



House of Representatives

General Assembly

File No. 135

February Session, 2016

House Bill No. 5255

House of Representatives, March 23, 2016

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING GUARDIANSHIP OF PERSONS WITH INTELLECTUAL DISABILITY.

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

1 Section 1. Section 45a-669 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 For purposes of sections 45a-669 to [45a-684] 45a-683, inclusive, as
4 amended by this act, the following terms shall have the following
5 meanings:

6 (a) ["Plenary guardian of a person with intellectual disability"]
7 "Plenary guardian" means a person, legally authorized state official, [or
8 private nonprofit] corporation, limited liability company, partnership
9 or other entity recognized under the laws of this state, whether or not
10 operated for profit, except a hospital, nursing home facility, as defined
11 in section 19a-521, or residential care home, as defined in section 19a-
12 521, appointed by a [court of probate] Probate Court pursuant to the
13 provisions of sections 45a-669 to [45a-684] 45a-683, inclusive, as

14 amended by this act, to supervise all aspects of the care of an adult
15 person, as enumerated in subsection (d) of section 45a-677, as amended
16 by this act, for the benefit of such adult, who by reason of the severity
17 of [his or her] intellectual disability, has been determined to be totally
18 unable to meet essential requirements for his or her physical health or
19 safety and totally unable to make informed decisions about matters
20 related to his or her care.

21 (b) "Legally competent" means having the legal power to direct
22 one's personal and financial affairs. All persons in this state eighteen
23 years of age and over are legally competent unless determined
24 otherwise by a court in accordance with the provisions of sections 45a-
25 669 to [45a-684] 45a-683, inclusive, as amended by this act, or unless
26 otherwise provided by law.

27 (c) ["Limited guardian of a person with intellectual disability"]
28 "Limited guardian" means a person, legally authorized state official,
29 [or a private nonprofit] corporation, limited liability company,
30 partnership or other entity recognized under the laws of this state,
31 whether or not operated for profit, except a hospital or nursing home,
32 as defined in section 19a-521, appointed by a [court of probate] Probate
33 Court pursuant to the provisions of sections 45a-669 to [45a-684] 45a-
34 683, inclusive, as amended by this act, to supervise certain specified
35 aspects of the care of an adult person, as enumerated in subsection (d)
36 of section 45a-677, as amended by this act, for the benefit of such adult,
37 who by reason of the severity of [his] intellectual disability, has been
38 determined to be able to do some, but not all, of the tasks necessary to
39 meet essential requirements for his or her physical health or safety or
40 to make some, but not all, informed decisions about matters related to
41 his or her care.

42 (d) ["Person with intellectual disability"] "Intellectual disability"
43 means [a person who has a] the condition defined as intellectual
44 disability pursuant to section 1-1g.

45 (e) "Respondent" means an adult person for whom [an application]
46 a petition for guardianship or limited guardianship of the person has

47 been filed.

48 (f) "Unable to meet essential requirements for his or her physical
49 health or safety" means the inability through one's own efforts and
50 through acceptance of assistance from family, friends and other
51 available private and public sources, to meet one's needs for medical
52 care, nutrition, clothing, shelter, hygiene or safety so that, in the
53 absence of a guardian, [of the person with intellectual disability]
54 serious physical injury, illness or disease is likely to occur.

55 (g) "Unable to make informed decisions about matters related to
56 [one's] his or her care" means the inability of a person with intellectual
57 disability to achieve a rudimentary understanding, after conscientious
58 efforts at explanation, of information necessary to make decisions
59 about his or her need for physical or mental health care, food, clothing,
60 shelter, hygiene, protection from physical abuse or harm, or other care.

61 (h) ["Ward"] "Protected person" means a person for whom a
62 guardianship is granted under sections 45a-669 to [45a-684] 45a-683,
63 inclusive, as amended by this act.

64 Sec. 2. Section 45a-670 of the general statutes is repealed and the
65 following is substituted in lieu thereof (*Effective October 1, 2016*):

66 (a) [An application] A petition for guardianship may be filed [by the
67 court on its own motion or] by any adult person. [The application and
68 all records of Probate Court proceedings held as a result of the filing of
69 such application, except for the name of any guardian of the
70 respondent, shall be sealed and shall be made available only to the
71 respondent or the respondent's counsel or guardian, and to the
72 Commissioner of Developmental Services or the commissioner's
73 designee, unless the Probate Court, after hearing held with notice to
74 the respondent or the respondent's counsel or guardian, and to the
75 commissioner or the commissioner's designee, determines that such
76 application and records should be disclosed for cause shown. An
77 application filed by the court on its own motion shall contain a
78 statement of the facts on which the court bases its motion, and such

79 statement of facts shall be included in any notice to the respondent.]
80 Any [other application] petition filed shall allege that a respondent, by
81 reason of the severity of the respondent's intellectual disability, is
82 unable to meet essential requirements for the respondent's physical
83 health and safety and unable to make informed decisions about
84 matters relating to the respondent's care. Such [application] petition
85 shall be filed in [the court of probate] Probate Court in the district in
86 which the respondent resides, [or] is domiciled or is located at the time
87 of the filing of the petition. Such [application] petition shall state: (1)
88 Whether there is, in any jurisdiction, a guardian, limited guardian, or
89 conservator for the respondent; (2) the extent of the respondent's
90 inability to meet essential requirements for the respondent's physical
91 health or safety, and the extent of the respondent's inability to make
92 informed decisions about matters related to the respondent's care; (3)
93 any other facts upon which guardianship is sought; and (4) in the case
94 of a limited guardianship, the specific areas of protection and
95 assistance required for the respondent.

