applicant made a reasonable effort to notify (a) the person and any of his or her relatives who may be required by law to receive notice, (b) state agencies providing aid to the person, (c) a hospital or institution if the person is in one, and (d) others who the court orders to receive notice because they have an interest or the person requests it;

3. (a) the person had an opportunity to return to his or her domicile and was given the financial means to do so (within his or her resources) but refused or (b) the applicant made reasonable but unsuccessful efforts to return the person to his or her domicile; and

4. the statutory requirements for appointing a conservator are met.

If involuntary representation is granted, the bill requires the court to review it every 60 days. Involuntary representation expires 60 days after the order or latest review unless the court makes the same findings as above, but the person must be located in Connecticut and the conservator is responsible for the required notice and efforts to return the person to his or her domicile. The bill requires the court to consider reports from the conservator and the conserved person's attorney regarding these requirements.

If the person becomes domiciled in Connecticut after a conservator

is appointed, these provisions no longer apply.

§ 13 — PENALTIES FOR FRAUD OR FALSE TESTIMONY IN APPLICATIONS

The bill increases the penalties for fraudulent or malicious application or false testimony under the provisions on applying for involuntary representation. Under current law, this is punishable by up to one year in prison, a fine of up to $1,000, or both. The bill makes it a class D felony, punishable by up to five years in prison, a fine of up to $5,000, or both. The bill also extends this penalty to fraudulent or malicious application or false testimony under the statute on compensation of a conservator when the ward cannot pay.

§ 14 — NOTICE REQUIREMENTS FOR INVOLUNTARY REPRESENTATION APPLICATIONS

The bill modifies the notice requirements for involuntary representation. Under current law, after receiving an application, the court issues a citation to certain parties to appear which must be served on them at least seven days before the hearing. The bill requires service at least 10 days before the hearing, but retains the seven-day limit for applications regarding people with psychiatric disabilities requesting medication, treatment, psychotherapy, and shock therapy, and medication of criminal defendants under DHMAS custody.

The law requires personal service on the person who is the subject of the petition and certain relatives. The bill deletes a provision allowing the court to find that personal service is detrimental to the subject's health and welfare and to instead order service on counsel or an appointed attorney. The bill provides that if personal service is not made on the person and required relatives, the court does not have jurisdiction over the application, and any action it takes has no legal effect.

As under current law, the notice to the subject of the petition and any relatives required to receive notice must describe the involuntary representation sought and its consequences, the facts alleged in the

application, the time of the hearing, the right to appear, and the subject's right to hire and be represented by an attorney. The bill requires the notice to include a statement, in bold with 12-point print, about the hearing and the person's rights. The bill includes sample language and, among other things, states:

1. if you are not able to access the court where the hearing will be held, you may request that the hearing be moved to a convenient location, even to your place of residence;

2. you should have an attorney represent you at the hearing, the court will appoint one if you cannot obtain one, the court will pay attorney fees if you cannot pay, and you may choose an attorney if the attorney will accept the attorney fees permitted by court rules;

3. the court may review any alternative plans you have to get assistance to handle your own affairs that do not require appointing a conservator;

4. the court may appoint a conservator and among the areas that my be affected are (a) accessing your money and paying bills, (b) deciding where you live, (c) medical decisions, and (d) managing your real and personal property; and

5. you may participate in selecting the conservator.

§ 14 — INABILITY TO ATTEND THE HEARING

The bill requires the court to relocate the hearing to a place where the subject of the hearing can attend if the person notifies the court that he or she wants to attend but is unable to do so. Under current law, the court can only do this if the person cannot attend because of physical incapacity and the court has the option of visiting the person before the hearing if he or she is in Connecticut when it is impractical to relocate the hearing.

§ 15 — APPOINTING ATTORNEYS

Current law gives a person a right to an attorney as the subject of a petition for involuntary representation and in proceedings involving temporary conservators and for terminating conservatorships. Current law provides that the court will appoint counsel if the person cannot ask for or obtain counsel and will pay reasonable compensation, if the person is unable to, from Judicial Branch funds, if appropriated and if not available, from the probate court administration fund.

The bill expands the right to legal representation by making it applicable to petitions for voluntary or involuntary representation and to all proceedings involving people under involuntary conservatorships. The bill provides that the person has the right to choose that attorney.

The bill provides that the court is not required to appoint an attorney if the person refuses representation and the court finds that he or she understands the nature of the refusal. If the court appoints the attorney, the bill requires it to do so from a panel provided by the probate court administrator, according to regulations.

