



General Assembly

Substitute Bill No. 6535

January Session, 2001

**AN ACT CONCERNING INDEMNIFICATION OF COURT APPOINTED
HEALTH CARE GUARDIANS.**

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

1 Subsection (k) of section 54-56d of the general statutes is repealed
2 and the following is substituted in lieu thereof:

3 (k) (1) When any placement order for treatment is rendered or
4 continued, the court shall set a date for a hearing, to be held within
5 ninety days, for reconsideration of the issue of the defendant's
6 competency. Whenever the court receives a report pursuant to
7 subsection (j) of this section which indicates that (A) the defendant has
8 attained competency, (B) the defendant will not attain competency
9 within the remainder of the period covered by the placement order, or
10 (C) the defendant will not attain competency within the remainder of
11 the period covered by the placement order absent administration of
12 psychiatric medication for which the defendant is unwilling or unable
13 to provide consent, the court shall set the matter for a hearing no later
14 than ten days after the report is received. The hearing may be waived
15 by the defendant only if the report indicates that [he] the defendant is
16 competent. The court shall determine whether the defendant is
17 competent or [whether he] is making progress toward attainment of
18 competency within the period covered by the placement order. If the
19 court finds that the defendant is competent, [he] the defendant shall be
20 returned to the custody of the Commissioner of Correction or released,

21 if [he] the defendant has met the conditions for release, and the court
22 shall continue with the criminal proceedings. If the court finds that the
23 defendant is still not competent but that [he] the defendant is making
24 progress toward attaining competency, it may continue or modify the
25 placement order. If the court finds that the defendant is still not
26 competent and will not attain competency within the remainder of the
27 period covered by the placement order absent administration of
28 psychiatric medication for which [he] the defendant is unwilling or
29 unable to provide consent, it shall proceed as provided in subdivisions
30 (2) and (3) of this subsection.

31 (2) If the court finds that the defendant will not attain competency
32 within the remainder of the period covered by the placement order
33 absent administration of psychiatric medication for which the
34 defendant is unwilling or unable to provide consent, and after any
35 hearing held pursuant to subdivision (3) of this subsection, it may
36 order the involuntary medication of the defendant if it finds by clear
37 and convincing evidence that: (A) To a reasonable degree of medical
38 certainty involuntary medication of the defendant will render [him]
39 the defendant competent to stand trial, (B) an adjudication of guilt or
40 innocence cannot be had using less intrusive means, (C) the proposed
41 treatment plan is narrowly tailored to minimize intrusion on the
42 defendant's liberty and privacy interests, (D) the proposed drug
43 regime will not cause an unnecessary risk to the defendant's health,
44 and (E) the seriousness of the alleged crime is such that the criminal
45 law enforcement interest of the state in fairly and accurately
46 determining the defendant's guilt or innocence overrides the
47 defendant's interest in self-determination.

48 (3) If the court finds that the defendant is unable to provide consent
49 for the administration of psychiatric medication, and prior to deciding
50 whether to order the involuntary medication of the defendant under
51 subdivision (2) of this subsection, the court shall appoint a health care
52 guardian who shall be a licensed health care provider with specialized
53 training in the treatment of persons with psychiatric disabilities to
54 represent the health care interests of the defendant before the court.

55 Notwithstanding the provisions of section 52-146e, such [person]
56 health care guardian shall have access to the psychiatric records of the
57 defendant. Such [person] health care guardian shall file a report with
58 the court not later than thirty days after his or her appointment. The
59 report shall set forth such [person's] health care guardian's findings
60 and recommendations concerning the administration of psychiatric
61 medication to the defendant including the risks and benefits of such
62 medication, the likelihood and seriousness of any adverse side effects
63 and the prognosis with and without such medication. The court shall
64 hold a hearing on the matter not later than ten days after receipt of
65 such [person's] health care guardian's report and shall, in deciding
66 whether to order the involuntary medication of the defendant, take
67 into account such [person's] health care guardian's opinion concerning
68 the health care interests of the defendant.

69 (4) The state shall save harmless and indemnify any health care
70 guardian appointed by the court pursuant to subdivision (3) of this
71 subsection from financial loss and expense arising out of any claim,
72 demand, suit or judgment by reason of such health care guardian's
73 alleged negligence or alleged deprivation of any person's civil rights or
74 other act or omission resulting in damage or injury, provided the
75 health care guardian is found to have been acting in the discharge of
76 his or her duties pursuant to said subdivision (3) and such act or
77 omission is found not to have been wanton, reckless or malicious. The
78 provisions of subsections (b), (c) and (d) of section 5-141d shall apply
79 to such health care guardian. The provisions of chapter 53 shall not
80 apply to a claim against such health care guardian.

JUD **JOINT FAVORABLE SUBST.**