96 (b) [An application] A petition for guardianship may be filed by the
97 parent or guardian of a minor child up to one hundred eighty days
98 prior to the date such child attains the age of eighteen if the parent or
99 guardian anticipates that such minor child will require a guardian
100 upon attaining the age of eighteen. The court may grant such
101 [application] petition in accordance with this section, provided such
102 order shall take effect no earlier than the date the child attains the age
103 of eighteen.

104 (c) All records of cases related to guardianship under sections 45a-
105 669 to 45a-683, inclusive, as amended by this act, shall be confidential
106 and shall not be open to public inspection by or disclosed to any
107 person, except that (1) such records shall be available to (A) the parties
108 in any such case and their counsel, (B) the Department of
109 Developmental Services, and (C) the office of the Probate Court
110 Administrator; (2) if the court appoints a guardian, the names of the
111 guardian and the protected person shall be public; and (3) the court
112 may, after hearing with notice to the respondent, the respondent's

113 counsel, the guardian and the Department of Developmental Services,
114 permit records to be disclosed for cause shown.

115 Sec. 3. Section 45a-671 of the 2016 supplement to the general statutes
116 is repealed and the following is substituted in lieu thereof (*Effective*
117 *October 1, 2016*):

118 (a) Not later than forty-five days after the date of filing [an
119 application] a petition for guardianship with the Probate Court, such
120 court shall assign a time and place for hearing such [application]
121 petition. Notwithstanding the provisions of section 45a-7, the court
122 may hold the hearing on the [application] petition at a place within the
123 state other than its usual courtroom if it would facilitate the presence
124 of the respondent. Such court shall cause a citation and notice to be
125 served upon the respondent by personal service made by a state
126 marshal, constable or an indifferent person not less than seven days
127 prior to the date of such hearing.

128 (b) The court shall direct notice by first class mail to the following:
129 (1) The [applicant] petitioner; (2) the parents of the respondent; (3) the
130 spouse of the respondent; (4) children of the respondent; [, if any;] (5)
131 the siblings of the respondent or their representatives, if the
132 respondent has no living parents; and (6) the person in charge of the
133 hospital, nursing home, residential facility or other institution in which
134 the respondent may reside.

135 (c) The court in its discretion may order such notice as it directs to
136 other persons having an interest in the respondent.

137 Sec. 4. Section 45a-672 of the general statutes is repealed and the
138 following is substituted in lieu thereof (*Effective October 1, 2016*):

139 The notice required by subsection (a) of section 45a-671, as amended
140 by this act, shall inform such respondent of (1) whether the
141 guardianship sought is a plenary or a limited guardianship and that
142 the court, notwithstanding which type of guardianship is sought, may
143 appoint a plenary guardian or a limited guardian [of the person with

144 intellectual disability] with such limitations as the court determines; (2)
145 the legal consequences of both plenary and limited guardianships; (3)
146 the facts alleged in the [application] petition and the limitations on the
147 guardian's authority, if any, specifically applied for; and (4) the right to
148 be represented by counsel.

149 Sec. 5. Section 45a-674 of the general statutes is repealed and the
150 following is substituted in lieu thereof (*Effective October 1, 2016*):

151 At any hearing for appointment of a plenary guardian or limited
152 guardian, [of the person with intellectual disability,] the court shall
153 receive evidence as to the condition of the respondent, including a
154 written report or testimony by a Department of Developmental
155 Services assessment team appointed by the Commissioner of
156 Developmental Services or his or her designee, no member of which is
157 related by blood, marriage or adoption to either the [applicant]
158 petitioner or the respondent and each member of which has personally
159 observed or examined the respondent within forty-five days next
160 preceding such hearing. The assessment team shall be comprised of at
161 least two representatives from among appropriate disciplines having
162 expertise in the evaluation of persons alleged to have intellectual
163 disability. The assessment team members shall make their report on a
164 form provided for that purpose by the office of the Probate Court
165 Administrator and shall answer questions on such form as fully and
166 completely as possible. The report shall contain specific information
167 regarding the severity of the intellectual disability of the respondent
168 and those specific areas, if any, in which [he] the respondent needs the
169 supervision and protection of a guardian, and shall state upon the
170 form the reasons for such opinions. The [applicant] petitioner,
171 respondent or [his] the respondent's counsel shall have the right to
172 present evidence and cross-examine witnesses who testify at any
173 hearing on the [application. If such] petition. If the respondent or [his]
174 the respondent's counsel notifies the court not less than three days
175 before the hearing that he or she wishes to cross-examine the
176 witnesses, the court shall order such witnesses to appear. The fees for
177 such assessment team shall be paid from funds appropriated to the

178 Department of Developmental Services.

179 Sec. 6. Section 45a-675 of the general statutes is repealed and the
180 following is substituted in lieu thereof (*Effective October 1, 2016*):

181 The respondent shall be present at any hearing for his or her
182 guardianship, [provided] except that the court may exclude [him] the
183 respondent from such portions of the hearing at which testimony is
184 given which the court determines would be seriously detrimental to
185 his or her emotional or mental condition. Any person having
186 knowledge that the respondent is or will be medicated at that time,
187 shall inform the court of such fact and to the extent he or she knows
188 the same, shall inform the court of the common effects of such
189 medication.

