



General Assembly

January Session, 2013

**Committee Bill No. 5298**

LCO No. 4945



\* 0 4 9 4 5 H B 0 5 2 9 8 P H \*

Referred to Committee on PUBLIC HEALTH

Introduced by:  
(PH)

***AN ACT CONCERNING ELECTROCONVULSIVE THERAPY.***

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

1 Section 1. Subsection (c) of section 17a-543 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2013*):

4 (c) (1) No psychosurgery or [shock] electroconvulsive therapy shall  
5 be administered to any patient without the patient's written informed  
6 consent, except as provided in this subsection. Such consent shall be  
7 for a maximum period of thirty days and may be revoked at any time.  
8 If it is determined by the head of the hospital and two qualified  
9 physicians that the patient has become incapable of giving informed  
10 consent, [shock] electroconvulsive therapy may be administered upon  
11 order of the Probate Court if, after hearing in accordance with this  
12 section, such court finds that the patient is incapable of informed  
13 consent and there is no other, less intrusive beneficial treatment. An  
14 order of the Probate Court authorizing the administration of [shock]  
15 electroconvulsive therapy pursuant to this subsection shall be effective  
16 for not more than forty-five days.

17       (2) Upon an application for the administration of electroconvulsive  
18 therapy being filed in the Probate Court, such court shall assign a time,  
19 not later than ten business days thereafter, and a place for hearing such  
20 application, and shall cause reasonable notice thereof to be given to the  
21 respondent and to such relative or relatives and other persons as it  
22 deems advisable. Said notice shall inform such respondent (A) that he  
23 or she has a right to be present at the hearing; (B) that he or she has a  
24 right to counsel; (C) that he or she, if indigent, has a right to have  
25 counsel appointed to represent him or her; and (D) that he or she has a  
26 right to cross-examine witnesses testifying at any hearing upon such  
27 application.

28       (3) If the court finds such respondent is indigent or otherwise  
29 unable to pay for counsel, the court shall appoint counsel for such  
30 respondent, unless such respondent refuses counsel and the court  
31 finds that the respondent understands the nature of his or her refusal.  
32 The court shall provide such respondent a reasonable opportunity to  
33 select his or her own counsel to be appointed by the court. If the  
34 respondent does not select counsel or if counsel selected by the  
35 respondent refuses to represent such respondent or is not available for  
36 such representation, the court shall appoint counsel for the respondent  
37 from a panel of attorneys admitted to practice in this state provided by  
38 the Probate Court Administrator in accordance with regulations  
39 promulgated by the Probate Court Administrator in accordance with  
40 section 45a-77. The reasonable compensation of appointed counsel  
41 shall be established by, and paid from funds appropriated to, the  
42 Judicial Department; however, if funds have not been included in the  
43 budget of the Judicial Department for such purposes, such  
44 compensation shall be established by the Probate Court Administrator  
45 and paid from the Probate Court Administration Fund. Prior to such  
46 hearing, such respondent or his or her counsel, in accordance with the  
47 provisions of sections 52-146d to 52-146i, inclusive, shall be afforded  
48 access to all records including, without limitation, hospital records if  
49 such respondent is hospitalized, and shall be entitled to take notes  
50 therefrom. If such respondent is hospitalized at the time of the hearing,

51 the hospital shall make available at such hearing for use by the patient  
52 or his or her counsel all records in its possession relating to the  
53 condition of the respondent. Notwithstanding the provisions of  
54 sections 52-146d to 52-146i, inclusive, all such hospital records directly  
55 relating to the patient shall be admissible at the request of any party or  
56 the Court of Probate in any proceeding relating to the administration  
57 of electroconvulsive therapy. Nothing in this subsection shall prevent  
58 timely objection to the admissibility of evidence in accordance with the  
59 rules of civil procedure.

