



# Senate

General Assembly

**File No. 543**

February Session, 2014

Substitute Senate Bill No. 463

*Senate, April 15, 2014*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd 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 CONSERVATOR FOR A PERSON WITH INTELLECTUAL DISABILITY.***

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

1 Section 1. Subsections (a) to (d), inclusive, of section 45a-650 of the  
2 general statutes are repealed and the following is substituted in lieu  
3 thereof (*Effective October 1, 2014*):

4 (a) At any hearing on an application for involuntary representation,  
5 before the court receives any evidence regarding the condition of the  
6 respondent or of the respondent's affairs, the court shall require clear  
7 and convincing evidence that the court has jurisdiction, that the  
8 respondent has been given notice as required in section 45a-649, and  
9 that the respondent has been advised of the right to retain an attorney  
10 pursuant to section 45a-649a and is either represented by an attorney  
11 or has waived the right to be represented by an attorney. The  
12 respondent shall have the right to attend any hearing held under this  
13 section.

14 (b) The rules of evidence in civil actions adopted by the judges of  
15 the Superior Court shall apply to all hearings pursuant to this section.  
16 All testimony at a hearing held pursuant to this section shall be given  
17 under oath or affirmation.

18 (c) (1) After making the findings required under subsection (a) of  
19 this section, the court shall receive evidence regarding the respondent's  
20 condition, the capacity of the respondent to care for himself or herself  
21 or to manage his or her affairs, and the ability of the respondent to  
22 meet his or her needs without the appointment of a conservator.  
23 Unless waived by the court pursuant to subdivision (2) of this  
24 subsection, medical evidence shall be introduced from one or more  
25 physicians licensed to practice medicine in [the] this state who have  
26 examined the respondent [within] not more than forty-five days  
27 [preceding] prior to the hearing, except that for a person with  
28 intellectual disability, as defined in section 1-1g, psychological  
29 evidence may be introduced in lieu of such medical evidence from a  
30 psychologist licensed pursuant to chapter 383 who has examined the  
31 respondent not more than forty-five days prior to the hearing. The  
32 evidence shall contain specific information regarding the respondent's  
33 condition and the effect of the respondent's condition on the  
34 respondent's ability to care for himself or herself or to manage his or  
35 her affairs. The court may also consider such other evidence as may be  
36 available and relevant, including, but not limited to, a summary of the  
37 physical and social functioning level or ability of the respondent, and  
38 the availability of support services from the family, neighbors,  
39 community or any other appropriate source. Such evidence may  
40 include, if available, reports from the social work service of a general  
41 hospital, municipal social worker, director of social service, public  
42 health nurse, public health agency, psychologist, coordinating  
43 assessment and monitoring agencies, or such other persons as the  
44 court considers qualified to provide such evidence.

45 (2) The court may waive the requirement that medical evidence be  
46 presented if it is shown that the evidence is impossible to obtain  
47 because of the absence of the respondent or the respondent's refusal to

48 be examined by a physician or that the alleged incapacity is not  
49 medical in nature. If such requirement is waived, the court shall make  
50 a specific finding in any decree issued on the application stating why  
51 medical evidence was not required.

52 (3) Any hospital, psychiatric, psychological or medical record or  
53 report filed with the court pursuant to this subsection shall be  
54 confidential.

55 (d) Upon the filing of an application for involuntary representation  
56 pursuant to section 45a-648, the court shall issue an order for the  
57 disclosure of the medical information required pursuant to this section  
58 and any psychological information submitted with respect to a person  
59 with intellectual disability pursuant to subsection (c) of this section to  
60 the respondent's attorney and, upon request, to the respondent. The  
61 court may issue an order for the disclosure of such [medical]  
62 information to any other person as the court determines necessary.

63 Sec. 2. Subsections (c) and (d) of section 45a-660 of the general  
64 statutes are repealed and the following is substituted in lieu thereof  
65 (*Effective October 1, 2014*):

66 (c) The court shall review each conservatorship not later than one  
67 year after the conservatorship was ordered, and not less than every  
68 three years after such initial one-year review. After each such review,  
69 the court shall continue, modify or terminate the order for  
70 conservatorship. The court shall receive and review written evidence  
71 as to the condition of the conserved person. The conservator and a  
72 physician licensed to practice medicine in this state shall each submit a  
73 written report to the court [within] not more than forty-five days [of]  
74 after the court's request for such report, except that for a person with  
75 intellectual disability, as defined in section 1-1g, a psychologist  
76 licensed pursuant to chapter 383 may submit such written report in  
77 lieu of a physician. On receipt of a written report from the conservator  
78 or a physician or psychologist, as the case may be, the court shall  
79 provide a copy of the report to the conserved person and the attorney  
80 for the conserved person. If the conserved person is unable to request

