



STATE OF CONNECTICUT

DEPARTMENT OF MENTAL HEALTH
AND ADDICTION SERVICES
A HEALTHCARE SERVICE AGENCY

M. JODI RELL
GOVERNOR

THOMAS A. KIRK, JR., Ph.D.
COMMISSIONER

Memorandum:

TO: Judiciary Committee

FROM: Thomas A. Kirk Jr. Ph.D.
Commissioner

DATE: January 17, 2007

SUBJECT: **Written Comments on S.B. 126, An Act Concerning Adopting Certain Recommendations of the Judicial Branch Public Access Task Force**

Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee, thank you for the opportunity to submit written testimony on **S.B. 126, An Act Concerning Adopting Certain Recommendations of the Judicial Branch Public Access Task Force**.

While DMHAS normally would not weigh in on an issue such as this, we are doing so in this instance because section 11 of SB 126 refers to interactions DMHAS has with the courts when someone is found either not competent to stand trial or not guilty by reason of insanity.

In discussions with the current Acting Director of the Whiting Forensic Division, Dr. Michael Norko, the belief is that an order sealing the written report "to the public" should not prevent its use for purposes of diagnosis or treatment by DMHAS as otherwise permitted under Sec. 52-146f of the Connecticut General Statutes. To clarify any potential uncertainty on this point, we would appreciate the addition of the following language at the end of the changes to section 11(d) proposed under SB 126: **"An order to seal the written report entered under this subsection shall not prohibit disclosure of the report otherwise authorized under section 52-146f."**

Thank you for the opportunity to submit this recommendation. The department would be happy to meet with you in the future on this matter, or to provide you with additional information, as needed.

Sec. 11. Subsection (d) of section 54-56d of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2007):

(d) If the court finds that the request for an examination is justified and that, in accordance with procedures established by the judges of the Superior Court, there is probable cause to believe that the defendant has committed the crime for which the defendant is charged, the court shall order an examination of the defendant as to his or her competency. The court may (1) appoint one or more physicians specializing in psychiatry to examine the defendant, or (2) order the Commissioner of Mental Health and Addiction Services to conduct the examination either (A) by a clinical team consisting of a physician specializing in psychiatry, a clinical psychologist and one of the following: A clinical social worker licensed pursuant to chapter 383b or a psychiatric nurse clinical specialist holding a master's degree in nursing, or (B) by one or more physicians specializing in psychiatry, except that no employee of the Department of Mental Health and Addiction Services who has served as a member of a clinical team in the course of such employment for at least five years prior to October 1, 1995, shall be precluded from being appointed as a member of a clinical team. If the Commissioner of Mental Health and Addiction Services is ordered to conduct the examination, the commissioner shall select the members of the clinical team or the physician or physicians. If the examiners determine that the defendant is not competent, the examiners shall then determine whether there is a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the maximum period of any placement order under this section. If the examiners determine that there is a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the maximum period of any placement order under this section, the examiners shall then determine whether the defendant appears to be eligible for civil commitment, with monitoring by the Court Support Services Division, pursuant to subdivision (2) of subsection (h) of this section. The court may authorize a physician specializing in psychiatry, a clinical psychologist, a clinical social worker licensed pursuant to chapter 383b or a psychiatric nurse clinical specialist holding a master's degree in nursing selected by the defendant to observe the examination. Counsel for the defendant may observe the examination. The examination shall be completed within fifteen days from the date it was ordered and the examiners shall prepare and sign, without notarization, a written report and file such report with the court within twenty-one business days of the date of the order. On receipt of the written report, the clerk of the court shall cause copies to be delivered immediately to the state's attorney and to counsel for the defendant. The court shall, but only as to the public, order the written report sealed. The written report shall not be open to the public unless it is introduced at the hearing under subsection (e) of this section, a participant at such hearing relies upon such report for his or her testimony, the questioning of witnesses or arguments to the court or the court makes findings based on such report. **An order to seal the written report entered under this subsection shall not prohibit disclosure of the report otherwise authorized under section 52-146f.**