60 (4) The court shall require the certificates, signed under penalty of  
61 false statement, of at least two impartial physicians selected by the  
62 court, one of whom shall be a practicing psychiatrist, both of whom  
63 shall be licensed to practice medicine in the state and shall have been  
64 practitioners of medicine at least one year and shall not be connected  
65 with the hospital for psychiatric disabilities from which the application  
66 is being made, or related by blood or marriage to the applicant, or to  
67 the respondent. Such certificates shall indicate that they have  
68 personally examined such respondent within ten days before such  
69 hearing. The court shall appoint such physicians from a list of  
70 physicians and psychiatrists provided by the Commissioner of Mental  
71 Health and Addiction Services and such appointments shall be made  
72 in accordance with regulations promulgated by the Probate Court  
73 Administrator in accordance with section 45a-77. Each such physician  
74 shall make a report on a separate form provided for that purpose by  
75 the Department of Mental Health and Addiction Services and shall  
76 answer such questions as may be set forth on such form as fully and  
77 completely as reasonably possible. Such form shall include, but not be  
78 limited to, questions relating to the specific psychiatric disabilities  
79 alleged, whether or not the respondent is dangerous to himself or  
80 herself or others, whether or not such illness has resulted or will result  
81 in serious disruption of the respondent's mental and behavioral  
82 functioning, whether or not less intrusive treatment is recommended  
83 and available and whether or not respondent is incapable of  
84 understanding the need to accept the recommended electroconvulsive

85 therapy on a voluntary basis. Any such physician shall state upon the  
86 form the reasons for his or her opinions. Such respondent or his or her  
87 counsel shall have the right to present evidence and cross-examine  
88 witnesses who testify at any hearing on the application. If such  
89 respondent notifies the court not less than three days before the  
90 hearing that he or she wishes to cross-examine the examining  
91 physicians, the court shall order such physicians to appear. The court  
92 shall cause a recording of the testimony of such hearing to be made, to  
93 be transcribed only in the event of an appeal from the decree rendered  
94 hereunder. A copy of such transcript shall be furnished without charge  
95 to any appellant whom the Court of Probate finds unable to pay for the  
96 same. The cost of such transcript shall be paid from funds  
97 appropriated to the Judicial Department. If, on such hearing, the court  
98 finds by clear and convincing evidence that the person complained of  
99 is incapable of giving informed consent and there is no other, less  
100 intrusive beneficial treatment, it shall make an order for the  
101 administration of electroconvulsive therapy. Notice of any action taken  
102 by the court shall be given to the respondent and his or her attorney, if  
103 any, in such manner as the court concludes would be appropriate  
104 under the circumstances.

105 (5) The respondent shall be present at any hearing for the  
106 administration of electroconvulsive therapy to him or her under this  
107 section. If the respondent is medicated at that time, the court shall be  
108 notified by the hospital in writing of such fact and of the common  
109 effects of such medication.

110 Sec. 2. Subdivision (11) of section 17a-540 of the general statutes is  
111 repealed and the following is substituted in lieu thereof (*Effective July*  
112 *1, 2013*):

113 (11) ["Shock therapy"] "Electroconvulsive therapy" means a form of  
114 psychiatric treatment in which electric current, insulin, carbon dioxide  
115 or indoklon, or other similar agent, is administered to the patient and  
116 results in a loss of consciousness or a convulsive or comatose reaction;

117 Sec. 3. Section 19a-575a of the general statutes is repealed and the  
118 following is substituted in lieu thereof (*Effective July 1, 2013*):

119 (a) Any person eighteen years of age or older may execute a  
120 document that contains health care instructions, the appointment of a  
121 health care representative, the designation of a conservator of the  
122 person for future incapacity and a document of anatomical gift. Any  
123 such document shall be signed and dated by the maker with at least  
124 two witnesses and may be in the substantially following form:

125 THESE ARE MY HEALTH CARE INSTRUCTIONS.  
126 MY APPOINTMENT OF A HEALTH CARE REPRESENTATIVE,  
127 THE DESIGNATION OF MY CONSERVATOR OF THE PERSON  
128 FOR MY FUTURE INCAPACITY  
129 AND  
130 MY DOCUMENT OF ANATOMICAL GIFT

131 To any physician who is treating me: These are my health care  
132 instructions including those concerning the withholding or withdrawal  
133 of life support systems, together with the appointment of my health  
134 care representative, the designation of my conservator of the person  
135 for future incapacity and my document of anatomical gift. As my  
136 physician, you may rely on these health care instructions and any  
137 decision made by my health care representative or conservator of my  
138 person, if I am incapacitated to the point when I can no longer actively  
139 take part in decisions for my own life, and am unable to direct my  
140 physician as to my own medical care.

