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# STATE OF CONNECTICUT

DEPARTMENT OF MENTAL HEALTH  
AND ADDICTION SERVICES  
*A HEALTHCARE SERVICE AGENCY*

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COMMISSIONER

**Testimony of Michael Norko, M.D.  
Director of Forensic Services  
Department of Mental Health and Addiction Services  
Before the Judiciary Committee  
March 24, 2009**

Good afternoon, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. I am Dr. Michael Norko, Director of Forensic Services for the Department of Mental Health and Addiction Services, and I am here today to speak in support of **H.B. 6341, An Act Concerning Competency to Stand Trial** and **H.B. 6343, An Act Concerning Temporary Leave Orders Issued by the Psychiatric Security Review Board**, which will be addressed by Ellen Weber Lachance of the Psychiatric Security Review Board in her testimony.

H.B. 6341 proposes several amendments to Sec. 54-56d of the C.G.S. related to competency to stand trial. In short, these amendments are intended to: (1) improve treatment provided to restore competency to stand trial by increasing clinical information available to hospital treatment teams; (2) create an expanded opportunity for a rapid treatment option that may pre-empt lengthier and far more costly admissions; and (3) improve the quality of reports and testimony by our evaluators to the superior courts.

Related to the first item, we are requesting that our court clinic teams be able to transmit the clinical information they gather during their evaluation to the hospital when the court orders the

defendant to be sent to the hospital for treatment to restore competence to stand trial. This will help to inform our treatment teams and may reduce the time an individual has to spend in our hospital.

Related to the second item, we are asking that the timeframe for conducting the evaluation be changed from "15 days" to 15 business days, while keeping the timeframe for submitting the report to the requesting court the same (it will remain at 21 business days). The reason for this request is that we are beginning a pilot program to offer a period of voluntary rapid treatment to defendants for whom competence evaluations are ordered in an attempt to treat defendants sufficiently so that they are able to pass the competency examination. If we have 15 business days instead of 15 calendar days within which to attempt this rapid treatment, we are more likely to be successful. We have found that 3 weeks of treatment can make a substantial difference in a patient's well being. Success here means that the defendant gets hospital treatment more quickly; a higher percentage of defendants will be found competent; and the judicial process may proceed with less interruption due to mental health factors.

It should be noted that the average competency restoration requires 99 days of hospitalization at a cost of \$109,000. Since we perform 210 of these evaluations annually, we expend \$22.9 million on restoring trial competence each year. If by a 30-day rapid treatment intervention we can avoid the need for some of these 99-day restoration commitments, it should be possible to achieve savings that can be redirected toward treating other individuals in our system. Because of the potential positive budgetary impact of this item, we ask that this take effect upon passage, rather than October 1, 2009 as presently proposed.

Related to the third item, we are requesting two things. First, we ask that the final restoration report submitted by CVH be made available to the original court clinic team that did the evaluation. The report is currently given only to the court, the prosecution and the defense. By sharing the final report with the original evaluators, we hope to provide feedback about the continuity of the defendant's problems, and the accuracy of the initial assessment of competency and restorability. Having this information will provide valuable data to the evaluators that will improve the quality of their work, as well as their reports and testimony to the court, and will enhance the accuracy of data provided to the court about the assessment of restorability of individual defendants upon future evaluations.

Secondly, we also request that the evaluation teams be able to access the DMHAS database of treatment episodes, so that they will be able to request specific releases of information regarding the defendant for those programs where the defendant has received treatment. This database does not contain any progress notes, treatment plans or other clinical information— it is not an electronic medical record. It is merely a list of service episodes, with dates of admission and discharge, and diagnoses given during those episodes. Having this information will increase the likelihood of securing the defendant's release of information for relevant clinical data that will both improve the quality of the report to the court and enhance the ability of the hospital team to provide timely and effective treatment to the defendant who has been ordered into such restoration treatment. The amendment does nothing to alter the defendant's ability to decline the release of information; it merely improves our ability to request the most relevant releases. Without relevant clinical data, it is much harder for our evaluation teams to provide the court with informed opinions about the required

assessments under Sec. 54-56d of: “substantial probability” of restoration, the “least restrictive placement appropriate and available to restore competency,” an estimate of the time period necessary for restoration, or the determination as to “whether the defendant appears to be eligible for civil commitment.”

Following further discussions with some of the legal advocacy groups regarding the language of subsection(d), we are proposing additional changes to it so that they may be more comfortable with our intent. Advocates are concerned about permitting access to the database of treatment episodes without the defendant’s consent. This database is already available to all DMHAS treatment providers and to our jail diversion staff. The latter make use of this information to craft treatment plans that will allow the courts to divert clients away from the criminal justice system into treatment. We would expect our examiners who conduct competence to stand trial evaluations to not include information derived from the database for episodes of care about which the defendant declines to consent to release of information. We propose that additional language be added to the proposed amendment of subsection (d) in order to explicitly state this limitation on the use of the information. The additional language is noted in **bold print** and underlined below:

When performing an examination under this section, the examiners shall have access to the defendant's treatment history contained in the Department of Mental Health and Addiction Services' database of treatment episodes **for purposes of requesting appropriate releases of information from the defendant. No information about treatment episodes for which the defendant declines to consent to the release of information shall be**

**included in the examiners' report to the court or provided in any testimony on the matter of competence to stand trial. This restriction shall not prevent other legally authorized releases of this information.**

Thank you for the opportunity to address the Committee on this important bill. I would be happy to take any questions you may have at this time.