190 Sec. 7. Section 45a-676 of the general statutes is repealed and the
191 following is substituted in lieu thereof (*Effective October 1, 2016*):

192 (a) If the court finds, by clear and convincing evidence, that the
193 respondent is, by reason of the severity of the respondent's intellectual
194 disability, totally unable to meet essential requirements for the
195 respondent's physical health or safety and totally unable to make
196 informed decisions about matters related to the respondent's care, the
197 court shall appoint a plenary guardian or plenary coguardians [of the
198 person with intellectual disability] who shall have all those powers
199 and duties provided for in section 45a-677, as amended by this act.

200 (b) If the court finds by clear and convincing evidence that the
201 respondent is able to do some, but not all, of the tasks necessary to
202 meet essential requirements for the respondent's physical health or
203 safety or that the respondent is able to make some, but not all,
204 informed decisions about matters related to the respondent's care, the
205 court shall appoint a limited guardian or limited coguardians. [of the
206 person with intellectual disability.]

207 (c) For the purposes of sections 45a-669 to [45a-684] 45a-683,
208 inclusive, as amended by this act, any alleged inability of the

209 respondent must be evidenced by recent behavior that would cause
210 harm or create a risk of harm, by clear and convincing proof.

211 (d) The court shall take from any such plenary guardian or limited
212 guardian a written acceptance of such guardianship and, if the court
213 deems it necessary for the protection of the respondent, a probate
214 bond.

215 (e) The court shall make written findings of fact that support each
216 grant of authority to the plenary guardian or limited guardian. If the
217 court in reaching its conclusion is relying on incidents of behavior that
218 occurred more than six months prior to the date of hearing, the court
219 findings shall include its reasoning for relying upon such incidents.

220 (f) In selecting a plenary guardian or limited guardian, [of the
221 person with intellectual disability,] the court shall be guided by the
222 best interests of the respondent, including, but not limited to, the
223 preference of the respondent as to who should be appointed as plenary
224 guardian or limited guardian.

225 (g) No person shall be excluded from serving as a plenary guardian
226 or limited guardian solely because such person is employed by the
227 Department of Developmental Services, except that (1) no such
228 employee may be appointed as a plenary guardian or limited guardian
229 of a person [with intellectual disability] residing in a state-operated
230 residential facility for persons with intellectual disability located in the
231 Department of Developmental Services region in which such person is
232 employed; and (2) no such employee shall be so appointed unless no
233 other suitable person to serve as plenary guardian or limited guardian
234 can be found. Any appointment of an employee of the Department of
235 Developmental Services as a plenary guardian or limited guardian
236 shall be made for a limited purpose and duration. During the term of
237 appointment of any such employee, the Commissioner of
238 Developmental Services shall search for a suitable person who is not
239 an employee of the department to replace such employee as plenary
240 guardian or limited guardian.

241 (h) No person shall be excluded from serving as a plenary guardian
242 or limited guardian solely because such person is employed by a
243 private facility funded or licensed by the Department of
244 Developmental Services, except that (1) no such employee may be
245 appointed as a plenary guardian or limited guardian of a person [with
246 intellectual disability] residing in a residential facility in which such
247 employee is employed, and (2) no such employee shall be so appointed
248 unless no other suitable person to serve as plenary guardian or limited
249 guardian can be found.

250 (i) No person shall be excluded from serving as a plenary guardian
251 or limited guardian solely because such person is licensed by the
252 Department of Developmental Services to operate a community
253 companion home, except that (1) no such licensee, nor any of such
254 licensee's relatives or household members, may be appointed as a
255 plenary guardian or limited guardian of a person [with intellectual
256 disability] residing in a community companion home operated by such
257 licensee, and (2) no such licensee shall be so appointed unless no other
258 suitable person to serve as plenary guardian or limited guardian can
259 be found.

260 Sec. 8. Section 45a-677 of the general statutes is repealed and the
261 following is substituted in lieu thereof (*Effective October 1, 2016*):

262 (a) The court may assign to a limited guardian [of a person with
263 intellectual disability] any portion of the duties and powers listed in
264 subsection (d) of this section for those particular areas in which the
265 [respondent] protected person lacks the capacity to meet the essential
266 requirements for [such respondent's] the protected person's physical or
267 mental health or safety.

