



General Assembly

January Session, 2007

Raised Bill No. 1439

LCO No. 5599

05599_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS.

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

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 Section 45a-644 of the general statutes is repealed and the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

3 For the purposes of sections 45a-644 to 45a-662, inclusive, as
4 amended by this act, and section 3 of this act, the following terms shall
5 have the following meanings:

6 (a) "Conservator of the estate" means a person, a municipal or state
7 official, or a private profit or nonprofit corporation except a hospital or
8 nursing home as defined in section 19a-521, appointed by the Court of
9 Probate under the provisions of sections 45a-644 to 45a-662, inclusive,
10 to supervise the financial affairs of a person found to be incapable of
11 managing his or her own affairs or of a person who voluntarily asks
12 the Court of Probate for the appointment of a conservator of the estate,
13 and includes a temporary conservator of the estate appointed under
14 the provisions of section 45a-654.

15 (b) "Conservator of the person" means a person, a municipal or state

16 official, or a private profit or nonprofit corporation, except a hospital
17 or nursing home as defined in section 19a-521, appointed by the
18 [Probate] Court of Probate under the provisions of sections 45a-644 to
19 45a-662, inclusive, to supervise the personal affairs of a person found
20 to be incapable of caring for himself or herself or of a person who
21 voluntarily asks the Court of Probate for the appointment of a
22 conservator of the person, and includes a temporary conservator of the
23 person appointed under the provisions of section 45a-654.

24 (c) "Incapable of caring for one's self" or "incapable of caring for
25 himself or herself" means that a person has a mental, emotional or
26 physical condition resulting from mental illness, mental deficiency,
27 physical illness or disability, chronic use of drugs or alcohol, or
28 confinement, which results in the person's inability to provide medical
29 care for physical and mental health needs, nutritious meals, clothing,
30 safe and adequately heated and ventilated shelter, [personal hygiene]
31 and protection from physical abuse or harm and which results in
32 endangerment to such person's health.

33 (d) "Incapable of managing his or her affairs" means that a person
34 has a mental, emotional or physical condition resulting from mental
35 illness, mental deficiency, physical illness or disability, chronic use of
36 drugs or alcohol, or confinement, which prevents that person from
37 performing the functions inherent in managing his or her affairs, and
38 the person has property which will be wasted or dissipated unless
39 proper management is provided, or that funds are needed for the
40 support, care or welfare of the person or those entitled to be supported
41 by that person and that the person is unable to take the necessary steps
42 to obtain or provide funds which are needed for the support, care or
43 welfare of the person or those entitled to be supported by such person.

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

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

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

55 (h) "Ward" means a person for whom involuntary representation is
56 granted under sections 45a-644 to 45a-662, inclusive.

57 (i) "Least restrictive form of intervention" means that the
58 involuntary representation (1) represents only the duties,
59 responsibilities and powers necessary to provide for the ward's care or
60 to manage the ward's affairs, and (2) affords the ward the greatest
61 amount of independence and self-determination within the limitations
62 of the resources available to the ward, either through the ward's own
63 estate or through private or public assistance.

64 Sec. 2. Section 45a-649 of the general statutes is repealed and the
65 following is substituted in lieu thereof (*Effective October 1, 2007*):

66 (a) (1) Upon an application for involuntary representation, the court
67 shall issue a citation to the following enumerated parties to appear
68 before it at a date, time and place named in the citation, which shall be
69 served on the parties at least [seven] fourteen days before the hearing
70 date, or in the case of an application made pursuant to section 17a-543
71 or 17a-543a, at least seven days before the hearing date, which date
72 shall not be more than thirty days after the receipt of the application by
73 the Court of Probate unless continued for cause shown. [Notice of the
74 hearing shall be sent within thirty days after receipt of the application.]

