

CONNECTICUT LEGAL RIGHTS PROJECT

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**Testimony of Susan Aranoff, J.D. Staff Attorney
Connecticut Legal Rights Project, Inc.
Before the Judiciary Committee
February 16, 2007**

Good afternoon, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. I am Susan Aranoff, Staff Attorney at Connecticut Legal Rights Project and I am here today to speak on **H.B. 7067, An Act Concerning the Appointment and Powers of Conservators and Special Limited Conservators with Respect to Psychiatric Treatment.**

Connecticut Legal Rights Project, Inc. is a non-profit legal services agency that provides individual and systemic legal services to indigent adults who have, or are perceived as having, psychiatric disabilities and who receive, or are eligible to receive, services from the Department of Mental Health and Addiction Services.

Connecticut Legal Rights Project maintains offices at all DMHAS operated in-patient and out-patient facilities in the state. Our offices are staffed by attorneys and paralegal advocates. I provide legal services to individual clients and I supervise four paralegals. My testimony today is informed by my ten years of experience practicing disability law, including six years in Connecticut.

Connecticut Legal Rights Project, Inc. **SUPPORTS H.B. 7067 WITH ADDITIONAL AMENDMENTS.**

In essence, H.B. 7067 is a housekeeping bill. If passed, it will add three significant provisions – two we would agree are essential- to 17a-543 and 17a-543(a), the statutes governing non-emergency involuntary medication. First, H.B. 7067 would require the probate courts that hear involuntary medication applications under both 17a-543 and 17a-543(a) to make certain findings of fact before granting involuntary medication applications. Second, it directs that the court make its findings based upon “clear and convincing” evidence. Third, H.B. 7067 would authorize the special limited conservators appointed under 17a-543(a) to access the medical records of the persons for whom they are given medication authority.

It may surprise you to learn that at present there is nothing in either statute requiring the probate courts to make any findings whatsoever before granting a conservator the authority to consent to involuntary medication, let alone to make findings by clear and convincing evidence. Likewise it may strike you as odd that presently special limited conservators have no authority to obtain the medical records of the people they have the authority to have involuntarily medicated with psychotropic medications. However, for those of us who practice in this narrow but highly consequential area of law, nothing about this is surprising. There are many deficiencies in these statutes. We commend the effort to address some of these deficiencies, however this bill does not address one of the most significant deficiencies that we are aware of. Presently, just as the statutes inadvertently failed to require probate judges to make findings of fact, 17a-543(a) also fails- hopefully inadvertently- to afford basic due process. Accordingly, we are proposing two amendments to address the lack of due process provide under 17(a)-543(a) and will support H.B. 7067 with these additional amendments.

Our proposed amendments would provide persons medicated under 17a-543(a) the same due process protections afforded to persons medicated under 17a-543. Pursuant to 17a-543, a probate court must grant a conservator of the person specific medication authority in order for that conservator to consent to the involuntary administration of non-emergency psychotropic medication. Conservators of the person have the authority to make a wide range of decisions, including health care decisions on behalf of their wards. However, the legislature long ago determined that conservators of the person cannot authorize the involuntary administration of psychotropic medication - a decision that implicates the fundamental constitutional right to liberty- in the absence of adequate due process. Accordingly, pursuant to 17a-543, a conservator cannot authorize involuntary medication unless or until a probate court grants them the specific authority to do so. In brief, all conservators with medication authority are conservators of the person to whom a probate judge, after a hearing, has given additional, specific authority to give or withhold consent to the involuntary administration of psychotropic medication.

In order to become a conservator with medication authority, a person must first be appointed a conservator of the person in accordance with the procedures set out in 45a-644, et. seq. C.J.S. 45a-644-650 contains procedural requirements which taken as a whole provide the respondent adequate due process protection. Specifically, 45a-649(a) requires that specific parties be notified of the proceedings and 45a-649(b) requires that the respondent be provided with legal counsel and further that the respondent be notified of the following :

(1) The notice required by subdivision (1) 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 that the respondent has a right to be present at the hearing and has a right to be represented by an attorney at his or her own expense. If the respondent is unable to request or obtain counsel 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, 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. If the respondent notifies the court in any manner that he or she 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 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.

The process for appointing a special limited conservator set out in 17a-543(a) does not include any similar procedural requirements. Just as the statutes do not require the courts to make any findings, the statutes do not require the court to provide a 17a-543(a) respondent notice, the right to be present or the right to counsel. It must be noted that notwithstanding the lack of a statutory mandate to do so, the Honorable Joseph Marino, who has presided over most of the special limited conservator proceedings in his capacity of probate judge for the district of Middletown, has provided 17a-543(a) respondents with notice, the right to be heard and be represented, just as he has issued findings of fact and made his finding by clear and convincing evidence in the absence of any statutory mandate to do so. Nevertheless, the statute needs to be amended so that it is clear that 17a-543(a) respondents are afforded the same due process as 17a-543 respondents.

The reason the due process requirements set out in the conservator statutes do not apply to special limited conservators is that special limited conservators are not in fact conservators. A special limited conservator is not a conservator who has been appointed

under 45a-644 et.seq. and then given medication authority in addition to any other authorities. Rather, 17a-543(a) establishes certain criteria a person must meet in order to be granted the authority to consent to involuntary medication and then bestows upon such person the title of “special limited conservator.” A special limited conservator possesses one power and one power only and that power is the rather weighty power of consenting or refusing to consent to the involuntary administration of psychotropic medication. Indeed, it is precisely because a special limited conservator has only this one singular power that it is necessary to amend the statute to allow the SLC to obtain the records he or she needs to responsibly exercise their medication authority. Presently, special limited conservators lack the authority to perform this *di minimis* task that is arguably essential to the performance of their statutory duty to make informed medication decisions.

To recap, the term “special limited conservator” is truly a misnomer. A special limited conservator is not a conservator at all. Because special limited conservators are not appointed pursuant to the conservator statutes none of the due process provisions set out in the conservator statutes apply to the appointment of a special limited conservator. But they should.

Our first proposed amendment therefore is to add a requirement that special limited conservators be appointed in accordance with the procedures set out in 45a-644 et. seq., specifically section 649 which contains the notice and appointment of counsel requirements.

Our second proposed amendment would afford 17a-543(a) another important right that their 17a-543 counterparts are afforded but which they are denied - and that is simply the right to be informed of available advocacy services. 17a-543(d) specifically requires that patients who are the subject of an internal involuntary medication hearing be

informed of available advocacy services, and 17a-543(e) states that the hospital is to use the procedures set forth in (d) when it applies to the probate court for an involuntary medication order. There is no reason why 17a-543(a) respondents should not receive similar notice. We therefore propose amending 17a-543(a) so as to require the hospital to inform the patient orally and in writing of available advocacy services both at the time it is seeking a second opinion and at the time it files its involuntary medication application.

In sum, the United States Supreme Court has held that because the involuntary administration of psychotropic medication implicates the fundamental right to liberty, a state cannot do it unless it provides adequate due process protections. Presently, and likely inadvertently, 17a-543(a) does not provide adequate due process protections. As the legislature considers other housekeeping amendments to 17a-543 and 17a-543(a) it is an opportune time to amend 17a-543(a) so as to ensure that all involuntary medication respondents are afforded equal due process.

Thank you for the opportunity to address the committee with regard to H.B.

7067. I would be happy to answer any questions you may have at this time.