268 (b) A limited guardian may also be assigned the duty to assist the
269 [respondent] protected person in those particular areas in which the
270 capacity of the [respondent] protected person to meet the essential
271 requirements of such [respondent's] protected person's physical or
272 mental health or safety, protect such [respondent's] protected person's
273 rights, obtain necessary services, or to fulfill such [respondent's]

274 protected person's civil duties is impaired, as well as in other ways not
275 specifically prohibited by sections 45a-669 to [45a-684] 45a-683,
276 inclusive, as amended by this act.

277 (c) A limited guardian [of a person with intellectual disability] shall
278 have only such of the duties and responsibilities and powers of a
279 guardian [of a person with intellectual disability] under subsection (d)
280 of this section as the court shall specify based upon its findings with
281 regard to the individual need of the [respondent] protected person for
282 supervision. The guardian shall have the duty to report to the [probate
283 court which] Probate Court that appointed such limited guardian at
284 least annually the condition of the [respondent] protected person. The
285 preceding duties, responsibilities and powers shall be carried out
286 within the limitations of the resources available to the [ward] protected
287 person, either through the [ward's] protected person's own estate or by
288 reason of private or public assistance.

289 (d) The court may assign to a limited guardian the custody of the
290 [ward] protected person for the purpose of exercising any, but not all,
291 of the following limited duties and powers, in order to assist the
292 [ward] protected person in achieving self-reliance: (1) To assure and
293 consent to a place of abode outside the natural family home, (2) to
294 consent to specifically designed educational, vocational or behavioral
295 programs, (3) to consent to the release of clinical records and
296 photographs, (4) to assure and consent to routine, elective and
297 emergency medical and dental care, and (5) other specific limited
298 powers to assure and consent to services necessary to develop or
299 regain to the maximum extent possible the [ward's] protected person's
300 capacity to meet essential requirements. All plenary guardians and
301 limited guardians appointed pursuant to sections 45a-669 to [45a-684]
302 45a-683, inclusive, as amended by this act, shall also have a duty to
303 assure the care and comfort of the [ward] protected person within the
304 limitations of their appointment, and within the limitations of the
305 resources available to the [ward] protected person either through the
306 [ward's] protected person's own estate or by reason of private or public
307 assistance.

308 (e) A plenary guardian or limited guardian [of a person with
309 intellectual disability] shall not have the power or authority: (1) To
310 cause the [ward] protected person to be admitted to any institution for
311 treatment of the mentally ill, except in accordance with the provisions
312 of sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive,
313 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to
314 17a-576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-
315 664, inclusive, and chapter 420b; (2) to cause the [ward] protected
316 person to be admitted to any training school or other facility provided
317 for the care and training of persons with intellectual disability if there
318 is a conflict concerning such admission between the guardian and the
319 protected person [with intellectual disability] or next of kin, except in
320 accordance with the provisions of sections 17a-274 and 17a-275; (3) to
321 consent on behalf of the [ward] protected person to a sterilization,
322 except in accordance with the provisions of sections 45a-690 to 45a-700,
323 inclusive; (4) to consent on behalf of the [ward] protected person to
324 psychosurgery, except in accordance with the provisions of section
325 17a-543; (5) to consent on behalf of the [ward] protected person to the
326 termination of the [ward's] protected person's parental rights, except in
327 accordance with the provisions of sections 45a-706 to 45a-709,
328 inclusive, 45a-715 to 45a-718, inclusive, 45a-724 to 45a-737, inclusive,
329 and 45a-743 to 45a-757, inclusive; (6) to consent on behalf of the [ward]
330 protected person to the performance of any experimental biomedical
331 or behavioral medical procedure or participation in any biomedical or
332 behavioral experiment, unless it (A) is intended to preserve the life or
333 prevent serious impairment of the physical health of the [ward]
334 protected person, (B) is intended to assist the [ward] protected person
335 to regain the [ward's] protected person's abilities and has been
336 approved for the [ward] protected person by the court, or (C) has been
337 (i) approved by a recognized institutional review board, as defined by
338 45 CFR 46, 21 CFR 50 and 21 CFR 56, as amended from time to time,
339 which is not a part of the Department of Developmental Services, (ii)
340 endorsed or supported by the Department of Developmental Services,
341 and (iii) approved for the [ward] protected person by such [ward's]
342 protected person's primary care physician; (7) to admit the [ward]

343 protected person to any residential facility operated by an organization
344 by whom such guardian is employed, except in accordance with the
345 provisions of section 17a-274; (8) to prohibit the marriage or divorce of
346 the [ward] protected person; and (9) to consent on behalf of the [ward]
347 protected person to an abortion or removal of a body organ, except in
348 accordance with applicable statutory procedures when necessary to
349 preserve the life or prevent serious impairment of the physical or
350 mental health of the [ward] protected person.

351 (f) A plenary guardian or limited guardian shall submit a report to
352 the court: (1) Annually; (2) when the court orders additional reports to
353 be filed; (3) when there is a significant change in the capacity of the
354 [ward] protected person to meet the essential requirements for the
355 [ward's] protected person's physical health or safety; (4) when the
356 plenary guardian or limited guardian resigns or is removed; and (5)
357 when the guardianship is terminated.