75 [(1)] (2) The court shall direct that personal service of the citation be
76 made, by a state marshal, constable or an indifferent person, upon the
77 following: (A) The respondent; [, except that if the court finds personal

78 service on the respondent would be detrimental to the health or
79 welfare of the respondent, the court may order that such service be
80 made upon counsel for the respondent, if any, and if none, upon the
81 attorney appointed under subsection (b) of this section;] and (B) the
82 respondent's spouse, if any, if the spouse is not the applicant, except
83 that in cases where the application is for involuntary representation
84 pursuant to section 17b-456, and there is no spouse, the court shall
85 order notice by certified mail to the children of the respondent and if
86 none, the parents of the respondent and if none, the brothers and
87 sisters of the respondent or their representatives, and if none, the next
88 of kin of such respondent.

89 [(2)] (3) The court shall order such notice as it directs to the
90 following: (A) The applicant; (B) the person in charge of welfare in the
91 town where the respondent is domiciled or resident and if there is no
92 such person, the first selectman or chief executive officer of the town if
93 the respondent is receiving assistance from the town; (C) the
94 Commissioner of Social Services, if the respondent is in a state-
95 operated institution or receiving aid, care or assistance from the state;
96 (D) the Commissioner of Veterans' Affairs if the respondent is
97 receiving veterans' benefits, or the Veterans' Home [, or both,] if the
98 respondent is receiving aid or care from such home, or both; (E) the
99 Commissioner of Administrative Services, if the respondent is
100 receiving aid or care from the state; (F) the children of the respondent
101 and if none, the parents of the respondent and if none, the brothers
102 and sisters of the respondent or their representatives; and (G) the
103 person in charge of the hospital, nursing home or some other
104 institution, if the respondent is in a hospital, nursing home or some
105 other institution.

106 [(3)] (4) The court, in its discretion, may order such notice as it
107 directs to other persons having an interest in the respondent and to
108 such persons the respondent requests be notified.

109 (5) The respondent may not waive the right to the notice required in

110 subdivision (2) of this subsection.

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

114 (b) [(1)] The notice required by subdivision [(1)] (2) of subsection (a)
115 of this section shall specify [(A)] (1) the nature of involuntary
116 representation sought and the legal consequences thereof, [(B)] (2) the
117 facts alleged in the application, [and (C)] (3) the date, time and place of
118 the hearing [. (2) The notice shall further state] on such application,
119 and (4) that the respondent has a right to be present at the hearing and
120 has a right to be represented by an attorney either at [his or her] the
121 respondent's own expense or within the court's payment guidelines. [If
122 the respondent is unable to request or obtain counsel for any reason,
123 the court shall appoint an attorney to represent the respondent in any
124 proceeding under this title involving the respondent. If the respondent
125 is unable to pay for the services of such attorney, the reasonable
126 compensation for such attorney shall be established by, and paid from
127 funds appropriated to, the Judicial Department, however, if funds
128 have not been included in the budget of the Judicial Department for
129 such purposes, such compensation shall be established by the Probate
130 Court Administrator and paid from the Probate Court Administration
131 Fund.] The notice shall also include a statement in boldface type of a
132 minimum size of twelve points in substantially the following form:

133 POSSIBLE CONSEQUENCES OF A COURT

134 FINDING THAT YOU ARE INCAPABLE

135 This court has received an application to appoint a conservator for
136 you. A hearing on the application has been scheduled for (date, time
137 and place). If the application is granted you will lose some or many of
138 your rights. A conservator may be appointed for you. The
139 appointment of a conservator may affect control of how you spend
140 your money, control and management of your property, who makes

141 your medical decisions, where you live and other important rights.
142 You have the right to attend the hearing on the application, to present
143 evidence, to cross-examine witnesses and to be represented by an
144 attorney of your own choice either at your expense or within the
145 court's payment guidelines.

146 If you do not have, or cannot obtain, or cannot afford an attorney,
147 an attorney may be appointed for you by the court. You may be
148 responsible for the cost of a court-appointed attorney. You may object
149 to the appointment of an attorney for you. You may also request that a
150 specific attorney be appointed for you.