The bill requires an appointed attorney to (1) represent the person in conservatorship proceedings; (2) consult with a conserved person about appealing adverse probate court rulings to the Superior Court; and (3) assist in filing and starting an appeal to the Superior Court if requested by the conserved person, without an obligation to participate in the appeal. The bill prohibits a conservator from denying a conserved person access to his or her resources that are needed for an appeal.

Under the bill, the person retains the right to replace his or her attorney with a different attorney of his or her choosing under these provisions. The fees of an attorney chosen by the person are subject to probate court approval or, if appealed, the Superior Court.

The bill applies the same requirements in current law for paying attorneys for indigent people but requires the Office of Probate Court Administrator to set reasonable rates of compensation for appointed

attorneys.

The bill prohibits an attorney representing someone in conservatorship proceedings from becoming the person's guardian ad litem or conservator unless the person (1) executed a legal document naming the attorney as conservator in the event of future incapacity or names the attorney in a similar document such as a trust or advance health care directive or (2) requests it during a conservator appointment hearing.

The bill gives an attorney access to all information pertinent to the probate proceedings on presenting proof of authority. This includes immediate access to all medical records available to the client's treating physician.

§ 16 — HEARINGS ON INVOLUNTARY CONSERVATOR APPOINTMENTS

The bill requires certain conditions to be met before the court can hear evidence about the condition of the person or the person's finances in hearings on applications for involuntary representation. Under the bill, (1) the court must find, by clear and convincing evidence, that it has jurisdiction and (2) the person who is the subject of the application must have (a) notice, and (b) been advised of the right to an attorney and either be represented by an attorney or waived the right to one. The person who is the subject of the application has the right to attend all hearings.

Current law requires the applicant to submit a written report or testimony by at least one licensed physician who examined the person within 30 days of the hearing, including information about the person's disability and its incapacitating effect. The bill changes these requirements by (1) extending the examination period to 45 days before the hearing and (2) allowing the court to waive the evaluation.

Existing law permits probate court judges to consider other forms of evidence at these hearings. The bill requires the probate court to use the Superior Court rules of evidence and requires testimony under

oath or affirmation.

The bill eliminates a specific provision requiring the court, on Department of Social Services' request, to order an examination of an elderly person subject to a protective supervision petition by a physician, psychologist, or psychiatrist regardless of reports submitted by the elderly person or his or her caretaker.

The bill requires, rather than permits as under current law, the court to order all required medical information disclosed. Under the bill, disclosure is to the attorney for the person who is the subject of the application or, on request, to the person. The bill allows the court to order disclosure to anyone else it deems necessary.

Factors in Decisions on Appointing Conservators

As under current law, the court must consider any previous alternate arrangements for care for the person or his or her affairs, including a durable power of attorney, health care agents, or similar documents. The bill requires the court to consider the adequacy of these arrangements and also requires considering any springing power of attorney, health care representative, living will, or trust.

The bill requires the court to consider certain factors before making a decision on whether to appoint a conservator. The bill deletes a specific provision that the court is guided by the person's best interests when making this decision and in selecting the conservator. The bill adds consideration of the following factors:

1. the person's abilities;

2. the person's capacity to understand and articulate an informed preference about his or her care or affairs;

3. any relevant and material information from the person;

4. evidence of the person's past preferences, lifestyle choices, and cultural background;

5. the desirability of continuity in the person's life and environment;

6. any relevant and material evidence from the person's family or anyone else about the person's past practices and preferences; and

7. any supportive services, technologies, or other means available to assist the person in meeting his or her needs.

Standard in Decision-Making

The bill prohibits appointing a conservator if the person's personal needs and property management are adequately cared for by an agency or individual appointed under a power of attorney or health care directive.

Conservator of the Estate. Under current law, the court must appoint a conservator of the estate if (1) clear and convincing evidence shows that the person is incapable of managing his or her affairs and (2) it does not appear that the affairs are being managed properly without a conservator.

The bill instead allows the court to appoint a conservator after considering the factors listed in the section above if it finds by clear and convincing evidence that (1) the person cannot manage his or her affairs, (2) the person's affairs cannot be managed adequately without appointing a conservator, and (3) appointing a conservator is the least restrictive intervention available to assist the person in managing his or her affairs.

Conservator of the Person. Under current law, the court must appoint a conservator of the person if (1) clear and convincing evidence shows that the person is incapable of caring for himself or herself and (2) it does not appear that the person is being properly cared for without a conservator.

The bill instead allows the court to appoint a conservator after

considering the factors listed in the section above if it finds by clear and convincing evidence that (1) the person is incapable of caring for himself or herself, (2) the person cannot be adequately cared for without appointing a conservator, and (3) appointing a conservator is the least restrictive intervention available to assist the person in caring for himself or herself.