358 (g) Such reports shall be submitted on a form provided by the office
359 of the Probate Court Administrator and shall contain the following
360 information: (1) Significant changes in the capacity of the [ward]
361 protected person to meet the essential requirements for the [ward's]
362 protected person's physical health or safety; (2) the services being
363 provided to the [ward] protected person and the relationship of those
364 services to the individual guardianship plan; (3) the significant actions
365 taken by the limited guardian [of a person with intellectual disability]
366 or plenary guardian [of a person with intellectual disability] during the
367 reporting period; (4) any significant problems relating to the
368 guardianship which have arisen during the reporting period; and (5)
369 whether such guardianship, in the opinion of the guardian, should
370 continue, be modified, or be terminated, and the reasons therefor.

371 (h) When any protected person [with intellectual disability for
372 whom a guardian has been appointed] becomes a resident of any
373 [town in the state in a] probate district in this state other than the one
374 in which a guardian was appointed, or becomes a resident of any
375 [town in the state] probate district in this state other than the one to

376 which the guardianship file has been transferred under this section,
377 [such] the court in [that district] which the guardianship matter is on
378 file may, upon motion of any person deemed by the court to have
379 sufficient interest in the welfare of the [respondent] protected person,
380 including, but not limited to, the guardian, the Commissioner of
381 Developmental Services or the commissioner's designee, or a relative
382 of the protected person, [under guardianship,] transfer the file to the
383 probate district in which the protected person [under guardianship]
384 resides at the time of the [application] motion, provided the transfer is
385 in the protected person's best interest. [of the person with intellectual
386 disability.] A transfer of the file shall be accomplished by the [probate
387 court] Probate Court in which the guardianship matter is on file by
388 making copies of all documents in the court and certifying each of
389 them and then causing them to be delivered to the court for the district
390 in which the protected person [under guardianship] resides. When the
391 transfer is made, the [court of probate] Probate Court in which the
392 protected person [under guardianship] resides at the time of transfer
393 shall thereupon assume jurisdiction over the guardianship and all
394 further accounts shall be filed with such court.

395 (i) A plenary guardian or limited guardian [of a person with
396 intellectual disability] and, to the extent appropriate, [such] the
397 protected person shall be the primary decision maker with respect to
398 programs needed by [such] the protected person and policies and
399 practices affecting the well-being of [such] the protected person within
400 the authority granted by the court pursuant to this section, provided
401 any such decision does not conflict with the requirements of section
402 17a-238. In making any such decision, the plenary guardian or limited
403 guardian shall consult with the [ward] protected person and
404 appropriate members of the [ward's] protected person's family, where
405 possible. A limited guardian shall be the primary decision maker only
406 with respect to such duties assigned to the limited guardian by the
407 court. The provisions of this subsection shall be included in any court
408 order appointing a plenary guardian or limited guardian. [of a person
409 with intellectual disability.]

410 Sec. 9. Section 45a-678 of the general statutes is repealed and the
411 following is substituted in lieu thereof (*Effective October 1, 2016*):

412 Any plenary guardian or limited guardian [of the person with
413 intellectual disability] serving in accordance with the provisions of
414 sections 45a-669 to [45a-684] 45a-683, inclusive, as amended by this act,
415 may be removed by the [court of probate] Probate Court which
416 appointed such guardian and another person appointed guardian [of
417 the person with intellectual disability] if the court [of probate] making
418 such appointment, after notice and hearing as required in section 45a-
419 671, as amended by this act, finds such removal and appointment of a
420 new plenary guardian or limited guardian [of the person with
421 intellectual disability] to be in the best interest of the [respondent]
422 protected person. In the event [an application] a petition for removal
423 has been filed under this section, the attorney of record for the
424 [respondent] protected person shall have access to all of the records of
425 the respondent.

426 Sec. 10. Section 45a-679 of the general statutes is repealed and the
427 following is substituted in lieu thereof (*Effective October 1, 2016*):

428 If a [ward] protected person or conserved person has both a plenary
429 guardian or limited guardian [of the person with intellectual disability]
430 and a conservator of the estate or person or a temporary conservator
431 who are not the same person and a conflict arises between the two
432 concerning the duties and responsibilities or authority of either, the
433 matter shall be submitted to the [court of probate] Probate Court
434 making the appointment of such guardian or conservator and such
435 court shall, after a hearing, order the course of action which in its
436 discretion is in the best interest of the [ward] protected person or
437 conserved person.

438 Sec. 11. Section 45a-680 of the general statutes is repealed and the
439 following is substituted in lieu thereof (*Effective October 1, 2016*):

440 Whenever a [court of probate] Probate Court appoints a plenary
441 guardian or limited guardian, [of the person with intellectual

442 disability,] such court may appoint a standby plenary guardian or a
443 standby limited guardian. [of the person with intellectual disability.]
444 Such standby shall act if the appointed plenary guardian or limited
445 guardian [of the person with intellectual disability] dies, becomes
446 incapable, or renounces his or her plenary guardianship or limited
447 guardianship. The standby plenary guardian or standby limited
448 guardian shall immediately inform the [court of probate] Probate
449 Court which has jurisdiction over such guardianship of his or her
450 assumption of the guardianship and the reason therefor. The standby
451 guardian, in the event of the guardian's death, incapacity or
452 renunciation, shall, upon furnishing a probate bond if such a bond had
453 been required from the plenary guardian or limited guardian whose
454 duties are being assumed, but without further proceedings, be
455 empowered to assume the duties of his or her office immediately upon
456 the death or adjudication of incompetency of the plenary guardian [of
457 the person] or limited guardian, [of the person of the person with
458 intellectual disability,] subject only to confirmation of his or her
459 appointment by the [court of probate] Probate Court within sixty days
460 following assumption of his or her duties of office.