141 I, ..., the author of this document, request that, if my condition is  
142 deemed terminal or if I am determined to be permanently  
143 unconscious, I be allowed to die and not be kept alive through life  
144 support systems. By terminal condition, I mean that I have an  
145 incurable or irreversible medical condition which, without the  
146 administration of life support systems, will, in the opinion of my  
147 attending physician, result in death within a relatively short time. By  
148 permanently unconscious I mean that I am in a permanent coma or

149 persistent vegetative state which is an irreversible condition in which I  
150 am at no time aware of myself or the environment and show no  
151 behavioral response to the environment. The life support systems  
152 which I do not want include, but are not limited to: Artificial  
153 respiration, cardiopulmonary resuscitation and artificial means of  
154 providing nutrition and hydration. I do want sufficient pain  
155 medication to maintain my physical comfort. I do not intend any direct  
156 taking of my life, but only that my dying not be unreasonably  
157 prolonged.

158 I appoint .... to be my health care representative. If my attending  
159 physician determines that I am unable to understand and appreciate  
160 the nature and consequences of health care decisions and unable to  
161 reach and communicate an informed decision regarding treatment, my  
162 health care representative is authorized to make any and all health care  
163 decisions for me, including (1) the decision to accept or refuse any  
164 treatment, service or procedure used to diagnose or treat my physical  
165 or mental condition, except as otherwise provided by law such as for  
166 psychosurgery or [shock] electroconvulsive therapy, as defined in  
167 section 17a-540, as amended by this act, and (2) the decision to  
168 provide, withhold or withdraw life support systems. I direct my health  
169 care representative to make decisions on my behalf in accordance with  
170 my wishes, as stated in this document or as otherwise known to my  
171 health care representative. In the event my wishes are not clear or a  
172 situation arises that I did not anticipate, my health care representative  
173 may make a decision in my best interests, based upon what is known  
174 of my wishes.

175 If .... is unwilling or unable to serve as my health care  
176 representative, I appoint .... to be my alternative health care  
177 representative.

178 If a conservator of my person should need to be appointed, I  
179 designate .... be appointed my conservator. If .... is unwilling or unable  
180 to serve as my conservator, I designate .....

No bond shall be required

181 of either of them in any jurisdiction.

182 I hereby make this anatomical gift, if medically acceptable, to take  
183 effect upon my death.

184 I give: (check one)

T1 .... (1) any needed organs or parts

T2 .... (2) only the following organs or parts ....

185 to be donated for: (check one)

T3 (1) .... any of the purposes stated in subsection (a) of section 19a-289j

T4 (2) .... these limited purposes ....

186 These requests, appointments, and designations are made after  
187 careful reflection, while I am of sound mind. Any party receiving a  
188 duly executed copy or facsimile of this document may rely upon it  
189 unless such party has received actual notice of my revocation of it.

T5 Date ....., 20..

T6 .... L.S.

190 This document was signed in our presence by .... the author of this  
191 document, who appeared to be eighteen years of age or older, of sound  
192 mind and able to understand the nature and consequences of health  
193 care decisions at the time this document was signed. The author  
194 appeared to be under no improper influence. We have subscribed this  
195 document in the author's presence and at the author's request and in  
196 the presence of each other.

T7 ....

T8 (Witness) (Witness)

T9 ....

T10 (Number and Street) (Number and Street)

T11 ....

T12 (City, State and Zip Code) (City, State and Zip Code)

T13 STATE OF CONNECTICUT  
T14 }  
T15 } ss. ....  
T16 COUNTY OF ....

197 We, the subscribing witnesses, being duly sworn, say that we  
198 witnessed the execution of these health care instructions, the  
199 appointments of a health care representative, the designation of a  
200 conservator for future incapacity and a document of anatomical gift by  
201 the author of this document; that the author subscribed, published and  
202 declared the same to be the author's instructions, appointments and  
203 designation in our presence; that we thereafter subscribed the  
204 document as witnesses in the author's presence, at the author's request,  
205 and in the presence of each other; that at the time of the execution of  
206 said document the author appeared to us to be eighteen years of age or  
207 older, of sound mind, able to understand the nature and consequences  
208 of said document, and under no improper influence, and we make this  
209 affidavit at the author's request this .... day of .... 20...