Naming a Conservator

Under current law, a person can request, if capable of forming an intelligent preference, someone to act as his or her conservator. The bill also allows a person to name a conservator in a legal document to take effect in the event of future incapacity or in an advance health care directive. Under current law, the court must accept an appointment unless it is not in the person's best interests. The bill instead requires the court to accept the appointment unless the nominee is unwilling or unable to serve or there is substantial evidence to disqualify the person.

The bill and current law allow the appointment as conservator of any qualified person or an authorized public official or corporation. The bill adds the following considerations when deciding who to appoint as conservator:

1. the proposed conservator's knowledge of the person's preferences regarding care or management of the affairs;

2. the proposed conservator's ability to carry out a conservator's duties, responsibilities, and powers;

3. the costs of the proposed conservatorship to the estate or the person;

4. the proposed conservator's commitment to promoting the person's welfare and independence; and

5. any existing or potential conflicts of interest.

The bill eliminates a provision requiring the court to make and

furnish findings of fact to support its conclusion within 30 days if it is requested by the person who is the subject of the hearing or his or her counsel.

Powers of Conservators

Under current law, the court can limit the powers and duties given to a conservator but it must make specific findings to justify any limitation. Current law requires the court to consider the conserved person's abilities; the prior appointment of an attorney, health care representative, trustee, or other fiduciary to act for the person; available support services; and other relevant evidence.

The bill requires the court to give a conservator only the duties and authority that are the least restrictive intervention necessary to meet the person's needs and that the management be provided in an appropriate manner. The bill requires the court to find by clear and convincing evidence that the duties and authority restrict the person's decision-making only to the extent necessary to provide for personal needs or property management. The court must make a finding of the clear and convincing evidence that supports the need for each duty and authority. The bill provides that the person retains all rights and authority not expressly given to the conservator.

The bill requires a conservator to follow all health care decisions by a person's health care representative, based on an advance health care directive, unless the court or the law provides otherwise.

The bill provides that nothing in the statutory provisions about conservators limits a conserved person's right to an attorney or to seek redress in a court or agency, including using a habeas corpus petition regarding limits imposed on the person by the court regarding conservators and the provisions dealing with people with psychiatric disabilities, and treatment for addictions. In any other proceeding where the conservator retains counsel for the conserved person, the person can request that the probate court direct the conservator to substitute an attorney of the person's choosing.

§ 17 — NOTICE OF PENDING APPLICATION FOR CONSERVATOR

While an application to appoint a conservator is pending, the law allows the person who filed it to:

1. record notice of the application with the clerk in any town where the alleged incapable person resides or has property in order to invalidate any contracts or conveyance of real property without court approval, until the application is adjudicated, and

2. file notice of the application with a bank to prevent withdrawal of the alleged incapable person's funds without court approval, until the application is adjudicated.

The bill requires these notices to be copies certified by the court. It requires the original to be filed with the court.

§ 18 — APPOINTING A TEMPORARY CONSERVATOR

Standard for Appointment

Under current law, a probate court can appoint a temporary conservator if a person is incapable of managing his or her affairs or caring for himself or herself and immediate or irreparable injury to mental or physical health or financial or legal affairs will result without appointing a temporary conservator. The bill additionally requires the appointment to be the least restrictive intervention available to prevent the harm and the court to make all of these findings by clear and convincing evidence.

The bill requires, instead of allows as under current law, the temporary conservator to give a probate bond.

Current law requires the court to make specific findings to justify limitations on the temporary conservator's powers. The bill instead requires specific findings, supported by clear and convincing evidence, (1) of the immediate and irreparable harm that will be prevented by appointing a conservator and (2) that support appointing the temporary conservator. It also requires the court to list each duty or authority given the temporary conservator.

Term

Under current law, a temporary conservator's appointment is for up to 30 days unless an application for a conservator is filed during that period, in which case the court can extend the term for up to 30 days or until the application is decided, whichever occurs first. The bill specifies that a temporary conservator's appointment cannot exceed 60 days from the initial appointment date.

Application, Notice, and Hearing

Unless excused, the law requires a physician's report before appointing a temporary conservator. The bill requires the report to be filed with the application. Current law allows the court to order this medical information disclosed. The bill requires disclosure to the subject of the application on request, his or her attorney, and other parties the court considers appropriate.

The bill requires the court, on receiving an application, to notify the subject of the application, appoint counsel for the person, and hold a hearing in the same manner as for other involuntary conservators (see §§ 14-16 above).