151 (c) Notice to all other persons required by this section shall state
152 only the nature of the involuntary representation sought, the legal
153 consequences of the involuntary representation and the date, time and
154 place of the hearing.

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

164 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) Any respondent for
165 whom an application for involuntary representation has been filed and
166 any ward appealing from a decree issued under chapter 802h of the
167 general statutes shall have the right to be represented by an attorney of
168 the respondent's or ward's choice either at the respondent's or ward's
169 expense or within the rates of compensation established pursuant to
170 subsection (c) of this section.

171 (b) If the respondent or ward is unable to or does not choose an

172 attorney or if the attorney chosen by the respondent or ward refuses to
173 represent such respondent or ward or is not available for such
174 representation, the court shall appoint an attorney for the respondent
175 or ward from a panel of attorneys admitted to practice in this state
176 provided by the Probate Court Administrator in accordance with
177 regulations issued by the Probate Court Administrator pursuant to
178 section 45a-77 of the general statutes. The respondent or ward may
179 refuse such representation if the court finds that the respondent or
180 ward understands the nature of his or her refusal. If the court appoints
181 an attorney for the respondent or ward pursuant to this section, the
182 court shall inform the respondent or ward of the right to file a
183 complaint pursuant to subsection (g) of this section if the respondent
184 or ward believes that his or her interests have not been represented
185 with respect to such application or appeal.

186 (c) If the court finds the respondent or ward is indigent or otherwise
187 unable to pay for an attorney, reasonable compensation of an attorney
188 shall be established by, and paid from funds appropriated to, the
189 Judicial Department. If funds have not been included in the budget of
190 the Judicial Department for such purposes, such compensation shall be
191 established by the Probate Court Administrator and paid from the
192 Probate Court Administration Fund.

193 (d) Any attorney who has served as counsel for an individual in
194 proceedings under chapter 802h of the general statutes shall not accept
195 appointment as either guardian ad litem or conservator of the person
196 or estate for that same individual, except where such attorney has been
197 appointed by the individual pursuant to section 45a-645 of the general
198 statutes or pursuant to a form or method set forth in subdivision (2) of
199 subsection (g) of section 45a-650 of the general statutes, as amended by
200 this act.

201 (e) Any attorney appointed pursuant to this section shall represent
202 the respondent or ward in proceedings under chapter 802h of the
203 general statutes, shall inform and consult with the respondent or ward

204 regarding bringing an appeal, and shall assist in the filing of an appeal
205 to the Superior Court if requested by the respondent or ward. An
206 attorney's assistance in filing an appeal of a decree issued under
207 chapter 802h of the general statutes shall not obligate the attorney to
208 appear in or prosecute the appeal.

209 (f) Any attorney for a respondent or ward who is the subject of an
210 application or appeal under chapter 802h of the general statutes shall
211 have full access to all information relevant to such application or
212 appeal, including, but not limited to, full and direct access to the
213 respondent's or ward's medical records.

214 (g) Any respondent or ward who believes that his or her interests
215 have not been represented by an attorney appointed pursuant to this
216 section with respect to an application or appeal under chapter 802h of
217 the general statutes may file a complaint with the office of the Probate
218 Court Administrator. The Probate Court Administrator shall
219 investigate each complaint filed pursuant to this subsection. If the
220 Probate Court Administrator finds that an attorney appointed
221 pursuant to this section has breached the attorney's obligations to a
222 respondent or ward pursuant to such complaint, the Probate Court
223 Administrator shall remove such attorney from any panel of attorneys
224 maintained by the Probate Court Administrator in accordance with
225 regulations issued by the Probate Court Administrator pursuant to
226 section 45a-77 of the general statutes.