461 Sec. 12. Section 45a-681 of the general statutes is repealed and the
462 following is substituted in lieu thereof (*Effective October 1, 2016*):

463 (a) The court shall review each guardianship [of the person with
464 intellectual disability or limited guardianship of the person with
465 intellectual disability] at least every three years and shall either
466 continue, modify or terminate the order for guardianship. Pursuant to
467 such review:

468 (1) The court shall receive and review written evidence as to the
469 condition of the [ward] protected person. Except as provided in
470 subdivision (2) of this subsection, the guardian and a Department of
471 Developmental Services professional or, if requested by the [ward]
472 protected person or by the court, an assessment team appointed by the
473 Commissioner of Developmental Services or the commissioner's
474 designee shall each submit a written report to the court not later than

475 forty-five days after the court's request for such report.

476 (2) In the case of a [ward] protected person who is functioning
477 adaptively and intellectually within the severe or profound range of
478 intellectual disability, as determined by the Department of
479 Developmental Services, the court shall receive and review written
480 reports as to the condition of the [ward] protected person only from
481 the guardian, except that the court may require a Department of
482 Developmental Services professional or assessment team to submit a
483 written report as to the condition of [such ward] the protected person.

484 (3) The Department of Developmental Services professional or
485 assessment team shall personally observe or examine the [ward]
486 protected person within the forty-five-day period preceding the date it
487 submits any report under subdivision (4) of this subsection.

488 (4) Each written report shall be submitted to the court not later than
489 forty-five days after the court's request for such report. On receipt of a
490 written report from the guardian or a Department of Developmental
491 Services professional or assessment team, the court shall provide a
492 copy of the report to the attorney for the [ward] protected person.

493 (5) Not later than thirty days after the attorney for the [ward]
494 protected person receives a copy of a report pursuant to subdivision
495 (4) of this subsection, the protected person's attorney [for the ward]
496 shall (A) meet with the [ward] protected person concerning the report,
497 and (B) provide written notice to the court (i) that the protected
498 person's attorney [for the ward] has met with the [ward] protected
499 person, and (ii) indicating whether a hearing is requested. Nothing in
500 this section shall prevent the [ward] protected person or the protected
501 person's attorney [for the ward] from requesting a hearing at any other
502 time as permitted by law.

503 (6) If the [ward] protected person is unable to request or obtain an
504 attorney, the court shall appoint an attorney for the [ward] protected
505 person. If the [ward] protected person is unable to pay for the services
506 of the attorney, the reasonable compensation of such attorney shall be

507 established by, and paid from funds appropriated to, the Judicial
508 Department; however, if funds have not been included in the budget
509 of the Judicial Department for such purposes, such compensation shall
510 be established by the Probate Court Administrator and paid from the
511 Probate Court Administration Fund.

512 (b) If the court determines, after receipt of the reports from the
513 Department of Developmental Services professional or assessment
514 team and the guardian, and notice from the attorney for the [ward]
515 protected person, that there has been no change in the condition of the
516 [ward] protected person since the last preceding review by the court, a
517 hearing on the condition of the [ward] protected person shall not be
518 required, but the court, in its discretion, may hold such hearing. If the
519 protected person's attorney, [for the ward,] the Department of
520 Developmental Services professional or assessment team or the
521 guardian requests a hearing, the court shall hold a hearing within
522 thirty days of such request. No order expanding or reducing the
523 powers and responsibilities of a guardian shall be issued unless such
524 hearing is held.

525 Sec. 13. Section 45a-682 of the general statutes is repealed and the
526 following is substituted in lieu thereof (*Effective October 1, 2016*):

527 (a) [An application] A petition for a temporary limited guardian
528 may be filed by any interested party alleging that the respondent is in
529 need of elective surgical, medical or dental procedures or treatment
530 involving the use of general anesthesia, and that by reason of the
531 severity of [his] intellectual disability, he or she is unable to give
532 informed consent to such treatment. Such [application] petition shall
533 include two certificates, one signed by a physician licensed to practice
534 medicine or surgery in this state and one signed by a licensed
535 psychologist, stating that each has, within thirty days prior to the filing
536 of the [application] petition, examined the respondent and in his or her
537 opinion (1) the respondent's condition renders him or her incapable of
538 giving informed consent to said procedure, and (2) without such
539 treatment, the respondent will suffer deterioration of his or her

540 physical or mental health or serious discomfort.

