



General Assembly

January Session, 2003

Raised Bill No. 867

LCO No. 2832

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING ALTERNATIVES TO INCARCERATION FOR
PERSONS WITH PSYCHIATRIC DISABILITIES.**

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

1 Section 1. Subsection (d) of section 54-56d of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2003*):

4 (d) If the court finds that the request for an examination is justified
5 and that, in accordance with procedures established by the judges of
6 the Superior Court, there is probable cause to believe that the
7 defendant has committed the crime for which he is charged, the court
8 shall order an examination of the defendant as to his competency. The
9 court [either] may (1) appoint one or more physicians specializing in
10 psychiatry to examine the defendant, or [it may] (2) order the
11 Commissioner of Mental Health and Addiction Services to conduct the
12 examination either (A) by a clinical team consisting of a physician
13 specializing in psychiatry, a clinical psychologist and one of the
14 following: A clinical social worker licensed pursuant to chapter 383b or
15 a psychiatric nurse clinical specialist holding a master's degree in
16 nursing, or (B) by one or more physicians specializing in psychiatry,

17 except that no employee of the Department of Mental Health and
18 Addiction Services who has served as a member of a clinical team in
19 the course of such employment for at least five years prior to October
20 1, 1995, shall be precluded from being appointed as a member of a
21 clinical team. If the Commissioner of Mental Health and Addiction
22 Services is ordered to conduct the examination, [he] the commissioner
23 shall select the members of the clinical team or the physician or
24 physicians. If the examiners determine that the defendant is not
25 competent, they shall then determine whether there is substantial
26 probability that the defendant, if provided with a course of treatment,
27 will regain competency within the maximum period of any placement
28 order under this section, or whether the defendant appears to be
29 eligible for civil commitment, with monitoring by the Court Support
30 Services Division, pursuant to subdivision (2) of subsection (h) of this
31 section, as amended by this act. The court may authorize a physician
32 specializing in psychiatry, a clinical psychologist, a clinical social
33 worker licensed pursuant to chapter 383b or a psychiatric nurse
34 clinical specialist holding a master's degree in nursing selected by the
35 defendant to observe the examination. Counsel for the defendant may
36 observe the examination. The examination shall be completed within
37 fifteen days from the date it was ordered and the examiner or
38 examiners shall prepare and sign, without notarization, a written
39 report and file [it] such report with the court within twenty-one
40 business days of the date of the order. On receipt of the written report,
41 the clerk of the court shall cause copies to be delivered immediately to
42 the state's attorney and to counsel for the defendant.

43 Sec. 2. Subsection (h) of section 54-56d of the general statutes is
44 repealed and the following is substituted in lieu thereof (*Effective*
45 *October 1, 2003*):

46 (h) (1) If, at the hearing, the court finds that there is a substantial
47 probability that the defendant, if provided with a course of treatment,
48 will regain competency within the period of any placement order
49 under this section, the court shall either (A) order placement of the

50 defendant for treatment for the purpose of rendering him competent,
51 or (B) order placement of the defendant at a treatment facility pending
52 civil commitment proceedings pursuant to subdivision (2) of this
53 subsection.

54 (2) (A) Except as provided in subparagraph (B) of this subdivision, if
55 the court makes a finding pursuant to subdivision (1) of this subsection
56 and does not order placement pursuant to subparagraph (A) of said
57 subdivision, the court shall, on its own motion or on motion of the
58 state or the defendant, order placement of the defendant in the custody
59 of the Commissioner of Mental Health and Addiction Services at a
60 treatment facility pending civil commitment proceedings. The
61 treatment facility shall be determined by the Commissioner of Mental
62 Health and Addiction Services. Such order shall: (i) Include an
63 authorization for the Commissioner of Mental Health and Addiction
64 Services to apply for civil commitment of such defendant pursuant to
65 sections 17a-495 to 17a-528, inclusive; (ii) permit the defendant to agree
66 to participate voluntarily in a treatment plan prepared by the
67 Commissioner of Mental Health and Addiction Services and require
68 that the defendant comply with such treatment plan; and (iii) provide
69 that if the application for civil commitment is denied or not pursued
70 by the Commissioner of Mental Health and Addiction Services, or if, in
71 the case of a defendant who is participating voluntarily in a treatment
72 plan, such defendant ceases to so participate voluntarily, the person in
73 charge of the treatment facility, or such person's designee, shall submit
74 a written progress report to the court pursuant to subsection (j) of this
75 section, as amended by this act, and the defendant shall be returned to
76 the court for a hearing pursuant to subsection (k) of this section. The
77 Court Support Services Division shall monitor the defendant's
78 compliance with any applicable provisions of such order. The period
79 of placement and monitoring under such order shall not exceed the
80 period of the maximum sentence which the defendant could receive on
81 conviction of the charges against such defendant, or eighteen months,
82 whichever is less. If the defendant has complied with such treatment
83 plan and any applicable provisions of such order, at the end of the

84 period of placement and monitoring, the court shall approve the entry
85 of a nolle prosequi to the charges against the defendant or shall
86 dismiss such charges.

87 (B) This subdivision shall not apply: (i) To any person charged with
88 a class A felony, a class B felony, except a violation of section 53a-122
89 that does not involve the use, attempted use or threatened use of
90 physical force against another person, or a violation of section 14-227a,
91 subdivision (2) of subsection (a) of section 53-21 or section 53a-56b,
92 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b; (ii) to any
93 person charged with a crime or motor vehicle violation who, as a result
94 of the commission of such crime or motor vehicle violation, causes the
95 death of another person; or (iii) unless good cause is shown, to any
96 person charged with a class C felony.

