



STATE OF CONNECTICUT

DEPARTMENT OF MENTAL HEALTH
AND ADDICTION SERVICES
A HEALTHCARE SERVICE AGENCY

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GOVERNOR

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Testimony of Michael Norko, M.D., Director Whiting Forensic Division, Connecticut Valley Hospital Before the Judiciary Committee February 5, 2007

Good afternoon, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. I am Dr. Michael Norko, Director of the Whiting Forensic Division of Connecticut Valley Hospital, and I am here today to speak in support of **H.B. 6391, An Act Concerning Involuntary Administration of Psychiatric Medication for Purposes of Competency to Stand Trial.**

There are two mechanisms in Connecticut for involuntarily medicating defendants with psychiatric disabilities who are found not competent to stand trial. One parallels the civil procedures for appointing conservators authorized to give such consent, and this mechanism utilizes the Probate Court to appoint Special Limited Conservators under CGS § 17a-543a. This mechanism has been used almost exclusively since it was made available on October 1, 2004 in Public Act 04-160.

H.B. 6391 is a proposed change to the **other** mechanism for accomplishing involuntary medication of defendants who are either unwilling or unable to consent to psychiatric medications and who meet the criteria set out in CGS § 54-56d, Subsection (k), paragraph (2). This mechanism

is used in the criminal court and can be applied only to defendants for whom there is made a legal determination that the seriousness of the alleged crime is such that the criminal law enforcement interest of the state overrides the defendant's interest in self-determination.

The proceedings necessary to the determinations required for this form of involuntary medication are significant, involving the appointment of a Health Care Guardian to advise the court about the defendant's best medical interests related to psychiatric medication. However, once a court determines that all the criteria are met for such an order, and thus authorizes the use of involuntary medication, when the defendant is restored to competence to stand trial, that order is no longer valid. At that point, defendants are free to once again refuse psychiatric medications and, often when they do, they once again experience deterioration of their mental condition, usually manifested as a serious psychotic condition. We know that each time an individual re-experiences a psychotic episode, it becomes more difficult to treat the individual to reduce or eliminate the symptoms of psychosis.

Most often, that psychosis will also return the defendant to a state of incompetence to stand trial, thus necessitating a repetition of the entire mechanism for evaluating competence, ordering treatment to restore competence, and then once again seeking involuntary treatment – a process which bears a high cost for court services, court personnel and then for hospital-level treatment services. The defendant also pays a price in terms of the suffering that is associated with renewed psychosis and the imposition of a new cycle of involuntary treatment proceedings and probable re-hospitalization. The recurrence of acute psychiatric symptoms also prevents the trial from going forward, and may deprive the defendant of a speedy trial.

In the legislation before you, we are seeking an additional change to this mechanism.. We would like to amend the bill's wording to create an option allowing the court to consider whether involuntary medications are necessary in order to **maintain** the defendant's competence to stand trial. The criteria for such an order would be the same as the criteria for the initial order for medication to restore competency to stand trial.

In our discussions with representatives of the Connecticut Legal Rights Project and Advocacy Unlimited, we have considered some language changes that we would like to offer and support.

- In line 84, we would change the language to require a supplemental report of the Health Care Guardian by changing the word “may” to “shall.”
- In line 95, the word “any” would be changed to “the” (referring back to the line 84 change, above), from a permissive to a required Health Care Guardian report.
- In line 93, we propose to delete the words “unwilling or” in order to eliminate the possibility of a defendant who is capable of providing informed consent being forced to receive unwanted medication under this mechanism.
- After line 112 and before the current section 5, we wish to add a new section (5), detailing a periodic review every 180 days of such an order. The periodic review would be conducted in the same manner as the original review. The language of this newly suggested section is as follows:

“(5) An order for continued involuntary medication to maintain competency to stand trial entered under subsection (4) shall be reviewed by the court every 180 days while it remains in effect. At each review, the court will receive a supplemental report of the health care guardian and must find each of the criteria enumerated in subsection (4) by clear and convincing evidence in order to continue the order for involuntary medication.”

- The addition of the above language would change the numbering for former section [4] on line 113 to section **(6)**.

This bill will not affect a great number of people, but for the few people to whom it will apply, it will create the potential to save the individual from unnecessary repeated suffering and repeated hospitalization. This will also permit the legal system to operate more smoothly and expediently in resolving the issue of the defendant’s guilt or innocence and will spare the unnecessary wasting of finite resources in both the criminal justice system and the mental health service system, as is currently the case. We have also worked to balance the defendant’s liberty and due process interests in this proposal.

Thank you for the opportunity to address the committee today. With the inclusion of the foregoing changes, we strongly support passage of this bill. I would be happy to answer any questions you may have at this time.



General Assembly
January Session, 2007

Raised Bill No. 6391

LCO No. 3340

03340 _____ JUD

Referred to Committee on Judiciary

Introduced by:

(JUD)

AN ACT CONCERNING INVOLUNTARY ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR PURPOSES OF COMPETENCY TO STAND TRIAL.