541 (b) Immediately upon receipt of the [application] petition, the court
542 shall order such notice of the [application] petition and the date and
543 time of hearing as it may direct to the respondent, the respondent's
544 parents or spouse, if any, and to the Office of Protection and Advocacy
545 for Persons with Disabilities. A hearing shall be held promptly, taking
546 into consideration the condition of the respondent. If, after hearing, the
547 court finds that the respondent by reason of the severity of the
548 respondent's intellectual disability is incapable of giving informed
549 consent to such procedure, and that the respondent will suffer
550 deterioration of the respondent's physical or mental health or serious
551 discomfort if such procedure or treatment, or both, is not ordered, the
552 court may appoint a temporary limited guardian for the purpose of
553 consenting to such procedure or treatment, or both. In making such
554 appointment, the court shall give preference to the parent, next of kin
555 or other person whom the court deems proper. The court may appoint
556 the Commissioner of Developmental Services, or the commissioner's
557 designee, to serve in such capacity if it is unable to find a suitable
558 guardian. The appointment shall not be valid for more than sixty days.
559 A temporary limited guardian shall be subject to all limitations set
560 forth in section 45a-677, as amended by this act.

561 Sec. 14. Section 45a-683 of the general statutes is repealed and the
562 following is substituted in lieu thereof (*Effective October 1, 2016*):

563 Any plenary guardian, [of a person with intellectual disability,]
564 temporary limited guardian or limited guardian [of a person with
565 intellectual disability] who acts in good faith or pursuant to order of a
566 [court of probate] Probate Court pursuant to the provisions of sections
567 45a-669 to [45a-684] 45a-683, inclusive, as amended by this act, shall be
568 immune from civil liability, except that such immunity shall not extend
569 to gross negligence.

570 Sec. 15. Subsection (a) of section 9-159s of the general statutes is
571 repealed and the following is substituted in lieu thereof (*Effective*
572 *October 1, 2016*):

573 (a) The administrator of an institution, as defined in subsection (a)
574 of section 9-159q, a residential facility for persons with intellectual
575 disability licensed pursuant to section 17a-227, or a community
576 residence, as defined in section 19a-507a, shall use his or her best
577 efforts to provide written notice pursuant to subsection (b) of this
578 section to any conservator or guardian appointed to manage the affairs
579 of a resident of such institution, facility or residence pursuant to
580 sections 45a-644 to 45a-663, inclusive, or sections 45a-669 to [45a-684]
581 45a-683, inclusive, as amended by this act, at least seven days prior to
582 the date any voter registration or voting opportunity is presented to
583 the resident with respect to a primary, referendum or election. As used
584 in this section, "voter registration" or "voting opportunity" includes,
585 but is not limited to, the solicitation or completion of: (1) An
586 application for admission as an elector; or (2) an absentee ballot,
587 regardless of whether supervised absentee ballot voting will take place
588 at such institution. The administrator of such institution, facility or
589 residence shall also use his or her best efforts to provide written notice
590 to any such conservator or guardian at least seven days prior to the
591 date when the resident may be brought to a polling place to vote in
592 person. The notification provisions of this section shall not apply when
593 a member of the resident's immediate family provides the resident
594 with an absentee ballot application or brings the resident to a polling
595 place to vote.

596 Sec. 16. Section 17a-281 of the general statutes is repealed and the
597 following is substituted in lieu thereof (*Effective October 1, 2016*):

598 Any person who is a resident of Connecticut at the time an
599 application is made by such resident or on behalf of such resident
600 under the provisions of this section, and who is, or appears to be, or
601 believes himself or herself to be a person with intellectual disability,
602 may apply, in writing, to the Commissioner of Developmental
603 Services, on a form prescribed by the commissioner, for admission to
604 any facility for persons with intellectual disability. Such application
605 shall be accompanied by a medical history of the applicant, including
606 any medical or physical condition requiring special attention,

607 treatment or precautions, a written psychological report provided by a
608 psychologist either licensed under the provisions of chapter 383 or
609 employed by the Department of Developmental Services, who has
610 personally examined the applicant prior to the filing of application for
611 residential placement or a copy of the determination of eligibility made
612 in accordance with section 17a-212 and the regulations adopted
613 thereunder. The written psychological report shall include (1) a
614 statement that the psychologist has personally examined the applicant
615 not more than ninety days prior to the date of filing of the application,
616 (2) the results of a psychometric assessment conducted not more than
617 one year prior to the date of filing of the application, and (3) an
618 evaluation of the applicant's current level of adaptive functioning,
619 including self-care, mental health, social, academic and vocational
620 needs. In the event of an emergency, admission to a residential facility
621 may be made and the required medical history and psychologist's
622 report may be submitted not later than thirty days after the date of
623 such admission. The application for such person, if such person is a
624 minor, may be made by a parent, guardian of the person of, or person
625 having custody of, such minor. If such person is an adult who has had
626 a guardian appointed pursuant to sections 45a-669 to [45a-684] 45a-
627 683, inclusive, as amended by this act, such person's guardian may
628 apply for admission and the commissioner may admit such person,
629 provided the commissioner is satisfied that there is no conflict
630 concerning the admission between the guardian and his or her ward or
631 the ward's next of kin. If such conflict exists, the applicant may only be
632 admitted under the provisions of section 17a-274. The commissioner
633 may approve any such application for admission if the person on
634 whose behalf application is made is suitable for admission and if space
635 is available and may terminate such admission at any time when the
636 commissioner feels such person will not profit from continued
637 placement. The provisions of this section shall not apply to persons
638 who apply to the commissioner for respite care services for a period
639 not to exceed thirty days.

