



Senate

General Assembly

File No. 580

February Session, 2010

Substitute Senate Bill No. 447

Senate, April 15, 2010

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 THE APPOINTMENT OF A GUARDIAN AD LITEM FOR AN ADULT WHO IS SUBJECT TO A CONSERVATORSHIP OR A CONSERVATORSHIP PROCEEDING.

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

1 Section 1. Section 45a-132 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) [In] (1) Except as provided in subdivision (2) of this subsection,
4 in any proceeding before a court of probate or the Superior Court
5 including the Family Support Magistrate Division, whether acting
6 upon an appeal from probate or otherwise, the judge or magistrate
7 may appoint a guardian ad litem for any minor or incompetent,
8 undetermined or unborn person, or may appoint one guardian ad
9 litem for two or more of such minors or incompetent, undetermined or
10 unborn persons, if it appears to the judge or magistrate that one or
11 more persons as individuals, or as members of a designated class or
12 otherwise, have or may have an interest in the proceedings, and that
13 one or more of them are minors, incompetent persons or persons

14 undetermined or unborn at the time of the proceeding.

15 (2) No judge or magistrate may appoint a guardian ad litem in a
16 proceeding under section 17a-543 or 17a-543a, sections 45a-644 to 45a-
17 663, inclusive, or section 45a-705a for any person eighteen years of age
18 or older who is represented by an attorney, and is a respondent or has
19 a conservator of the estate or a conservator of the person appointed on
20 such person's behalf, unless the person's attorney is unable to ascertain
21 the preferences of the person, including preferences previously
22 expressed by the person. Prior to appointing a guardian ad litem under
23 this subdivision, the judge or magistrate shall question the person for
24 the sole purpose of determining the person's preferences or inability to
25 express such preferences. If the judge or magistrate appoints a
26 guardian ad litem under this subdivision, the judge's or magistrate's
27 order shall (A) limit the appointment in scope and duration, and (B)
28 grant the guardian ad litem only the specific duty to answer specific
29 questions posed by the judge or magistrate, including questions
30 designed to ascertain whether the attorney's or conservator's proposed
31 course of action is the least restrictive means of intervention available
32 to assist the person in managing his or her affairs or caring for himself
33 or herself. Any appointment of a guardian ad litem under this
34 subdivision shall terminate upon the guardian ad litem's report to the
35 judge or magistrate, or earlier upon the order of the judge or
36 magistrate.

37 (3) For the purposes of subdivision (2) of this subsection,
38 "conservator of the estate", "conservator of the person", "least
39 restrictive means of intervention" and "respondent" have the meanings
40 set forth in section 45a-644.

41 (b) The appointment shall not be mandatory, but shall be within the
42 discretion of the judge or magistrate.

43 (c) Any order or decree passed or action taken in any such
44 proceeding shall affect all the minors, incompetent persons or persons
45 thereafter born or determined for whom the guardian ad litem has
46 been appointed, in the same manner as if they had been of the age of

47 majority and competent and present in court after legal notice at the
48 time of the action or the issuance of the order or decree.

49 (d) Any appointment of a guardian ad litem may be made with or
50 without notice and, if it appears to the judge or magistrate that it is for
51 the best interests of a minor having a parent or guardian to have as
52 guardian ad litem some person other than the parent or guardian, the
53 judge or magistrate may appoint a disinterested person to be the
54 guardian ad litem.

55 (e) When the appointment is made in connection with the settlement
56 of a decedent's estate or the settlement of the account of a trustee or
57 other fiduciary, the person so appointed shall be authorized to
58 represent the minor or incompetent, undetermined or unborn person
59 in all proceedings for the settlement of the estate or account and
60 subsequent accounts of the trustee or other fiduciary, or until his
61 appointment is terminated by death, resignation or removal.

62 (f) The guardian ad litem may be removed by the judge or
63 magistrate which appointed [him] the guardian ad litem, without
64 notice, whenever it appears to the judge or magistrate to be in the best
65 interests of the ward or wards of the guardian.

66 (g) Any guardian ad litem appointed under the provisions of this
67 section may be allowed reasonable compensation by the judge or
68 magistrate appointing [him] the guardian ad litem and shall be paid as
69 a part of the expenses of administration.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	45a-132

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Judicial Department (Court Operations); Child Protection Commission	GF - Savings	Less than 50,000	Less than 50,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill would restrict the circumstances under which a judge could appoint a guardian ad litem to advocate on behalf of the interests of certain parties.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 447*****AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR AN ADULT WHO IS SUBJECT TO A CONSERVATORSHIP OR A CONSERVATORSHIP PROCEEDING.*****SUMMARY:**

This bill prohibits a judge or magistrate from appointing a guardian ad litem in certain proceedings for anyone 18 or older who is represented by an attorney and (1) is a respondent or (2) has a conservator of the estate or a conservator of the person appointed on his or her behalf, unless the attorney is unable to ascertain the person's preferences, including those previously expressed. The bill is applicable to proceedings to (1) appoint a conservator for people with psychiatric disabilities, (2) appoint a conservator for the administration of medication to a criminal defendant placed in the custody of the Department of Mental Health and Addiction Services commissioner, (3) appoint a conservator under the probate laws, and (4) apply for a habeas corpus by an individual subject to guardianship or involuntary representation.

Before appointing a guardian ad litem, the bill requires the judge or magistrate to question the person for the sole purpose of determining the person's preferences or inability to express such preferences. If the judge or magistrate appoints a guardian ad litem, the judge's or magistrate's order must (1) limit the appointment's scope and duration and (2) grant the guardian ad litem only the specific duty to answer specific questions posed by the judge or magistrate. This includes questions designed to ascertain whether the attorney's or conservator's proposed course of action is the least restrictive means of intervention available to assist the person in managing his or her affairs or caring for himself or herself. Any appointment of a guardian ad litem under

these circumstances must terminate when the guardian ad litem reports to the judge or magistrate, or earlier on the order of the judge or magistrate.

EFFECTIVE DATE: October 1, 2010

BACKGROUND

Respondent

Probate laws define the term “respondent” to mean an adult person (1) for whom an application for involuntary representation has been filed or (2) who has requested voluntary representation.

Conservator of the Estate

Probate laws define a “conservator of the estate” as a person, municipal or state official, or private profit or nonprofit corporation, except a hospital or nursing home, appointed by the probate court to supervise the financial affairs of a person (1) found to be incapable of managing his or her own affairs or (2) who voluntarily asks the court for the appointment of a conservator of the estate.

Conservator of the Person

Probate laws define a “conservator of the person” as a person, a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home, appointed by the probate court to supervise the personal affairs of a person (1) found to be incapable of caring for himself or herself or (2) who voluntarily asks the court for the appointment of a conservator of the person.

Least Restrictive Means

Probate laws define the “least restrictive means” as the intervention for a conserved person that is sufficient to provide, within the resources available to the conserved person, for a conserved person's personal needs or property management while affording the conserved person the greatest amount of independence and self-determination.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/29/2010)