T17 ....  
T18 (Witness) (Witness)

210 Subscribed and sworn to before me this .... day of .... 20..

T19 .....  
T20 Commissioner of the Superior Court  
T21 Notary Public  
T22 My commission expires: ....

211 (Print or type name of all persons signing under all signatures)

212 (b) Except as provided in section 19a-579b, an appointment of health  
213 care representative may only be revoked by the declarant, in writing,  
214 and the writing shall be signed by the declarant and two witnesses.

215 (c) The attending physician or other health care provider shall make  
216 the revocation of an appointment of health care representative a part of  
217 the declarant's medical record.

218 (d) In the absence of knowledge of the revocation of an appointment  
219 of health care representative, a person who carries out an advance  
220 directive pursuant to the provisions of this chapter shall not be subject  
221 to civil or criminal liability or discipline for unprofessional conduct for  
222 carrying out such advance directive.

223 (e) The revocation of an appointment of health care representative  
224 does not, of itself, revoke the living will of the declarant.

225 Sec. 4. Section 19a-577 of the general statutes is repealed and the  
226 following is substituted in lieu thereof (*Effective July 1, 2013*):

227 Any person eighteen years of age or older may execute a document  
228 that may, but need not be, in substantially the following form:

229 DOCUMENT CONCERNING THE APPOINTMENT  
230 OF HEALTH CARE REPRESENTATIVE

231 "I understand that, as a competent adult, I have the right to make  
232 decisions about my health care. There may come a time when I am  
233 unable, due to incapacity, to make my own health care decisions. In  
234 these circumstances, those caring for me will need direction and will  
235 turn to someone who knows my values and health care wishes. By  
236 signing this appointment of health care representative, I appoint a  
237 health care representative with legal authority to make health care  
238 decisions on my behalf in such case or at such time.

239 I appoint .... (Name) to be my health care representative. If my  
240 attending physician determines that I am unable to understand and  
241 appreciate the nature and consequences of health care decisions and to  
242 reach and communicate an informed decision regarding treatment, my  
243 health care representative is authorized to (1) accept or refuse any  
244 treatment, service or procedure used to diagnose or treat my physical

245 or mental condition, except as otherwise provided by law, such as for  
246 psychosurgery or [shock] electroconvulsive therapy, as defined in  
247 section 17a-540, as amended by this act, and (2) make the decision to  
248 provide, withhold or withdraw life support systems. I direct my health  
249 care representative to make decisions on my behalf in accordance with  
250 my wishes as stated in a living will, or as otherwise known to my  
251 health care representative. In the event my wishes are not clear or a  
252 situation arises that I did not anticipate, my health care representative  
253 may make a decision in my best interests, based upon what is known  
254 of my wishes.

255 If this person is unwilling or unable to serve as my health care  
256 representative, I appoint .... (Name) to be my alternative health care  
257 representative."

258 "This request is made, after careful reflection, while I am of sound  
259 mind."

T23 .... (Signature)  
T24 .... (Date)

260 This document was signed in our presence, by the above-named ....  
261 (Name) who appeared to be eighteen years of age or older, of sound  
262 mind and able to understand the nature and consequences of health  
263 care decisions at the time the document was signed.

T25 .... (Witness)  
T26 .... (Address)  
T27 .... (Witness)  
T28 .... (Address)

|   |              |            |
|---|--------------|------------|
| This act shall take effect as follows and shall amend the following sections: |              |            |
| Section 1   | July 1, 2013 | 17a-543(c) |

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|--------|---------------------|-------------|
| Sec. 2 | <i>July 1, 2013</i> | 17a-540(11) |
| Sec. 3 | <i>July 1, 2013</i> | 19a-575a    |
| Sec. 4 | <i>July 1, 2013</i> | 19a-577     |

***Statement of Purpose:***

To require the probate court to follow certain procedures before issuing an order for involuntary electroconvulsive therapy and to replace the term "shock therapy" with "electroconvulsive therapy".

Co-Sponsors: REP. NAFIS, 27th Dist.; SEN. DOYLE, 9th Dist.

H.B. 5298