640 Sec. 17. Subdivision (3) of subsection (i) of section 45a-186 of the
641 general statutes is repealed and the following is substituted in lieu

642 thereof (*Effective October 1, 2016*):

643 (3) The following matters shall not be referred to a special
 644 assignment probate judge pursuant to this subsection: Appeals under
 645 sections 17a-75 to 17a-83, inclusive, section 17a-274, sections 17a-495 to
 646 17a-528, inclusive, sections 17a-543, 17a-543a, 17a-685 to 17a-688,
 647 inclusive, children's matters as defined in subsection (a) of section 45a-
 648 8a, sections 45a-644 to 45a-663, inclusive, 45a-668 to [45a-684] 45a-683,
 649 inclusive, as amended by this act, and 45a-690 to 45a-700, inclusive,
 650 and any matter in a Probate Court heard on the record in accordance
 651 with sections 51-72 and 51-73.

652 Sec. 18. Subdivision (7) of section 46a-11a of the general statutes is
 653 repealed and the following is substituted in lieu thereof (*Effective*
 654 *October 1, 2016*):

655 (7) "Guardian" means the guardian or limited guardian of a person
 656 with intellectual disability appointed pursuant to sections 45a-669 to
 657 [45a-684] 45a-683, inclusive, as amended by this act;

658 Sec. 19. Section 45a-684 of the 2016 supplement to the general
 659 statutes is repealed. (*Effective July 1, 2016*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	45a-669
Sec. 2	<i>October 1, 2016</i>	45a-670
Sec. 3	<i>October 1, 2016</i>	45a-671
Sec. 4	<i>October 1, 2016</i>	45a-672
Sec. 5	<i>October 1, 2016</i>	45a-674
Sec. 6	<i>October 1, 2016</i>	45a-675
Sec. 7	<i>October 1, 2016</i>	45a-676
Sec. 8	<i>October 1, 2016</i>	45a-677
Sec. 9	<i>October 1, 2016</i>	45a-678
Sec. 10	<i>October 1, 2016</i>	45a-679
Sec. 11	<i>October 1, 2016</i>	45a-680
Sec. 12	<i>October 1, 2016</i>	45a-681
Sec. 13	<i>October 1, 2016</i>	45a-682

Sec. 14	<i>October 1, 2016</i>	45a-683
Sec. 15	<i>October 1, 2016</i>	9-159s(a)
Sec. 16	<i>October 1, 2016</i>	17a-281
Sec. 17	<i>October 1, 2016</i>	45a-186(i)(3)
Sec. 18	<i>October 1, 2016</i>	46a-11a(7)
Sec. 19	<i>July 1, 2016</i>	Repealer section

HS *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.

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

The bill expands the types of entities that the probate court may appoint as guardians and makes procedural and technical changes that do not result in a fiscal impact.

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

OLR Bill Analysis**HB 5255*****AN ACT CONCERNING GUARDIANSHIP OF PERSONS WITH INTELLECTUAL DISABILITY.*****SUMMARY:**

This bill updates terminology and makes unrelated changes to statutes governing probate court processes to appoint guardians for adults with intellectual disabilities.

The bill expands the types of entities that the probate court may appoint as guardians for adults with intellectual disabilities to include, in addition to private, nonprofit corporations authorized under current law, (1) for-profit corporations, (2) limited liability companies, (3) partnerships, and (4) other state-recognized nonprofit or for-profit entities. Under the bill, this change applies to both (1) plenary guardians, who supervise all aspects of an adult's care, and (2) limited guardians, who supervise certain specified aspects of an adult's care. By law, unaffected by the bill, residential care homes cannot be plenary guardians, and hospitals and nursing homes cannot be plenary or limited guardians.

The bill makes several changes to the confidentiality of documents in guardianship cases. Under current law, applications for guardianship and subsequent records of probate court proceedings must be sealed, except for the guardian's name. Under the bill, records related to guardianship cases are confidential; the bill expands the exception to include the protected person's name. Current law allows disclosure of records to the respondent, the respondent's counsel or guardian, and the Department of Developmental Services (DDS) commissioner or her designee. The bill instead allows disclosure to all parties in the case and their counsel, DDS, and the Office of the Probate Administrator. Under current law, the probate court may disclose

records to other parties for cause shown, as long as the court gives notice to the (1) respondent, respondent's counsel, or guardian, and (2) DDS commissioner or her designee. The bill instead requires the court to give notice to the (1) respondent, (2) respondent's counsel, (3) guardian, and (4) DDS.

The bill renames "ward" under current law as "protected person." The definition still refers to a person for whom the probate court grants guardianship.

EFFECTIVE DATE: October 1, 2016, except for a technical provision on probate court fees, which is effective July 1, 2016.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 16 Nay 0 (03/10/2016)