



STATE OF CONNECTICUT

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PROBATE COURT ADMINISTRATOR

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Honorable Members of the Judiciary Committee

FROM: Paul J. Knierim
Probate Court Administrator

RE: R.B. 7029 An Act Concerning Probate Court Operations

DATE: April 1, 2015

Thank you for the opportunity to present testimony in support of Raised Bill No. 7029, which the Connecticut Probate Assembly and the Office of the Probate Court Administrator jointly support. This memorandum will summarize the bill by sections.

Sections 1 through 6 and Section 28 eliminate the option of having the following case types heard by a three-judge panel:

- Commitment for treatment of psychiatric disabilities
- Appeal of quarantine and isolation orders
- Hearings conducted on the record by agreement of parties

Three-judge courts are a vestige of the Probate Courts before the system was restructured in 2011. Parties were afforded the ability to have three judges hear the case out of concern that the judge of a very small court might lack legal training as well as experience with such highly sensitive cases. The option is no longer necessary because all newly elected judges must be attorneys and judges are required to take mandatory continuing education programs in all areas of

probate jurisdiction. Moreover, our research indicates that no party has requested a three-judge court in over 20 years, with only one request since 1978.

We do not propose to eliminate the three-judge panel in one area of jurisdiction; namely, writs of habeas corpus brought under C.G.S. section 45a-705a. Under that statute, a person can seek review of a conservatorship or guardianship by either the Superior Court or a panel of three probate judges. Because the habeas petition is equivalent to an appeal from a Probate Court, we believe that it is appropriate that the matter be heard by three judges.

Section 7 updates the statute governing writs of habeas corpus to address the venue for appeals to the Superior Court when the Probate Court that rendered the decision serves multiple towns.

Section 8 is technical.

Section 9 adds the Probate Court system to the whistleblower statute. RB 6999 An Act Implementing the Recommendations of the Auditors of Public Accounts is currently before the Government Administration and Elections Committee and contains parallel language. We have worked with the Auditors on the language in RB 6999 and request that this section be deleted.

Sections 10 through 17 relate to the Council on Probate Judicial Conduct, which is the independent body that investigates complaints alleging judicial misconduct. There are three proposed changes to the statutes that govern the council:

- **Extend the council's jurisdiction to include probate magistrates and attorney probate referees:** A probate judge may, with the consent of the parties to a case, refer the case to a probate magistrate or attorney probate referee. The magistrate or referee has authority to hear the evidence and prepare a report with proposed findings of fact and law. Because this function is judicial in nature, we believe that the Council on Probate Judicial Conduct should have jurisdiction over magistrates and referees.

Under the proposal, the council would have the authority to investigate complaints against magistrates and referees for violations of applicable provisions of the code of ethics and statutes. If the council finds that a magistrate or referee has committed misconduct, it may issue an admonishment or censure or recommend that the Chief Justice suspend or remove the individual from office.

- **Extend the council's jurisdiction to candidates for probate judge:** Currently, candidates for probate judge are bound by the provisions of the code of ethics that deal with campaign activities, but cannot be subject to

discipline for a violation of the code during the campaign because the council's jurisdiction is limited to judges. This proposal would close that gap and enable the council to address alleged violations that occur during a campaign.

- **Protect the confidentiality of council investigations:** The first phase of council investigations, during which the council determines whether there is probable cause to believe that a judge has committed misconduct, is confidential under existing law. If, however, an investigation relates to a pending case, the Probate Court Rules of Procedure require the judge to disclose the fact of the investigation to the parties. Section 4 seeks to protect the confidentiality of probable cause investigations by prohibiting a person who learns of an investigation in this manner from disclosing it to third parties.

Section 18 is a proposed revision of C.G.S. section 45a-273, which governs the small estate procedure for estates up to a maximum value of \$40,000. The small estate procedure, commonly referred to as "affidavit in lieu of administration," is frequently used by families who wish to handle the settlement of an estate without the assistance of an attorney. The bill would make the process easier to understand and remove obsolete language from the statute. It would also clarify that the procedure may be used even when debts, expenses and taxes exceed the value of the decedent's assets.

Sections 19, 20 and 21 would clarify existing law by explicitly permitting Probate Courts to maintain bank accounts to manage local court operations. The bill would also clarify that Probate Courts are not required to use the state's purchase order system when making expenditures from the accounts. The bill addresses three areas of local court operations:

- **Office budgets:** The Probate Court Budget Committee establishes an annual office budget for each court to cover items such as dues for professional organizations, seminar and meeting expenses and subscriptions. Office budgets for Regional Children's Probate Courts also include funds to maintain court facilities. This office disburses office budget funds to each court in accordance with the budget. Unspent funds lapse back to the Probate Court Administration Fund each year.
- **Escrow of prepaid probate fees:** Some health care facilities with a large volume of cases in the Probate Courts, including hospitals operated by the federal Department of Veterans Affairs, find it more convenient to prepay probate fees in a lump sum. To accommodate these organizations, a Probate Court may establish an escrow fund into which all prepaid fees are deposited. On receipt of a new case filing from an organization that has prepaid fees, the court immediately sends the applicable probate fee

payment to the state Treasurer. Escrow accounts are audited at the same time as the court office budget accounts.

