



STATE OF CONNECTICUT
PSYCHIATRIC SECURITY REVIEW BOARD

Testimony of Ellen Weber Lachance, Executive Director
Psychiatric Security Review Board
Before the Judiciary Committee
H.B. 5249
February 26, 2010

Good morning/afternoon, Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. My name is Ellen Weber Lachance, and I am the Executive Director of the Psychiatric Security Review Board. I am here to speak in support of H.B. 5249 regarding the confidentiality of acquittee records.

As you are aware, the Board, since 1985, has had jurisdiction over individuals found not guilty of a crime by reason of mental disease or defect. These individuals were tried and acquitted, in open court, of serious crimes because of their psychiatric illness. Once acquitted, the court commits the insanity acquittee to the Board and the Board, in turn, orders the acquittee confined for treatment to either the Department of Mental Health and Addiction Services or the Department of Developmental Services. The Board continues its oversight of the acquittee by approving transfers from inpatient facilities, dictating when and under what circumstances an acquittee can transition to the community and providing recommendations to Superior Court about an acquittee's readiness for discharge from the Board.

In performing the above functions, the Board regularly receives psychiatric and psychological reports concerning the mental status and treatment of acquittees. The confidentiality of acquittees' treatment records, as currently defined in our statute 17a-596(d), is ambiguous. It is this ambiguity the Board seeks to clarify. Connecticut's confidentiality statutes, as referenced in 52a-146c through 52a-146j, are intended to encourage private individuals to seek psychiatric treatment with the assurance that their information remains private. This concern is absent for acquittees because the insanity defense is an affirmative defense and, as such, the fact of their psychiatric illness, as well as much of their psychiatric information, becomes public at their criminal trial.

The Board's primary mandate is public safety. The public has a right to know how the Board reaches its decisions and performs its function in protecting the public. The Board keeps the public informed about the status of insanity acquittees through regular public hearings which often contain information about the acquittee's mental status, diagnosis, prognosis, course of treatment and readiness for community placement and discharge. A written Memorandum of Decision detailing these facts is issued following every hearing. By statute, acquittees can appeal Board decisions to Superior Court and they can apply directly to the court for discharge from the Board. During such court proceedings, it is imperative that all parties be able to publicly use information from the acquittee's psychiatric records to present their case.

The need for the proposed amendment in the last sentence of 17a-596(d) became apparent following a recent Superior Court decision finding that information taken from an acquittee's psychiatric record was confidential, thus prohibiting discussion of such information in open court. The issue at hand was whether the acquittee was safe enough to be treated in a non-maximum security setting, a matter in which the public has a legitimate interest. Without the clarity of our statutes for guidance, the court's interpretation has the potential to allow an acquittee to selectively disclose in open court, information he or she wishes to be known, thereby providing an inaccurate picture about their mental condition, level of dangerousness and potential risk. The proposed amendment seeks to rectify this situation.

This statutory change mirrors the Board's current practice relative to our public hearings. The proposed amendment would entitle the public access to relevant psychiatric information about an acquittee's treatment and risk, without opening the acquittee's entire psychiatric record for public inspection. The clarification of our statute ensures an appropriate balance between the public's access to critical information about an acquittee's mental status and the privacy of acquittee treatment records.

The Board has collaborated with the Legislative Commissioners' Office to offer substitute language that provides the statutory clarity we are seeking. Favorable action will assist the Board in ensuring the public's right to know the basis for Board decisions while safeguarding acquittees' psychiatric treatment records.

SUBSTITUTE LANGUAGE

AN ACT CONCERNING THE CONFIDENTIALITY OF CERTAIN DOCUMENTS AND RECORDS IN PSYCHIATRIC SECURITY REVIEW BOARD PROCEEDINGS.

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

Section 1. Section 17a-596 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Prior to any hearing by the board concerning the discharge, conditional release or confinement of the acquittee, the board, acquittee and state's attorney may each choose a psychiatrist or psychologist to examine the acquittee. The results of the examination shall be in writing and filed with the board, and shall include, but need not be limited to, an opinion as to whether the acquittee is a person with psychiatric disabilities or mentally retarded to the extent that [his] the acquittee's release would constitute a danger to [himself] the acquittee or others and whether the acquittee could be adequately controlled with treatment as a condition of release. To facilitate examination of the acquittee, the board may order [him] the acquittee placed in the temporary custody of any hospital for psychiatric disabilities or other suitable facility or placed with the Commissioner of Developmental Services.

(b) The board shall consider all evidence available to it that is material, relevant and reliable regarding the issues before the board. Such evidence may include, but [is] need not be limited to, the record of trial, the information supplied by the state's attorney or by any other interested party, including the acquittee, and information concerning the acquittee's mental condition and the entire psychiatric and criminal history of the acquittee.

(c) Testimony shall be taken upon oath or affirmation of the witness from whom the testimony is received.

(d) Any hearing by the board, including the taking of any testimony at such hearing, shall be open to the public. At any hearing before the board, the acquittee shall have all the rights given a party to a contested case under chapter 54. In addition to the rights enumerated [thereunder] in chapter 54, the acquittee shall have the right to appear at all proceedings before the board, except board deliberations, and to be represented by counsel, to consult with counsel prior to the hearing and, if indigent, to have counsel provided, pursuant to the provisions of chapter 887, without cost. At any hearing before the board, copies of documents and reports considered by the board shall be available for examination by the acquittee, counsel for the acquittee and the state's attorney. [The confidentiality of these reports shall be determined pursuant to sections 52-146c to 52-146j, inclusive.] Psychiatric or psychological reports concerning the acquittee that are in the possession of the board shall not be public records, as defined in section 1-200, except that information from such reports relied on by the board or used as evidence concerning the discharge, conditional release, temporary leave or confinement of the acquittee shall not be confidential. The provisions of sections 52-146c to 52-146j, inclusive, shall not apply to such reports for the purposes of this section.

(e) Upon request of any party before the board, or on its own motion, the board may continue a hearing for a reasonable time not to exceed sixty days to obtain additional information or testimony or for other good cause shown.

(f) At any hearing before the board, the acquittee, or any applicant seeking an order less restrictive than the existing order, shall have the burden of proving by a preponderance of the evidence the existence of conditions warranting a less restrictive order.

(g) A record shall be kept of all hearings before the board, except board deliberations.

(h) Within twenty-five days of the conclusion of the hearing, the board shall provide the acquittee, [his] the acquittee's counsel, the state's attorney and any victim as defined in section 17a-601 with written notice of the board's decision. If there is no victim or the victim is unidentified or cannot be located, the board shall be relieved of the requirement of providing notice to the victim.

Sec. 2. Section 17a-590 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

As one of the conditions of release, the board may require the acquittee to report to any public or private mental health facility for examination. Whenever medical, psychiatric or psychological treatment is recommended, the board may order the acquittee, as a condition of release, to cooperate with and accept treatment from the facility. The facility to which the acquittee has been referred for examination shall perform the examination and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, it shall include its recommendations for treatment in the report to the board. Whenever treatment is provided by the facility, [it] the facility shall furnish reports to the board on a regular basis

concerning the status of the acquittee and the degree to which [he] the acquittee is a danger to himself or others. The board shall furnish copies of all such reports to the acquittee, counsel for the acquittee and the state's attorney. [The confidentiality of these reports shall be determined pursuant to sections 52-146c to 52-146j, inclusive.] The facility shall comply with any other conditions of release prescribed by order of the board.