The bill requires notice to the subject of the application at least five days before the hearing and the hearing must be within seven days of the application's filing (excluding weekends and holidays). If the application is made ex parte (without holding a hearing or giving advance notice to other parties), this notice can be made within 48 hours after the ex parte appointment of a temporary conservator and the hearing must be held within three days of the ex parte appointment (excluding weekends and holidays). Current law requires a hearing within 72 hours of the application (excluding weekends and holidays) unless continued for cause and notice to the next of kin and the person's attorney.

The bill requires the notice to be served in hand by a state marshal, constable, or indifferent person. As under current law, it must include:

1. a copy of the application and accompanying physician's report;

2. a copy of the ex parte decree, if any; and

3. the time and place of the hearing.

The bill prohibits the court from appointing a temporary conservator until it makes the required findings and holds a hearing, except under the ex parte appointment provisions.

If notice is given to the next of kin, the bill prohibits the court from disclosing the physician's report to that person without a court order.

Ex Parte Appointments

Under current law, a court can appoint a temporary conservator ex parte and must then hold a hearing within 72 hours of the appointment. The bill requires the hearing within three days and provides that the ex parte order expires within three days of its issuance unless the hearing begins during that period and is continued for cause.

Medical Examination

By law, the court can waive the medical examination requirement if the person refuses an examination. The bill provides that if the court waives the requirement, it cannot appoint a temporary conservator unless clear and convincing evidence shows that (1) the person is incapable of managing his or her affairs or caring for himself or herself or (2) immediate and irreparable harm to the person's mental or physical health or financial or legal affairs will result without appointing a temporary conservator.

Changing Residence

The bill removes a provision that a temporary conservator cannot change the person's residence without notifying the court and obtaining specific court findings after a hearing. It also eliminates procedures for placing a person in an institution for long-term care. Conservators of the person retain the ability to do so, although the bill sets new standards they must use.

Final Accounting

The law requires a temporary conservator to file a written report with the court when the temporary conservatorship ends. The bill also requires a final accounting if it is directed by the court.

§ 20 — DUTIES OF A CONSERVATOR OF THE PERSON

The bill requires a conservator of the person to carry out the duties and authority expressly assigned by the court in a manner that is the least restrictive intervention. The conservator must also:

1. assists the person in (a) removing obstacles to independence and (b) achieving self-reliance,

2. ascertain the person's views,

3. make decisions conforming with the person's reasonable and informed expressed preferences,

4. make all reasonable efforts to ascertain the person's health care instructions and other wishes, and

5. make decisions conforming with the person's expressed health care preferences including instructions and other wishes in an advanced health care directive.

The bill requires the conservator to give the person (1) the opportunity for meaningful participation in decision-making based on the person's abilities and (2) reasonable responsibility for decisions affecting his or her well-being.

The law requires a conservator to report at least annually to the probate court on the person's condition. The bill also requires the report to address efforts made to encourage the person's independence and a statement on whether appointing a conservator is the least restrictive means of intervention for managing the person's needs.

§ 21 — CHANGING A PERSON'S RESIDENCE AND LONG-TERM CARE PLACEMENTS

Under current law, a conservator of the person has the power to change a person's place of abode. The bill sets rules for doing so.

It prohibits a conservator from ending a person's tenancy or lease, selling or disposing of real property or household furnishings, or changing the person's residence unless a probate court holds a hearing and finds that (1) the change is necessary or (2) the person agrees to it.

It creates a procedure for filing a report and holding a hearing on changing the person's residence that is similar to provisions in current law for a conservator placing a person in a long-term care institution.

The bill requires the conservator, when he or she determines it is necessary to change the person's residence, to file a report of the intended change with the probate court. The court must hold a hearing to consider the report and the conservator can make the change if the court grants permission after the hearing. The hearing must be at least five days after filing the report (excluding weekends and holidays) and at least 72 hours before the change of residence.

The person can waive the right to a hearing after consultation with an attorney if the attorney files a waiver with the court, but it is invalid if it does not represent the person's wishes.

The bill also applies these procedures to placing the person in a long-term care institution. By doing so, it changes current law by:

1. requiring the hearing rather than only requiring it on request of the person or an interested party or on the court's motion, but adds the provision on waiving the hearing;

2. eliminating provisions allowing placement before filing a report based on avoiding irreparable harm;

3. requiring notice to the person's attorney, in addition to the person and interested parties as under current law, and requires service by first-class mail with the conservator certifying that service was made;

4. allowing the person to request a hearing at any time, following the procedures described above;

5. expanding the definition of an "institution for long-term care" to include a residential care home, extended care facility, nursing home, rest home, or rehabilitation hospital or facility (as under current law, it also includes a federally-certified skilled nursing facility or intermediate care facility).