- **Grant funds:** Eight Probate Courts administer the state-funded Kinship and Grandparents and Relatives Respite programs. The purpose of these grant programs is to assist indigent court-appointed guardians who are caring for children other than their own. Judges award grants for specific needs for the child, such as tutoring and after school programs. Grants are capped at \$500 per year per child for the Kinship Fund and \$2,000 per year per family for the Grandparents and Relatives Respite Fund. This office audits all of the courts administering the grants each year.

Most aspects of Probate Court financial operations are now administered centrally, including payroll and accounts payable for all services purchased on a state-wide basis. While this arrangement has produced very significant cost savings, we believe that the three areas of financial operations outlined above are most efficiently administered at the local court level.

Section 22 would amend the statute that defines who may petition a Probate Court for the removal of a parent as guardian of a minor child. Under current law, only the following three categories have standing to initiate a removal proceeding: (1) an adult relative of the child; (2) the child's attorney; or (3) the court on its own motion. Under this proposal, a non-relative with actual physical custody of the child would be authorized to file for removal. This modest expansion of the statute would enable a person already caring for the child to seek guardianship and thereby avoid a foster care placement. Section 22 would also repeal the provision by which the court may be the petitioner in removal proceedings to eliminate the procedural challenges associated with the court acting on a matter that it initiated.

Section 23 addresses an inconsistency between the jurisdiction provisions of the involuntary and voluntary conservatorship statutes. C.G.S. section 45a-648 permits a petition for involuntary conservatorship to be filed where the respondent resides, is domiciled or is located at the time of the application. On the other hand, C.G.S. section 45a-646 requires that a petition for voluntary representation be filed where the person seeking a conservator resides. A problem arises when an involuntary proceeding is initiated in a court other than the district where the respondent resides but the respondent wishes to elect a voluntary conservatorship. Connecticut law favors the voluntary petition because it is a less restrictive alternative, but the court hearing the involuntary petition lacks jurisdiction to hear the voluntary petition. As a result, the voluntary petition must be filed at another court, to be heard at another time. By expanding the jurisdiction provisions of the C.G.S. section 45a-646 to mirror those contained in C.G.S. section 45a-648, the bill would ensure that a respondent in an involuntary conservatorship proceeding is able to voluntarily accept a conservator without

the inconvenience and delay of commencing a new matter at another Probate Court.

Section 24 clarifies who is entitled to notice in a proceeding to appoint a guardian for an adult with intellectual disability.

Section 25 replaces the term "incapable person" with "person under voluntary or involuntary conservatorship" in C.G.S. section 47-36o. The effect of the change is to permit use of a conservator's deed in both voluntary and involuntary conservatorships.

Section 26 would afford the Governor discretion in determining whether to call a special election when a vacancy occurs due to the retirement, resignation or death of a probate judge during her or his term. The bill would enable the Governor to evaluate whether a special election is needed in light of the length of the unexpired term. If the remaining term is short, this office can appoint one or more judges from nearby districts to fill the vacancy, thereby avoiding the municipal expense of a special election.

Section 27 codifies the existing practice of Probate Courts having the local option of serving as passport acceptance agencies. Federal law authorizes Probate Courts to issue passports and many Connecticut Probate Courts have performed this community service for years.

We are submitting proposed substitute language with this testimony to address some technical issues that have been identified since the bill was drafted. On behalf of the Probate Court system, I respectfully request that the committee act favorably on the bill with the attached JFS language. Thank you for your consideration.

PCA Proposed Substitute Language for RB 7029

AN ACT CONCERNING PROBATE COURT OPERATIONS.

In lines 686 and 689: Delete “court of probate” and replace with “Probate Court”

Delete Section 9.

Beginning on line 845: The Chief Justice, on the recommendation of the Council on Probate Judicial Conduct or the Probate Court Administrator, may suspend or remove a probate magistrate during his or her term for reasonable cause.

Beginning on line 884: The Chief Justice, on the recommendation of the Council on Probate Judicial Conduct or the Probate Court Administrator, may suspend or remove an attorney probate referee during his or her term for reasonable cause.

Beginning on line 951: (d) In making [any such] an investigation[, **the council**] under subsection (a), (b) or (c) of this section, the council may use the services of the Division of State Police within the Department of Emergency Services and Public Protection, or any chief inspector, inspector or investigator in the Division of Criminal Justice, or may engage the services of private investigators if it deems such services necessary.

Beginning on line 1031: If a preliminary investigation indicates that probable cause exists that [the judge has committed an act of judicial misconduct] a respondent has committed misconduct under subsection (a), (b) or (c) of section 45a-63, as amended by this act, the council shall hold a hearing concerning the misconduct or complaint.

Beginning on line 1054: If the council finds that a respondent has not committed a violation under subsection (a), (b) or (c) of section 45a-63, as amended by this act, [or that a referee] but has acted in a manner which gives the appearance of impropriety or constitutes an unfavorable judicial practice, the council may issue a private admonishment to the respondent recommending a change in practice or judicial conduct.

Beginning on line 1260: If the claims, taxes and expenses exceed the fair value of the decedent's assets, the court shall order payment in [the order of priority set forth in section 45a-365] accordance with this subsection, provided the procedures for insolvent estates under sections 45a-376 to 45a-383, inclusive, shall not be required.