227 Sec. 4. Section 45a-650 of the general statutes is repealed and the
228 following is substituted in lieu thereof (*Effective October 1, 2007*):

229 (a) At any hearing on an application for involuntary representation,
230 the court shall require clear and convincing evidence that it has
231 jurisdiction, including that the respondent is a resident or domiciliary
232 of the probate district, that the respondent has been given notice as
233 required in section 45a-649, as amended by this act, and that the
234 respondent has been advised of the right to retain an attorney
235 pursuant to section 3 of this act, before the court receives any evidence

236 regarding the condition of the respondent or of the respondent's
237 affairs. The rules of evidence in civil actions adopted by the judges of
238 the Superior Court shall apply to all hearings pursuant to this section.
239 All testimony at a hearing held pursuant to this section shall be given
240 under oath or affirmation. The court shall cause an audio recording of
241 the hearing, including all testimony, to be made and the recording
242 shall become part of the permanent court record. The recording shall
243 be transcribed in the event of an appeal from the decree issued under
244 this chapter.

245 (b) After the court determines pursuant to subsection (a) of this
246 section that it has jurisdiction over the application for involuntary
247 representation, the court shall receive evidence regarding the
248 [condition] capacity of the respondent [, including a written report or
249 testimony by] to care for himself or herself or manage his or her affairs
250 that may include evidence from one or more physicians licensed to
251 practice medicine in the state who have examined the respondent
252 within [thirty] forty-five days preceding the hearing. The [report or
253 testimony] evidence shall contain specific information regarding the
254 [disability and the extent of its incapacitating effect] respondent's
255 condition and the effect of the condition on the respondent's ability to
256 care for himself or herself or manage his or her affairs. The court [may]
257 shall also consider such other evidence as may be available and
258 relevant, including, but not limited to, a summary of the physical and
259 social functioning level or ability of the respondent, and the
260 availability of support services from the family, neighbors, community
261 or any other appropriate source. Such evidence may include, if
262 available, [reports] evidence from the social work service of a general
263 hospital, municipal social worker, director of social service, public
264 health nurse, public health agency, psychologist, coordinating
265 assessment and monitoring agencies, or such other persons as the
266 court deems qualified to provide such evidence. [The court may waive
267 the requirement that medical evidence be presented if it is shown that
268 the evidence is impossible to obtain because of the absence of the
269 respondent or his or her refusal to be examined by a physician or that

270 the alleged incapacity is not medical in nature. If such requirement is
271 waived, the court shall make a specific finding in any decree issued on
272 the petition stating why medical evidence was not required. In any
273 matter in which the Commissioner of Social Services seeks the
274 appointment of a conservator pursuant to chapter 319dd and
275 represents to the court that an examination by an independent
276 physician, psychologist or psychiatrist is necessary to determine
277 whether the elderly person is capable of managing his or her personal
278 or financial affairs, the court shall order such examination unless the
279 court determines that such examination is not in the best interests of
280 the elderly person. The court shall order such examination
281 notwithstanding any medical report submitted to the court by the
282 elderly person or the caretaker of such elderly person.] Any medical
283 [report] evidence filed with the court pursuant to this subsection shall
284 be confidential.

285 [(b)] (c) Upon the filing of an application for involuntary
286 representation pursuant to section 45a-648, the court may issue an
287 order for the disclosure of the medical information required pursuant
288 to subsection [(a)] (b) of this section.

289 [(c)] (d) Notwithstanding the provisions of section 45a-7, the court
290 [may] shall, at the request of the respondent, hold the hearing on the
291 application at a place [within the state] other than its usual courtroom
292 if it would facilitate attendance by the respondent. The respondent has
293 an absolute right to attend any hearing held under this section.

294 [(d)] (e) (1) If the court finds by clear and convincing evidence that
295 the respondent is incapable of managing his or her affairs, that the
296 respondent's affairs cannot be managed without the appointment of a
297 conservator or any agency or person described in subdivision (2) of
298 subsection (g) of this section, and that appointment of a conservator is
299 the least restrictive form of intervention available to assist the
300 respondent in managing his or her affairs, the court [shall] may
301 appoint a conservator of his or her estate. [unless it appears to the

302 court that such affairs are being managed properly without the
303 appointment of a conservator.]

