



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES

60B WESTON STREET, HARTFORD, CT 06120-1551

JAMES D. McGAUGHEY
Executive Director

Phone: 1/860-297-4307
Confidential Fax: 1/860-297-4305

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Judiciary Committee
March 30, 2007

Presented by James D. McGaughey
Executive Director

Good afternoon and thank you for this opportunity to comment on several of the bills on your agenda today.

The first of these are **Raised Bill No. 1439, AN ACT CONCERNING CONSERVATORS AND PROBATE APPEALS**; and, **Raised Bill No. 1453, AN ACT CONCERNING THE TRANSFER OF AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR TO THE SUPERIOR COURT OR OTHER PROBATE COURT.**

These bills grow out of frustrations shared by advocates for people who are elderly and people who have disabilities over the widespread failure of our current involuntary representation mechanism to respect the rights and expressed preferences of people who are being considered for, or are actually living under court ordered representation by a conservator. Our Office has served a number of people who could manage some of their own affairs, and might have been candidates for some carefully tailored limited representation by a conservator, but were simply stripped of all their decision-making authority and placed under full conservatorship. Many people with disabilities have been placed into nursing homes or other long term care arrangements by conservators, have had their homes sold, their apartment leases terminated, and their furniture and other possessions disposed of by those same conservators. In some jurisdictions it is not unusual to find the same individual appointed to be conservator for a number of people who have been placed into local residential care homes or nursing homes, and to learn that that conservator has collected substantial fees for these questionable "services" performed on behalf of their multiple wards. While ostensibly aimed at preserving the ward's assets, these actions actually operate to greatly limit the person's prospects for recovering his or her place in the community, and moving on with life, effectively consigning these individuals to long term careers as "mental patients". Not infrequently, and not surprisingly, we find that the person who is the alleged beneficiary was not consulted concerning these actions and only learned of them after-the-fact.

To be sure, many conservators faithfully fulfill their duties and do try to determine the preferences of the person and to act in his or her best interests. Similarly, many probate judges take seriously their responsibility to inquire into and fully consider all evidence, apply the appropriate statutory standards, and to exercise continuing supervision over conservators they appoint. However, we have also seen probate courts waive without explanation, procedural and substantive safeguards established in statute. And, many people under involuntary representation report to us that they have not had any contact with their conservator for many

months or even years, and that they do not know how to independently contact him or her. All they know is that their conservators disposed of their property and apparently want them to remain institutionalized.

Many factors contribute to this phenomenon: The informality of probate proceedings, the level of practice and role confusion exhibited by appointed counsel, unacknowledged conflicts of interest, and across the board ignorance of the principles and possibilities of recovery and rehabilitation. One of the biggest flaws is that the mechanism of conservatorship itself often operates to fulfill its own expectations both as to the complete incapability of the person, and the course of decisions and actions that the conservator is expected to follow. In practice, conservatorship often operates as an intrusive, blunt instrument when what is needed is a sensitive, individually tailored, respectfully implemented response to the demonstrated vulnerabilities of a particular human being - vulnerabilities that should have to be clearly established by objective evidence, and then responded to by crafting individualized, transparent safeguards that make sense in the context of the person's life circumstances. Although our current statutes allow courts to limit the duties and powers of conservators of the estate and of the person, the burdens for judicial inquiry and explicit justification still operate so as to create a considerable bias in favor of appointing full conservators.

The reforms proposed in these bills would certainly move things in a better direction. R.B. 1439 creates a preference for the least restrictive form of intervention. It establishes a "rebuttable presumption" that the ward should retain authority in as many decision-making domains as possible; clarifies that when a person who is being considered for conservatorship, he or she must receive specific notice of the potential consequences of being adjudicated incapable; clarifies the role of appointed counsel; protects previous decisions the person has made regarding surrogate decision makers. R.B. 1453 repeats and expands on several of these concepts and would also establish concurrent jurisdiction over petitions for conservatorship in both courts of probate and superior courts. I understand that since these bills were drafted representatives from advocacy groups, the bar association, legal services and the probate courts have continued to work on language that would reconcile some of the differences between these bills and improve on several provisions not addressed in either. I believe you will hear from participants in that process, and, based on the drafts I have read, I believe that the work they have done merits careful consideration. It represents a consensus amongst factions that have historically been at loggerheads. More importantly, it reflects sound, comprehensive policy reform in an area of law that desperately needs it.

I would also like to briefly comment on **Committee Bill No. 5675, AN ACT CONCERNING THE DURATION OF PSYCHIATRIC EVALUATIONS**. This bill would extend the allowable timeframe for confinement in a psychiatric hospital when a person has been admitted pursuant to a physician's "emergency certificate", and the hospital seeks to confine the person beyond the fifteen day period covered by that emergency certificate. Actually there are two fifteen day periods contemplated in current law. A person can be confined for evaluation for up to fifteen days just based in the physician's emergency certificate, and then for up to an

Testimony of James D. McGaughey
Page 3 of 3
March 30, 2007

additional fifteen days if the hospital initiates formal commitment proceedings in probate court prior to the expiration of the first fifteen day certificate. So, right now, it is possible for a person to be confined in a psychiatric hospital for up to 30 days before seeing a judge. (The law does allow the person to request a hearing to contest his or her confinement, but many are reluctant to do so as one result of a hearing may be a full-fledged commitment order.) The bill would extend this total period by another fifteen days, meaning that a person could be confined for a period of up to 45 days before seeing a court order would be required for further confinement.

Under our statutes, involuntary confinement in a psychiatric hospital under the authority of the State is only permitted when, due to a person's mental illness he or she is determined to be dangerous to himself or others or to be gravely disabled. Allowance is made for any licensed physician to order confinement for up to fifteen days just based on his or her own opinion. Beyond that, constitutionally protected liberty interests require considerably greater due process - things like a hearing, convincing evidence, opportunity to be represented by counsel, to cross examine witnesses, etc. To extend the period of potential confinement without these due process safeguards circumvents an important principle, and would weaken protections for civil rights. I understand that this bill is an attempt to address what is sometimes a "revolving door" for people who are discharged from hospitals because they do not meet the criteria for ongoing commitment but are subsequently re-admitted because their conditions deteriorate outside of the hospital environment. However, in my view it would be better to focus on developing more competent and user-friendly aftercare programming for the few people who fall into this category - things like supported housing and intensive outpatient programming - than to reduce due process protections across the board.

Thank you for your attention. If you have any questions I will try to answer them.