81 or obtain an attorney, the court shall appoint an attorney. If the  
82 conserved person is unable to pay for the services of the attorney, the  
83 reasonable rates of compensation of such attorney shall be established  
84 by, and the attorney shall be paid from funds appropriated to, the  
85 Judicial Department. If funds have not been included in the budget of  
86 the Judicial Department for such purposes, such rates of compensation  
87 shall be established by the Probate Court Administrator and the  
88 attorney shall be paid from the Probate Court Administration Fund.  
89 The physician or psychologist, as the case may be, shall examine the  
90 conserved person [within the forty-five-day period preceding] not  
91 more than forty-five days prior to the date of submission of the  
92 physician's or psychologist's report. Any physician's or psychologist's  
93 report filed with the court pursuant to this subsection shall be  
94 confidential. The court may issue an order for the disclosure of medical  
95 information [required] or psychological information received pursuant  
96 to this subsection, except that the court shall issue an order for the  
97 disclosure of [medical] such information to the conserved person's  
98 attorney. Not later than thirty days after receipt of the conservator's  
99 report and the physician's or psychologist's report, as the case may be,  
100 the attorney for the conserved person shall notify the court that the  
101 attorney has met with the conserved person and shall inform the court  
102 as to whether a hearing is being requested. Nothing in this section  
103 shall prevent the conserved person or the conserved person's attorney  
104 from requesting a hearing at any other time as permitted by law.

105 (d) If the court finds, after receipt of the reports from the attorney  
106 for the conserved person, the physician or psychologist, as the case  
107 may be, and the conservator, by clear and convincing evidence, that  
108 the conserved person continues to be incapable of managing his or her  
109 affairs or continues to be incapable of caring for himself or herself, as  
110 the case may be, and that there are no less restrictive means available  
111 to assist the conserved person in managing his or her affairs or caring  
112 for himself or herself, as the case may be, the court shall continue or  
113 modify the conservatorship under the terms and conditions of the  
114 appointment of the conservator under section 45a-650, as amended by  
115 this act. If the court does not make such a finding of continued

116 incapacity by clear and convincing evidence, the court shall terminate  
 117 the conservatorship. A hearing on the condition of the conserved  
 118 person shall not be required under this subsection, except that the  
 119 court may hold a hearing in its discretion and shall hold a hearing if  
 120 the conserved person, conserved person's attorney or conservator  
 121 requests a hearing, in which case the court shall hold a hearing within  
 122 thirty days of such request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	45a-650(a) to (d)
Sec. 2	<i>October 1, 2014</i>	45a-660(c) and (d)

**Statement of Legislative Commissioners:**

In sections 1(c)(1) and 2(c), the references to a licensed psychologist and a psychologist licensed in this state were changed to "a psychologist licensed pursuant to chapter 383" for accuracy and consistency.

**JUD**      *Joint Favorable Subst. -LCO*

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 expands what is considered allowed evidence at a specific probate court hearing and does not result in a fiscal impact.

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

**OLR Bill Analysis****sSB 463*****AN ACT CONCERNING THE APPOINTMENT OF A CONSERVATOR FOR A PERSON WITH INTELLECTUAL DISABILITY.*****SUMMARY:**

This bill allows psychological evidence from a psychologist to be introduced in place of medical evidence from a physician at a probate court hearing or review concerning involuntary conservatorship for a person with intellectual disability.

The bill also makes conforming changes.

EFFECTIVE DATE: October 1, 2014

**PSYCHOLOGISTS' EVIDENCE AT CONSERVATORSHIP HEARINGS AND REVIEWS*****Hearing on Application for Conservatorship***

By law, the probate court can appoint a conservator of the estate for someone who cannot manage his or her affairs and a conservator of the person for someone incapable of caring for himself or herself.

For hearings on applications for involuntary conservatorship, current law generally requires medical evidence to be introduced from at least one state-licensed physician. In lieu of this medical evidence, the bill allows the introduction of psychological evidence from a state-licensed psychologist if the respondent (the subject of the hearing) is a person with intellectual disability.

Under the bill, as under current law regarding medical evidence from a physician:

1. the psychologist must have examined the person within 45 days prior to the hearing;

2. the evidence must contain specific information about the respondent's condition and its effect on the respondent's ability to care for himself or herself or manage his or her affairs;
3. the psychological record must be confidential;
4. the court must order the submitted psychological information to be disclosed to the respondent's attorney, and the respondent if he or she requests it; and
5. the court may order the information to be disclosed to anyone else it deems necessary.

Existing law, unchanged by the bill, allows the court to consider other relevant available evidence, including reports from psychologists.

By law, the court can waive the requirement for medical evidence if it is shown that (1) the evidence is impossible to obtain because of the respondent's absence or refusal to be examined or (2) the alleged incapacity is not medical in nature.

### ***Review of Conservatorship***

By law, after a person is subject to involuntary conservatorship, the court must review the conservatorship after one year and at least every three years after that. As part of this process, current law requires a written report by a state-licensed physician who examined the respondent within the prior 45 days. The bill allows the report to be from a state-licensed psychologist if the conserved person has intellectual disability.

Under existing law and the bill, similar provisions apply as noted above regarding confidentiality and disclosure of the report, except the report must be provided to the conserved person.

By law, a conserved person can petition the court at any time to terminate the conservatorship. The conserved person is not required to present medical evidence at such a hearing.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 38 Nay 0 (03/28/2014)