304 (2) If the court finds by clear and convincing evidence that the
305 respondent is incapable of caring for himself or herself, that the
306 respondent cannot be cared for without the appointment of a
307 conservator or an agency or person described in subdivision (2) of
308 subsection (g) of this section, and that appointment of a conservator is
309 the least restrictive form of intervention available to assist the
310 respondent in caring for himself or herself, the court [shall] may
311 appoint a conservator of his or her person, [unless it appears to the
312 court that the respondent is being cared for properly without the
313 appointment of a conservator.]

314 (f) (1) In granting an application for involuntary representation and
315 appointing a conservator of the person or of the estate, there shall be a
316 rebuttable presumption that the court shall enter a limited order that
317 will restrict the decision-making authority of the ward only to the
318 extent necessary to address the specific care needs of the ward and
319 proven to the court by clear and convincing evidence, or the
320 management of the ward's affairs and proven to the court by clear and
321 convincing evidence.

322 (2) Any conservator appointed under this section shall be granted
323 only the duties, responsibilities and powers necessary to provide for
324 such specific care needs or the management of the affairs of the ward
325 in such a manner as are appropriate to the ward and that constitute the
326 least restrictive form of intervention. The court shall make specific
327 findings as to the clear and convincing evidence that supports the need
328 for the duties, responsibilities and powers being assigned to the
329 conservator.

330 (3) The appointment of a conservator shall be by a separate decree
331 than the decree declaring the respondent incapable of caring for
332 himself or herself or incapable of managing his or her affairs.

333 (4) Notwithstanding a finding of incapacity, nothing in this chapter
334 shall be construed to impair or otherwise limit or diminish a ward's
335 right to retain counsel or to seek redress of a grievance through any
336 court or administrative agency.

337 [(e)] (g) (1) When determining whether a conservator should be
338 appointed, [and in selecting a conservator to be appointed for the
339 respondent, the court shall be guided by the best interests of the
340 respondent. In making such determination, the court shall consider
341 whether the respondent had previously made alternative
342 arrangements for the care of his or her person or for the management
343 of his or her affairs, including, but not limited to, the execution of a
344 valid durable power of attorney, the appointment of a health-care
345 agent or other similar document] the court shall consider: (A) The
346 abilities of the respondent; (B) the respondent's capacity to understand
347 and articulate an informed preference regarding the care of his or her
348 person or the management of his or her affairs; (C) any relevant and
349 material information obtained from the respondent; (D) evidence of
350 the respondent's past preferences and life style choices; (E) the
351 respondent's cultural background; (F) the desirability of maintaining
352 continuity in the respondent's life and environment; (G) whether the
353 respondent had previously made alternative arrangements for the care
354 of his or her person or for the management of his or her affairs,
355 including, but not limited to, the execution of a durable power of
356 attorney, springing power of attorney, the appointment of a healthcare
357 representative, the execution of a living will or the execution of any
358 other similar document; (H) any relevant and material evidence from
359 the respondent's family and any other person regarding the
360 respondent's past practices and preferences; and (I) any supportive
361 services or technologies that are otherwise available to assist the
362 respondent in meeting his or her needs.

363 (2) No conservator may be appointed if the respondent's care needs
364 or the management of his or her affairs, as the case may be, are being
365 met by an agency or person appointed by the respondent pursuant to

366 (A) a form set forth in section 1-43, 19a-575a or 19a-577 or any other
367 advance directive, as defined in section 19a-570, (B) a trust, or (C)
368 health care instructions or appointment of a health care proxy subject
369 to section 19a-580g.

370 (h) (1) When considering who may serve as conservator, the court
371 shall appoint any person appointed by the respondent pursuant to
372 section 45a-645, or any agency or person described in subdivision (2) of
373 subsection (g) of this section appointed by the ward while the ward
374 had capacity, unless such appointed person or agency is unwilling or
375 unable to serve or there is clear and convincing evidence that there is
376 good cause to disqualify such person or agency from serving.