97 Sec. 3. Subsection (j) of section 54-56d of the general statutes is
98 repealed and the following is substituted in lieu thereof (*Effective*
99 *October 1, 2003*):

100 (j) The person in charge of the treatment facility, or [his] such
101 person's designee, shall submit a written progress report to the court
102 (1) at least seven days prior to the date of any hearing on the issue of
103 the defendant's competency; (2) whenever he believes that the
104 defendant has attained competency; [or] (3) whenever he believes that
105 there is not a substantial probability that the defendant will attain
106 competency within the period covered by the placement order; or (4)
107 whenever the defendant has been placed for treatment pending civil
108 commitment proceedings pursuant to subdivision (2) of subsection (h)
109 of this section, as amended by this act, and the application for civil
110 commitment of the defendant is denied or not pursued. The progress
111 report shall contain: (A) [the] The clinical findings of the person
112 submitting the report and the facts on which the findings are based; (B)
113 the opinion of the person submitting the report as to whether the
114 defendant has attained competency or as to whether the defendant is
115 making progress, under treatment, toward attaining competency

116 within the period covered by the placement order; and (C) any other
117 information concerning the defendant requested by the court, [such as]
118 including, but not limited to, the method of treatment or the type,
119 dosage and effect of any medication the defendant is receiving.

120 Sec. 4. Subsection (m) of section 54-56d of the general statutes is
121 repealed and the following is substituted in lieu thereof (*Effective*
122 *October 1, 2003*):

123 (m) If at any time the court determines that there is not a substantial
124 probability that the defendant will attain competency within the
125 period of treatment allowed by this section, or if at the end of [that]
126 such period the court finds that the defendant is still not competent,
127 the court shall either release the defendant from custody or order the
128 defendant placed in the custody of the Commissioner of Mental Health
129 and Addiction Services, the Commissioner of Children and Families or
130 the Commissioner of Mental Retardation. The commissioner given
131 custody, or [his] the commissioner's designee, shall then apply for civil
132 commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270
133 to 17a-283, inclusive, and 17a-495 to 17a-528, inclusive. The court shall
134 hear arguments as to whether the defendant should be released or
135 should be placed in the custody of the Commissioner of Mental Health
136 and Addiction Services, the Commissioner of Children and Families or
137 the Commissioner of Mental Retardation. If the court orders the release
138 of a defendant charged with the commission of a crime that resulted in
139 the death or serious physical injury, as defined in section 53a-3, of
140 another person, [it] or orders the placement of such defendant in the
141 custody of the Commissioner of Mental Health and Addiction
142 Services, the court may, on its own motion or on motion of the
143 prosecuting authority, order, as a condition of such release or
144 placement, periodic examinations of the defendant as to his
145 competency. Such an examination shall be conducted in accordance
146 with subsection (d) of this section, as amended by this act. Upon
147 receipt of the written report as provided in [said] subsection (d) of this
148 section, as amended by this act, the court shall, upon the request of

149 either party filed not later than thirty days after the court receives such
150 report, conduct a hearing as provided in subsection (e) of this section.
151 Such hearing shall be held not later than ninety days after the court
152 receives such report. If the court finds that the defendant has attained
153 competency, he shall be returned to the custody of the Commissioner
154 of Correction or released, if he has met the conditions for release, and
155 the court shall continue with the criminal proceedings. Periodic
156 examinations ordered by the court under this subsection shall continue
157 until the court finds that the defendant has attained competency or
158 until the time within which the defendant may be prosecuted for the
159 crime with which he is charged, as provided in section 54-193 or 54-
160 193a, has expired, whichever occurs first. The court shall dismiss, with
161 or without prejudice, any charges for which a nolle prosequi is not
162 entered when the time within which the defendant may be prosecuted
163 for the crime with which he is charged, as provided in section 54-193
164 or 54-193a, has expired. Notwithstanding the erasure provisions of
165 section 54-142a, police and court records and records of any state's
166 attorney pertaining to a charge which is nolle or dismissed without
167 prejudice while the defendant is not competent shall not be erased
168 until the time for the prosecution of the defendant expires under
169 section 54-193 or 54-193a. A defendant who is not civilly committed as
170 a result of an application made by the Commissioner of Mental Health
171 and Addiction Services, the Commissioner of Children and Families or
172 the Commissioner of Mental Retardation pursuant to this section shall
173 be released. A defendant who is civilly committed pursuant to such an
174 application shall be treated in the same manner as any other civilly
175 committed person.

176 Sec. 5. Subsection (n) of section 54-56d of the general statutes is
177 repealed and the following is substituted in lieu thereof (*Effective*
178 *October 1, 2003*):

179 (n) The cost of the examination effected by the Commissioner of
180 Mental Health and Addiction Services and of testimony of persons
181 conducting the examination effected by the commissioner shall be paid

182 by the Department of Mental Health and Addiction Services. The cost
183 of the examination and testimony by physicians appointed by the
184 court shall be paid by the Judicial Department. If the defendant is
185 indigent, the fee of the person selected by the defendant to observe the
186 examination and to testify on his behalf shall be paid by the Public
187 Defender Services Commission. The expense of treating a defendant
188 placed in the custody of the Commissioner of Mental Health and
189 Addiction Services, the Commissioner of Children and Families or the
190 Commissioner of Mental Retardation pursuant to subdivision (2) of
191 subsection (h) of this section, as amended by this act, or subsection (i)
192 of this section shall be computed and paid for in the same manner as is
193 provided for persons committed by a probate court under the
194 provisions of sections 17b-19, 17b-63 to 17b-65, inclusive, 17b-116 to
195 17b-138, inclusive, 17b-220 to 17b-250, inclusive, 17b-256, 17b-259, 17b-
196 263, 17b-287, 17b-340 to 17b-350, inclusive, 17b-689, 17b-689b and 17b-
197 743 to 17b-747, inclusive.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>

JUD *Joint Favorable*