



# House of Representatives

General Assembly

**File No. 249**

February Session, 2012

House Bill No. 5287

*House of Representatives, April 4, 2012*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION OF TREATMENT FOR A PSYCHIATRIC DISABILITY.***

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 Section 45a-132 of the general statutes is repealed and the  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, 2012*):

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

13 proceedings, and that one or more of them are minors, incompetent  
14 persons or persons undetermined or unborn at the time of the  
15 proceeding.

16 (2) No judge or magistrate may appoint a guardian ad litem for (A)  
17 a patient in a proceeding under section 17a-543 or 17a-543a, prior to a  
18 determination by a court of probate that the patient is incapable of  
19 giving informed consent under either of said sections, or (B) a  
20 respondent in a proceeding under sections 45a-644 to 45a-663,  
21 inclusive, prior to a determination by a court of probate that the  
22 respondent is incapable of caring for himself or herself or incapable of  
23 managing his or her affairs. No judge or magistrate may appoint a  
24 guardian ad litem for an applicant under section 45a-705a.

25 (3) No judge or magistrate may appoint a guardian ad litem for a  
26 conserved person in a proceeding under section 17a-543 or 17a-543a or  
27 sections 45a-644 to 45a-663, inclusive, unless (A) the judge or  
28 magistrate makes a specific finding of a need to appoint a guardian ad  
29 litem for a specific purpose or to answer specific questions to assist the  
30 judge or magistrate in making a determination, or (B) the conserved  
31 person's attorney is unable to ascertain the preferences of the person,  
32 including preferences previously expressed by the person. Prior to  
33 appointing a guardian ad litem for a person under subparagraph (B) of  
34 this subdivision, the judge or magistrate may question the person to  
35 determine the person's preferences or inability to express such  
36 preferences. If the judge or magistrate appoints a guardian ad litem  
37 under this subdivision, the judge's or magistrate's order shall (i) limit  
38 the appointment in scope and duration, and (ii) direct the guardian ad  
39 litem to take only the specific action required or to answer specific  
40 questions posed by the judge or magistrate, including questions  
41 designed to ascertain whether the attorney's or conservator's proposed  
42 course of action is the least restrictive means of intervention available  
43 to assist the person in managing his or her affairs or caring for himself  
44 or herself. Any appointment of a guardian ad litem under this  
45 subdivision shall terminate upon the guardian ad litem's report to the  
46 judge or magistrate in accordance with the order appointing the

47 guardian ad litem, or earlier upon the order of the judge or magistrate.

48 (4) For the purposes of this subsection, "conserved person",  
49 "incapable of caring for himself or herself", "incapable of managing his  
50 or her affairs", "least restrictive means of intervention" and  
51 "respondent" have the meanings set forth in section 45a-644 and  
52 "conservator" means a conservator of the person or conservator of the  
53 estate, as those terms are defined in section 45a-644.

54 (b) The appointment of a guardian ad litem shall not be mandatory,  
55 but shall be within the discretion of the judge or magistrate.

56 (c) Any order or decree passed or action taken in any such  
57 proceeding shall affect all the minors, incompetent persons or persons  
58 thereafter born or determined for whom the guardian ad litem has  
59 been appointed, in the same manner as if they had been of the age of  
60 majority and competent and present in court after legal notice at the  
61 time of the action or the issuance of the order or decree.

62 (d) Any appointment of a guardian ad litem may be made with or  
63 without notice and, if it appears to the judge or magistrate that it is for  
64 the best interests of a minor having a parent or guardian to have as  
65 guardian ad litem some person other than the parent or guardian, the  
66 judge or magistrate may appoint a disinterested person to be the  
67 guardian ad litem.

68 (e) [When] Except as provided in subdivisions (2) and (3) of  
69 subsection (a) of this section, when the appointment of a guardian ad  
70 litem is made in connection with the settlement of a decedent's estate  
71 or the settlement of the account of a trustee or other fiduciary, the  
72 person so appointed shall be authorized to represent the minor or  
73 incompetent, undetermined or unborn person in all proceedings for  
74 the settlement of the estate or account and subsequent accounts of the  
75 trustee or other fiduciary, or until [his] the person's appointment is  
76 terminated by death, resignation or removal.

77 (f) The guardian ad litem may be removed by the judge or

78 magistrate which appointed [him] the guardian ad litem, without  
79 notice, whenever it appears to the judge or magistrate to be in the best  
80 interests of the ward or wards of the guardian.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	45a-132

**JUD**      *Joint Favorable*

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.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill clarifies the circumstances in which a judge can appoint a guardian ad litem for a person who is subject to a conservatorship proceeding or a proceeding concerning administration of treatment for a psychiatric disability. This will not result in a fiscal impact to the Probate Court Administration Fund, as guardians ad litem for these matters are compensated by the individual they are representing.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****HB 5287*****AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION OF TREATMENT FOR A PSYCHIATRIC DISABILITY.*****SUMMARY**

This bill limits the circumstances under which judges or family support magistrates can appoint a guardian ad litem (GAL – a person assigned to make findings and recommendations about a litigant when a court is concerned that this person is incapable of making his or her own decisions). Currently, court GAL appointments and functions are purely discretionary and vary considerably from court to court.

The bill applies when:

1. the court is being asked to order that an individual be given psychiatric medication or hospital treatment against his or her will;
2. a litigant, by request, has a court-approved conservator to handle his or her daily or financial affairs, or both; or
3. a mentally ill person has filed a habeas corpus writ, claiming that he or she is being held or medicated unlawfully. (In this case, the bill prohibits GAL appointments.)

EFFECTIVE DATE: October 12, 2012

**FORCED MEDICATION AND HOSPITALIZATION**

Under the bill, judges or family support magistrates faced with the decision of ordering forcible medication or hospitalization can appoint

a GAL only if they first get a probate court's determination that the ill person cannot care for himself or herself or manage his or her affairs.

By law, a person is incapable of doing this if he or she has a mental, emotional, or physical condition that results in an inability 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.

### **WHEN LITIGANT HAS COURT-APPROVED CONSERVATOR**

The bill further limits a GAL's role when the incompetent person already has a court-approved conservator. The functions of these two officials substantially overlap in that conservators also recommend court action based on their ward's best interests.

#### ***Limited Purpose and Duration of Appointment***

Rather than giving the court broad discretion to set the scope of the GAL's authority, the bill requires it to make a specific finding that a GAL is needed (1) for a specific purpose or to answer specific questions to help the court in making a determination or (2) because the conserved person's attorney is unable to ascertain his or her client's preferences, including preferences expressed in the past. Before appointing a GAL, the court may question the conserved person to determine his or her preferences or inability to express those preferences.

The bill requires the appointing judge or magistrate's GAL appointment order to:

1. limit the GAL's appointment scope and duration and
2. direct the GAL to take only the specific action required or to answer specific questions the court poses.

The questions the GAL may ask include those intended to ascertain whether the attorney or conservator's proposed course of action is the least restrictive means of intervention available to the person in

managing his or her affairs or caring for himself or herself.

Any GAL appointment must end when the GAL submits his or her court report. As under existing law, the court may order it to end sooner. The court must pay the GAL's reasonable fees as part of the expenses of administration.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 42    Nay 0    (03/21/2012)