377 (2) Unless otherwise provided in the court's decree, any decree
378 appointing a conservator pursuant to this section shall require the
379 conservator to comply with all health care decisions made by the
380 ward's health care representative or health care proxy.

381 (3) The respondent may, by oral or written request, if at the time of
382 the request he or she has sufficient capacity to [form an intelligent]
383 communicate a preference, nominate a conservator who shall be
384 appointed unless the court finds [the appointment of] that the nominee
385 is [not in the best interests of the respondent] unwilling or unable to
386 serve or there is clear and convincing evidence that there is good cause
387 to disqualify such person from serving. In [such case, or in] the
388 absence of any such nomination, the court shall consider whether the
389 proposed conservator has knowledge of the respondent's preferences
390 regarding the care of his or her person or the management of his or her
391 affairs, whether the proposed conservator possesses the ability to carry
392 out the duties, responsibilities and powers of a conservator, the cost of
393 the proposed conservatorship to the estate of the respondent, or the
394 proposed conservator's commitment to promoting the respondent's
395 welfare and independence, and any existing or potential conflicts of
396 interest of the proposed conservator, and may thereafter appoint any
397 qualified person, authorized public official or corporation in

398 accordance with subsections (a) and (b) of section 45a-644, as amended
399 by this act.

400 [(f)] (i) Upon the request of the respondent [or his or her counsel,
401 made within thirty days of the date of the decree] or any interested
402 party, the court shall, [make and furnish findings of fact to support its
403 conclusion] within fourteen days of the date of such request, clarify the
404 findings of fact required to support an appointment of conservator
405 under this section.

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

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

422 Sec. 5. Section 45a-656 of the general statutes is repealed and the
423 following is substituted in lieu thereof (*Effective October 1, 2007*):

424 (a) (1) The conservator of the person shall have [:(1) The duty and
425 responsibility for the general custody of the respondent; (2) the power
426 to establish his or her place of abode within the state; (3) the power to
427 give consent for his or her medical or other professional care, counsel,
428 treatment or service; (4) the duty to provide for the care, comfort and

429 maintenance of the ward; (5) the duty to take reasonable care of the
430 respondent's personal effects; and (6) the duty to report at least
431 annually to the Probate Court which appointed the conservator
432 regarding the condition of the respondent] only such duties,
433 responsibilities and powers expressly assigned pursuant to section
434 45a-650, as amended by this act. In carrying out the duties,
435 responsibilities and powers assigned by the Probate Court, the
436 conservator of the person shall (A) assist the ward in achieving self-
437 reliance and in removing obstacles to independence, (B) ascertain the
438 ward's views with respect to the representation, (C) make all
439 reasonable efforts to ascertain any health care instructions or health
440 care preferences of the ward expressed pursuant to chapter 368w and
441 other wishes of the ward, and (D) make decisions in conformance with
442 the ward's reasonable and informed expressed preferences and wishes,
443 including, but not limited to, such health care preferences or health
444 care instructions.

445 (2) The conservator shall delegate to the ward reasonable
446 responsibility for decisions affecting the ward's well-being consistent
447 with the decree that appointed the conservator.

448 (3) The conservator shall report at least annually to the Probate
449 Court that appointed the conservator regarding the condition of the
450 ward, the efforts made to encourage independence and whether there
451 are less restrictive means of managing the ward's needs without the
452 continued appointment of a conservator. The conservator shall provide
453 a copy of the report to each person entitled to notice pursuant to
454 section 45a-649, as amended by this act.

455 (4) The [preceding] duties, responsibilities and powers set forth in
456 this subsection shall be carried out within the limitations of the
457 resources available to the ward, either through the ward's own estate
458 or through private or public assistance.

459 (b) The conservator of the person shall not have the power or
460 authority to cause the respondent to be committed to any institution

461 for the treatment of the mentally ill except under the provisions of
462 sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-
463 495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-
464 576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664,
465 inclusive, and chapter 359.