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

Section 1. Subsection (k) of section 54-56d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(k) (1) When any placement order for treatment is rendered or continued, the court shall set a date for a hearing, to be held within ninety days, for reconsideration of the issue of the defendant's competency. Whenever the court (A) receives a report pursuant to subsection (j) of this section which indicates that (i) the defendant has attained competency, (ii) the defendant will not attain competency within the remainder of the period covered by the placement order, (iii) the defendant will not attain competency within the remainder of the period covered by the placement order absent administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, or (iv) the defendant would be eligible for civil commitment pursuant to subdivision (2) of subsection (h) of this section, or (B) receives a report pursuant to subparagraph (A)(iii) of subdivision (2) of subsection (h) of this section which indicates that (i) the application for civil commitment of the defendant has been denied or has not been pursued by the Commissioner of Mental Health and Addiction Services, or (ii) the defendant is unwilling or unable to comply with a treatment plan despite reasonable efforts of the treatment facility to encourage the defendant's compliance, the court shall set the matter for a hearing no later than ten days after the report is received. The hearing may be waived by the defendant only if the report

indicates that the defendant is competent. The court shall determine whether the defendant is competent or is making progress toward attainment of competency within the period covered by the placement order. If the court finds that the defendant is competent, the defendant shall be returned to the custody of the Commissioner of Correction or released, if the defendant has met the conditions for release, and the court shall continue with the criminal proceedings. If the court finds that the defendant is still not competent but that the defendant is making progress toward attaining competency, the court may continue or modify the placement order. If the court finds that the defendant is still not competent and will not attain competency within the remainder of the period covered by the placement order absent administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, the court shall proceed as provided in subdivisions (2), [and] (3) and (4) of this subsection. If the court finds that the defendant is eligible for civil commitment, the court may order placement of the defendant at a treatment facility pending civil commitment proceedings pursuant to subdivision (2) of subsection (h) of this section.

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

(3) (A) If the court finds that the defendant is unwilling or unable to provide consent for the administration of psychiatric medication, and prior to deciding whether to order the involuntary medication of the defendant under subdivision (2) of this subsection, the court shall appoint a health care guardian who shall be a licensed health care provider with specialized training in the treatment of persons with psychiatric disabilities to represent the health care interests of the defendant before the court. Notwithstanding the provisions of section 52-146e, such health care guardian shall have access to the psychiatric records of the defendant. Such health care guardian shall file a report with the court not later than thirty days after his or her appointment. The report shall set forth such health care guardian's findings and recommendations concerning the administration of psychiatric medication to the defendant, including the risks and benefits of such medication, the likelihood and seriousness of any adverse side effects and the prognosis with and without such medication. The court shall hold a hearing on

the matter not later than ten days after receipt of such health care guardian's report and shall, in deciding whether to order the involuntary medication of the defendant, take into account such health care guardian's opinion concerning the health care interests of the defendant.

(B) The court, in anticipation of considering continued involuntary medication of the defendant under subdivision (4) of this subsection, may shall order the health care guardian to file a supplemental report updating the findings and recommendations contained in the health care guardian's report filed under subparagraph (A) of this subdivision.

(4) If, after the defendant has been found to have attained competency by means of involuntary medication ordered under subdivision (2) of this subsection, the court determines by clear and convincing evidence that the defendant will not remain competent absent the continued administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, and after any hearing held pursuant to subdivision (3) of this subsection and consideration of any the supplemental report of the health care guardian, the court may order continued involuntary medication of the defendant if the court finds by clear and convincing evidence that: (A) To a reasonable degree of medical certainty, continued involuntary medication of the defendant will maintain the defendant's competency to stand trial, (B) an adjudication of guilt or innocence cannot be had using less intrusive means, (C) the proposed treatment plan is narrowly tailored to minimize intrusion on the defendant's liberty and privacy interests, (D) the proposed drug regimen will not cause an unnecessary risk to the defendant's health, and (E) the seriousness of the alleged crime is such that the criminal law enforcement interest of the state in fairly and accurately determining the defendant's guilt or innocence overrides the defendant's interest in self-determination. Continued involuntary medication ordered under this subdivision may be administered to the defendant while the criminal charges against the defendant are pending and the defendant is in the custody of the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services.

(5) An order for continued involuntary medication to maintain competency to stand trial entered under subsection (4) shall be reviewed by the court every 180 days while it remains in effect. At each review, the court will receive a supplemental report of the health care guardian and must find each of the enumerated criteria in subsection (4) by clear and convincing evidence in order to continue the order for involuntary medication.

[(4)] (56) The state shall hold harmless and indemnify any health care guardian appointed by the court pursuant to subdivision (3) of this subsection from financial loss and expense arising out of any claim, demand, suit or judgment by reason of such health care guardian's alleged negligence or alleged deprivation of any person's civil

rights or other act or omission resulting in damage or injury, provided the health care guardian is found to have been acting in the discharge of his or her duties pursuant to said subdivision and such act or omission is found not to have been wanton, reckless or malicious. The provisions of subsections (b), (c) and (d) of section 5-141d shall apply to such health care guardian. The provisions of chapter 53 shall not apply to a claim against such health care guardian.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	54-56d(k)

Statement of Purpose:

To authorize continued involuntary administration of psychiatric medication to a criminal defendant for the purpose of maintaining the defendant's competency to stand trial.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]