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Testimony of

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**Raised Bill 6391, AN ACT CONCERNING INVOLUNTARY
ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR PURPOSES
OF COMPETENCY TO STAND TRIAL**

Judiciary Committee Public Hearing

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While not opposed, the Office of Chief Public Defender has concern over the language and intent of Raised Bill, 6391 - **AN ACT CONCERNING INVOLUNTARY ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR PURPOSES OF COMPETENCY TO STAND TRIAL**. Of concern specifically are sections K(3)(A) and K(3)(B) which would authorize continued involuntary administration of psychiatric medication to a criminal defendant for purposes of maintaining the defendant's competency to stand trial.

The concept makes sense to the extent that most mentally ill persons requiring medication as contemplated here will decompensate if they stop taking it. Starting and stopping medication can hinder not only its effectiveness, but also public safety. However, the fact remains that the sole reason a person is being medicated in this context is to prosecute them. Once the prosecution has been completed, assuming the person is sentenced to prison, there is no assurance that there will be any continuity of care in the case where subsequently the person goes off his or her medication and is not a 'maintenance' problem in corrections.

As the Connecticut statutes are now configured, Connecticut Valley Hospital (CVH) can proceed through the normal probate process to involuntarily medicate 54-56d detainees if their health is compromised, just as CVH would do so with any other civil patient. While the approach being proposed might not, in theory, present as much of an ethical issue in the situation where an individual is charged with a very serious crime, that element of the Garcia test, i.e., seriousness of the crime, is not well defined. (See **State v. Garcia, 265 Conn. 44 (1995)**). Yet, there is a concern that there is a belief by law enforcement, and perhaps the judiciary, that even minor crimes involving law enforcement fall within that category. Using this law in the context of those types of cases might run afoul of the spirit of **Sell v. United States, 123 S. Ct. 2174 (2003)**, the latest case decided by the United States Supreme Court addressing the issue of forcible medication in the context of competency restoration. In **Sell**, the Supreme Court does not mandate the use of civil commitment, or other civil procedures, as a prerequisite to a court order to involuntarily medicate a criminal defendant in order to render him competent to stand trial. It does, however, recommend that consideration be given to whether involuntary medication might be justified on some other ground, thereby avoiding the need to make that decision solely upon the ground of competence to stand trial. The Court made reference to its earlier decision in **Washington v. Harper, 494 U.S. 210 (1990)** noting that the purpose of the medication order in that case "related to the individual's dangerousness, or purposes related to the individual's own interests where the refusal to take drugs puts his health gravely at risk...", going on to observe that "there are strong reasons for a court to determine whether forced administration of drugs can be justified on these alternative grounds before turning to the trial competence question." The Court went on to note that the decision whether to medicate to address these other issues is usually more objective and manageable than the issues surrounding competence to stand trial, and that medical experts may find it easier to provide an informed opinion in these other contexts as opposed to trying to balance harms and benefits related to the more legal questions of trial fairness and competence.

There are other concerns as well. The proposed bill is unclear as to the impact such a revision would have in situations where the defense believes that it is in the defendant's best interest to regress into a psychotic state for trial strategy purposes. It is even less clear the impact that such a revision would have in the case of a capital death penalty case where the defendant was convicted of a capital crime and sentenced to death. As proposed, an inquiry is necessary as to whether such a provision could be used as justification to render a person competent to be executed.

The text of the proposed bill, specifically the language which articulates "in anticipation of considering continued involuntary medication [to keep a defendant competent]", appears to suggest that the bill is intended to save time and judicial resources. An alternative intention is that the bill is being proposed in an effort to keep 54-56d (C.G.S.) detainees out of the hospital and free up bed space.

Either way, the concerns as articulated, exist. The Office of Chief Public Defender, therefore, would be willing to meet with the proponent to address its concerns. Such a dialogue might provide insight that would resolve the concerns as raised in this testimony. Thank you for the opportunity to testify here today.