466 (c) (1) If the conservator of the person determines it is necessary to
467 cause the ward to be placed in an institution for long-term care, the
468 conservator may make such placement after the conservator files a
469 report of such intended placement with the Probate Court that
470 appointed the conservator, except that if the placement results from
471 the ward's discharge from a hospital or if irreparable injury to the
472 mental or physical health or financial or legal affairs of the ward
473 would result from filing the report before making such placement, the
474 conservator shall make the placement before filing the report provided
475 the conservator (A) files the report not later than five days after
476 making such placement, and (B) includes in the report a statement as
477 to the hospital discharge or a description of the irreparable injury that
478 the placement averted.

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

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

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

507 Sec. 6. Section 45a-186 of the general statutes is repealed and the
508 following is substituted in lieu thereof (*Effective October 1, 2007*):

509 (a) Any person aggrieved by any order, denial or decree of a [Court
510 of probate] Probate Court in any matter, unless otherwise specially
511 provided by law, may, not later than sixty days after receipt of such
512 order, denial or decree, appeal therefrom to the Superior Court by
513 filing a complaint [in accordance with subsection (b) of this section.
514 Except in the case of an appeal by the state, such person shall give
515 security for costs in the amount of one hundred fifty dollars, which
516 may be paid to the clerk, or a recognizance with surety annexed to the
517 appeal and taken before the clerk or a commissioner of the Superior
518 Court or a bond substantially in accordance with the bond provided
519 for appeals to the Supreme Court] in the Superior Court for the judicial
520 district in which such Probate Court is located, except that (1) any
521 appeal under subsection (b) of section 12-359 or subsection (b) of
522 section 12-367 or subsection (b) of section 12-395, shall be filed in the
523 judicial district of Hartford, and (2) any appeal in a matter concerning
524 removal of a parent as guardian, termination of parental rights or

525 adoption shall be filed in the Superior Court for juvenile matters
526 having jurisdiction over matters arising in such probate district. The
527 complaint shall state the reasons for the appeal and a copy of the
528 order, denial or decree appealed from shall be attached thereto.
529 Appeals from any decision rendered in any case after a [record]
530 recording of the hearing is made under sections 17a-498, 45a-650, as
531 amended by this act, 51-72 and 51-73 shall be on the record and shall
532 not be a trial de novo.

533 (b) Any such appeal shall be [filed in the Superior Court for the
534 judicial district in which such court of probate is located except that (1)
535 any appeal under subsection (b) of section 12-359 or subsection (b) of
536 section 12-367 or subsection (b) of section 12-395, shall be filed in the
537 judicial district of Hartford and (2) any appeal in a matter concerning
538 removal of a parent as guardian, termination of parental rights or
539 adoption shall be filed in the Superior Court for juvenile matters
540 having jurisdiction over matters arising in such probate district.]
541 initiated by filing a complaint in the Superior Court in accordance with
542 subsection (a) of this section. Each person who files an appeal pursuant
543 to this section shall serve a copy of the complaint upon all interested
544 parties and on the Probate Court that rendered the order, denial or
545 decree appealed from. Failure to make such service shall not deprive
546 the Superior Court of jurisdiction over the appeal. Service of the appeal
547 shall be made by (1) United States mail, certified or registered, postage
548 prepaid, return receipt requested, without the use of a state marshal or
549 any other proper officer, or (2) by personal service by a proper officer
550 or indifferent person making service in the same manner as complaints
551 are served in ordinary civil actions. If service of the appeal is made by
552 mail, service shall be effective upon deposit of the appeal in the mail.
553 In appeals from the Probate Court, neither the Probate Court nor its
554 agents shall be parties to the appeal.

555 (c) Not later than fifteen days after the appeal is filed, the person
556 who filed the appeal shall file or cause to be filed with the clerk of the
557 Superior Court the return receipts or the officer's return stating the

558 date and manner in which a copy of the appeal was served on the
559 Probate Court and each interested party.

560 (d) If service has not been made on an interested party, the Superior
561 Court, on motion, shall make such orders of notice of the appeal as are
562 reasonably calculated to notify each person listed in the decree not yet
563 served.