As under current law, the bill still allows placement in a long-term care institution on discharge from a hospital before filing a report but requires filing the report within 48 hours (excluding weekends and holidays) instead of within five days. It also requires the report to include related circumstances requiring the placement. It prohibits such a placement from continuing unless the probate court orders it after a hearing.

§ 22 — PROPERTY OF NON-RESIDENTS

The law sets procedures for the probate court to appoint a conservator of the estate for a person who is not domiciled in Connecticut but has real or personal property in this state. The bill prohibits the court from acting on an application for this purpose until an attorney is appointed under the bill's provisions to represent the person.

The law allows the proceeds from the sale of the real or personal property to be transferred to the conservator or similar individual who is in charge of the incapable person or his or her estate in the other state. The bill also allows transfer of the tangible personal property itself.

§ 23 — TERMINATING CONSERVATORSHIP

The bill allows a conserved person to petition the probate court to terminate the conservatorship at any time. The petition is determined based on the preponderance of the evidence and a person does not need to present medical evidence. The court must hold a hearing within 30 days of the petition's filing except for good cause. If the hearing is not held within the 30-day period, the conservatorship

terminates.

Current law requires the court to review the conservatorship at least every three years. The bill instead requires a review within one year of ordering the conservatorship and at least every three years after that. Current law requires the conservator, person's attorney, and a physician to submit written reports within 45 days of the court's request. The bill deletes the requirement for the attorney's report and requires the court to provide copies of the other reports to the conserved person and his or her attorney.

The law allows the court to order disclosure of medical information and the bill requires disclosure to the conserved person's attorney.

The bill requires the conserved person's attorney, within 30 days of receiving the reports of the conservator and physician, to notify the court (1) that he or she has met with the conserved person and (2) whether a hearing is requested, although it does not prohibit either the person or the attorney from requesting one at any other time the law permits.

Under current law, the court is not required to hold a hearing unless requested by the attorney, physician, or conservator if it finds that the person's condition did not change since the court's last review based on the filed reports. The bill also does not require a hearing unless requested but changes the standard: the court must find by clear and convincing evidence that the conserved person continues to be incapable of managing his or her affairs and there is no less restrictive means available to assist in managing the affairs. The bill then allows the court to continue or modify the conservatorship but requires it to terminate the conservatorship if it does not make these findings.

§§ 24-25 — HABEAS CORPUS PETITIONS

The bill provides that a person under involuntary conservatorship and minors or mentally retarded people under guardianship can use a writ of habeas corpus without exhausting other available remedies such as appealing the court order of guardianship or conservatorship.

The court must then determine the legality of the guardianship or conservatorship. The writ must be directed to the guardian or conservator and, if alleging that the guardianship or conservatorship is illegal or invalid, to the court that issued the order.

The application for habeas corpus can be brought in the Superior Court or probate court. If brought to the probate court, the probate court administrator must appoint three probate judges to hear the application from a list of those approved to hear these cases by the chief justice. The probate judge who issued the order cannot sit on the panel. The judges choose a chief judge. All proceedings are recorded, the recording is part of the record, and it is retained in the probate court that appointed the conservator or guardian in a manner set by the probate court administrator. Applications cannot be denied unless two judges vote to do so.

Hearings are held within 10 days (excluding weekends and holidays) after return of service of the writ. If the representation or guardianship is determined legal, the decision (1) is a final judgment subject to appeal and (2) does not bar another writ if it is claimed that (a) the person is no longer subject to the condition for which the person was under conservatorship or (b) the application is based on a different ground. The individual subject to the guardianship or conservatorship or a relative, friend, or person interested in his or her welfare can apply for the writ.

An appeal to the Superior Court from a probate judge panel is filed in the judicial district for the probate court that appointed the guardian or conservator. The appeal is heard within 30 days of return of service of the appeal.

Alcohol or Drug Treatment Facilities

Under the bill, someone confined in a hospital or inpatient treatment facility for alcohol or drug dependency treatment can seek a writ of habeas corpus in Superior Court. The court or judge issuing the writ determines the legality of confinement. The writ is directed to

the facility's superintendent or director and the judge of the committing court, if commitment is allegedly illegal or invalid. The bill requires the state's attorney for the relevant judicial district to represent the judge. If the confinement is determined legal, it does not bar another writ if it claims the individual is no longer subject to the condition for which the individual was confined. The confined person, a relative, a friend, or person interested in the individual's welfare can bring the writ.

The bill prohibits charging court fees to the judge or hospital superintendent or director.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 40 Nay 0 (04/11/2007)