

Testimony of Michael Norko, M.D.
Director of Forensic Services
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Before the Judiciary Committee
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Good morning, 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 (DMHAS), and I am here today to speak in support of **H.B. 5247, An Act Concerning Competency to Stand Trial; S.B. 229, An Act Concerning the Pretrial Supervised Diversionary Program for Persons with Psychiatric Disabilities; H.B. 5252, An Act Concerning the Pretrial Alcohol Education Program and the Pretrial Drug Education Program; S.B. 221, An Act Prohibiting the Disclosure of Employee Files to Inmates; and H.B. 5249, An Act Concerning the Confidentiality of Certain Documents and Records in Psychiatric Security Review Board Proceedings**, which will be addressed by Ellen Weber Lachance of the Psychiatric Security Review Board (PSRB) in her testimony.

House Bill 5247 proposes: minor changes in wording in subsection (i) and subsection (m)(*new* subdivision 5) of the statute; and policy changes in the subsection that addresses defendants who have been found by the court to be not competent and not restorable to competency for the criminal charges under consideration [subsection (m)]. These changes in the statute would allow DMHAS to better respond to requests and concerns that we have received from judges and the Office of the Chief State's Attorney.

When a defendant is found not competent and not restorable to competency to stand trial, in most cases the defendant is ordered by the court into the custody of the Commissioner of DMHAS for the purpose of civil commitment to an inpatient psychiatric unit. HB 5247 would permit the court to order that the court be given notice by DMHAS at any time, prior to the expiration of the statute of limitations for the current charge(s), that the defendant is released from the custody of the Commissioner of DMHAS. This would address a concern of judges that the court is not notified when the individual with unresolved charges is released from a DMHAS inpatient psychiatric unit. The current statute does not permit this communication absent the individual's consent to release of confidential information. Some courts have ordered periodic examinations under subsection (m) as a way to find out if the individual remains in the hospital, which is an expensive use of evaluation resources to discover merely whether the individual is still in the Commissioner's custody or not.

The current statute, in subsection (m), allows the court to order periodic examinations of competency of individuals who have been found not competent and not restorable for crimes that resulted in the death or serious physical injury of another person. This bill would also allow the court to order periodic examination of competency for individuals who have been accused of committing serious sexual offenses or of assault with a deadly weapon or dangerous instrument that resulted in physical injury. Several courts have wanted to order periodic examinations in these types of cases, but the current law does not permit it. We propose that a reference to **CGS 53a-70a** (Aggravated Sexual Assault) be added to the proposed amendment of charges for which periodic examinations may be ordered.

Regarding the proposed limit on the frequency of such periodic exams, we note that examinations ordered more frequently than every 6 months are very unlikely to produce recommendations different from the finding of not competent and not restorable by the court, and such examinations require a significant expenditure of limited staff resources.

Senate Bill 229 proposes technical changes throughout the Supervised Diversionary Program (SDP) statute to improve clarity and conformity to current practices, and proposes a policy adoption regarding the duration of the program.

DMHAS collaborated with the Court Support Services Division (CSSD) of the Judicial Branch to implement the SDP on October 1, 2008 and the DMHAS Jail Diversion Program provides clinical screening and referral for many SDP cases. There have been multiple inquiries from courts and other relevant parties for clarification about procedures and roles related to the SDP. Section 1 of SB 229, in reference to CGS 54-56l(d), clarifies the intended responsibilities of DMHAS, CSSD, and the CSSD-contracted providers and clarifies eligibility requirements regarding the need for mental health treatment services, potential benefits of these services, and the defendant's willingness to participate in services.

Public Act 08-1 Section 41, which created the SDP, did not specify a maximum period of time for the program. Section 1 of SB 229, in reference to 54-56l(e), sets the maximum to two years. A two-year time limit for SDP is consistent with the accelerated rehabilitation program, upon which it is based, and is consistent with the requests of CSSD to the courts and with the courts' practice of limiting the program to two years in nearly all cases for which they have granted the program.

DMHAS is proposing further changes to the proposed bill:

1) Deletion of the last sentence in the substituted language for 54-56l(d) [Section 1], which specifies the content of the plan for treatment services. After further consultation with CSSD, we agreed that it is not possible in all cases to have this information available prior to the first court continuance after application for the program, and therefore we propose that this requirement not be added to the statute.

2) The current SDP statute calls for a "treatment plan" to be presented to the court. In the behavioral health field a "treatment plan" is a detailed document based on evaluations performed by a treatment provider and in partnership with the person receiving treatment. In subsections (d) and (e) of the substituted language for 54-56l [in Section 1], SB 229 provides for a "plan for services and treatment." We propose that the wording be further changed from "plan for services and treatment" to "plan for treatment services."

House Bill 5252 proposes minor changes in the wording throughout the Pretrial Alcohol Education Program (PAEP) and the Pretrial Drug Education Program (PDEP) statutes to improve consistency and clarity.

For the PDEP, HB 5252 Section 2, related to CGS 54-56i(d), changes "The department" to "The Court Support Services Division." This change makes it clear that it is CSSD and not DMHAS that operates the community service labor program.

We also wish to draw your attention to a policy issue. In Section 1, there is a list of charges for which individuals may be eligible for the Pretrial Alcohol Education Program. The current PAEP statute (CGS 54-56g, 2010 Supplement) includes 15-132a as an eligible offense. 15-132a is Manslaughter in the second degree with a vessel (while under the influence). The counterpart for a death caused while operating a motor vehicle under the influence is not an eligible offense for the PAEP, and it is unlikely that judges will order the PAEP in a boating offense that resulted in death. While DMHAS does not take a position on this matter of public policy, we do want to point out to the committee the inclusion of CGS 15-132a in the offenses eligible for the PAEP in the event that the committee wishes to review this matter while considering HB 5252.

Regarding S.B. 221, we support the addition of protections to the staff of the Whiting Forensic Division of Connecticut Valley Hospital. Whiting serves a population of individuals requiring treatment under secure conditions (per CGS 17a-561), including detainees awaiting trial and sentenced inmates in the custody of the Department of Correction. This bill would prevent personal information about staff

members being used to hurt, threaten or harass employees or to attempt to influence processes of the criminal justice system.

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