564 (e) Any appeal from probate proceedings under section 17a-77, 17a-
565 80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, as
566 amended by this act, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-
567 682, 45a-699, 45a-703, or 45a-717, shall, unless a stay has been issued
568 pursuant to subsection (f) of this section, be heard and decided not
569 later than ninety days of the filing of the appeal.

570 (f) The filing of an appeal shall not, of itself, stay enforcement of the
571 order or decree. A motion for a stay may be made to the Probate Court
572 or the Superior Court. The filing of the motion with the Probate Court
573 shall not preclude action by the Superior Court.

574 (g) Except in appeals requiring a trial de novo, the Probate Court
575 shall cause the entire record of the hearing to be transcribed within
576 thirty days after the filing of the appeal, or within such further time as
577 may be allowed by the Superior Court, any portion of the record that
578 has not been transcribed, and transmit to the reviewing court the
579 original or a certified copy of the entire record of the proceeding
580 appealed from, which shall include the Probate Court's findings of fact
581 and conclusions of law, separately stated. By stipulation of all persons
582 listed in the decree to such appeal proceedings, the record may be
583 shortened. A person listed in the decree unreasonably refusing to
584 stipulate to limit the record may be taxed by the Superior Court for the
585 additional costs. The Superior Court may require or permit subsequent
586 corrections or additions to the record.

587 (h) Appeals from decrees made after a recording of the hearing is
588 made shall be conducted by the Superior Court without a jury and

589 shall be confined to the record. If alleged irregularities in procedure
590 before the Probate Court are not shown in the record or if facts
591 necessary to establish aggrievement are not shown in the record, proof
592 limited to such irregularities or aggrievement may be taken in the
593 Superior Court. The Superior Court, upon request, shall hear oral
594 argument and receive written briefs.

595 (i) The Superior Court shall affirm the decision of the Probate Court
596 unless the Superior Court finds that substantial rights of the person
597 who filed the appeal have been prejudiced because the findings,
598 inferences, conclusions or decisions are: (1) In violation of
599 constitutional or statutory provisions; (2) in excess of the statutory
600 authority of the Probate Court; (3) made upon unlawful procedure; (4)
601 affected by other error of law; (5) clearly erroneous in view of the
602 reliable, probative, and substantial evidence on the whole record; or (6)
603 arbitrary or capricious or characterized by abuse of discretion or
604 clearly unwarranted exercise of discretion. If the Superior Court finds
605 such prejudice, it shall sustain the appeal and, if appropriate, may
606 render a judgment that modifies the Probate Court order and decree or
607 remand the case for further proceedings. For purposes of this section, a
608 remand is a final judgment.

609 (j) Except in matters requiring a trial de novo, in any case in which a
610 person appealing claims that the person cannot pay the costs of an
611 appeal under this section, the person may, within the time permitted
612 for filing the appeal, file with the clerk of the court to which the appeal
613 is to be taken an application for waiver of payment of such fees, costs
614 and necessary expenses, including the requirements of bond, if any.
615 The application shall conform to the requirements prescribed by rule
616 of the judges of the Superior Court. After such hearing as the court
617 determines is necessary, the court shall render its judgment on the
618 application, which judgment shall contain a statement of the facts the
619 court has found, with its conclusions thereon. The filing of the
620 application for the waiver shall toll the time limits for the filing of an
621 appeal until such time as a judgment on such application is rendered.

622 Sec. 7. Section 45a-191 and 45a-192 of the general statutes are
623 repealed. (*Effective October 1, 2007*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	45a-644
Sec. 2	<i>October 1, 2007</i>	45a-649
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	45a-650
Sec. 5	<i>October 1, 2007</i>	45a-656
Sec. 6	<i>October 1, 2007</i>	45a-186
Sec. 7	<i>October 1, 2007</i>	Repealer section

Statement of Purpose:

To revise the process for the appointment of conservators and the review of such appointments and other probate court orders.

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