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State of Connecticut**

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**Testimony of  
Attorney Monte Radler, Chief of Psychiatric Defense Services  
Office of Chief Public Defender**

**Proposed Bill No. 1027  
AN ACT CONCERNING MANAGEMENT OF INDIVIDUALS COMMITTED TO THE PSYCHIATRIC SECURITY  
REVIEW BOARD**

**Judiciary Committee Public Hearing – April 1, 2015**

The Office of Chief Public Defender is opposed to ***Proposed Bill 1027, An Act Concerning Management Of Individuals Committed To The Psychiatric Security Review Board***. The proposed bill contemplates the transfer of a confined insanity acquittee from Connecticut Valley Hospital (CVH), Connecticut's maximum security psychiatric hospital, to a DOC prison facility, during a period of time when that insanity acquittee remains 'criminally insane', and legally entitled to psychiatric treatment designed to restore him or her to legal 'sanity'.

A decision is currently pending from the Connecticut Supreme Court in the matter of State of Connecticut vs. Anderson, S.C. 19399, in which a current acquittee is challenging the constitutionality of the decision of a Connecticut trial court setting a monetary bond under circumstances contemplated by this proposed amendment, and which resulted in acquittee Anderson's transfer from Connecticut's maximum security psychiatric facility to a maximum security Department of Correction facility prior to being convicted of a crime. The constitutional issues raised in the Anderson case include (1) whether C.G.S. § 54-64a, as applied under circumstances analogous to what this bill is proposing, violate the right of bail provision of article first, § 8 of the Connecticut Constitution; (2) whether due process is satisfied under the current statutory scheme as applied to an adjudicated insanity acquittee; and (3) whether the transfer of an adjudicated insanity acquittee from a psychiatric facility to a prison facility under Connecticut's current statutory schemes violates procedural and/or substantive due process.

The proposed legislation sets up irreconcilable conflicts between various statutes and established public policies, and should be rejected at this time as being premature in light of the pending Anderson decision. Notwithstanding the pending Anderson decision, there are substantive reasons to question the wisdom of this bill as well.

Every insanity acquittee confined at Connecticut Valley Hospital for custody and treatment has been found by a criminal trial court to have a mental disease or defect that caused him or her to lack to substantial capacity to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law. Public policy, as reflected in statutory schemes involving insanity acquittees, does not favor incarceration of the criminally insane. Courts, including the Connecticut Supreme Court, have long recognized that psychiatric commitment is not a punishment, society having deemed it improper to morally condemn people who commit crimes due to a mental disease or defect, and that society gains nothing from incarcerating a mentally ill man who cannot appreciate his punishment. Connecticut has a comprehensive statutory and regulatory scheme governing an acquittee's term of commitment which balances an acquittee's liberty interests with the state's *parens patriae* obligations and public safety, and clearly delineates the respective roles of the Psychiatric Security Review Board (PSRB) and the Superior Court in the management of insanity acquittees. The Connecticut Supreme Court has added a substantial body of judicial gloss to the law governing the management of insanity acquittees under Board jurisdiction which emphasizes the PSRB's pre-eminent role in managing acquittees.

Following a typical 'insanity acquittal' under Connecticut state law, the criminal trial court that adjudicated the case commits an acquittee to the jurisdiction of the PSRB for a period of time not to exceed the maximum sentence of the underlying crime for custody, care, and treatment. Upon commitment to PSRB jurisdiction, acquittees are initially confined at CVH, most typically in the Whiting Forensic Institute (WFI) under conditions of maximum security. While confined at CVH, insanity acquittees are in the actual physical custody of Connecticut's Department of Mental Health Addiction Services, which is legally obligated to provide an acquittee with psychiatric treatment designed to restore him or her to legal 'sanity'. An acquittee is not entitled to unconditional release from PSRB jurisdiction until such time as he or she 'regains his or her sanity'. The determination of whether an acquittee has been restored to legal 'sanity' is made by the same criminal trial court that adjudicated the original case in accordance with established legal standards.

The Office of Chief Public Defender has been unable to locate any reported Connecticut case, or reported case from any other American jurisdiction, in which an appellate court upheld the action of a trial court in setting a monetary bond, which an acquittee/ defendant could not possibly post, for the sole purpose of orchestrating the transfer of that insanity acquittee/defendant confined in a maximum security mental hospital to a prison facility on a pre-trial basis for reasons solely related to the safety of other hospital patients and/or hospital staff.

Under Connecticut's general law of bail, a monetary bond is directed at very specific behavior in very specific contexts, i.e., reasons having to do with the integrity of the judicial trial process. While governing statutes empower a court to consider a defendant's level of dangerousness when setting bond, the amount of bond must be set at a reasonable level under all the circumstances relevant to the likelihood that the accused will flee the jurisdiction or otherwise avoid being present

for trial, and when the intention of the state and the Trial Court is to detain an individual for reasons of dangerousness to the public only, the legal mechanism to achieve that result is through the bond revocation mechanism, not the imposition of a monetary bond. Insanity acquittees currently committed to the jurisdiction of the PSRB and patients at Connecticut Valley Hospital are generally confined to a locked unit. The typical acquittee is not capable of fleeing this jurisdiction and, more importantly, is easily available to face any pending criminal charges. The typical acquittee is also indigent. Imposing a monetary bond on an indigent acquittee to secure his/her transfer to a prison facility amounts to preventative detention. 'Preventive detention', except under extreme circumstances, is anathema to the American criminal justice system.

Independently of the bond question, insanity acquittees who are CVH patients possess substantive positive rights to treatment under an independent state statutory scheme. As individuals who are patients at a hospital for the treatment of persons with psychiatric disabilities, insanity acquittees are entitled to the protections of the Patients' Bill of Rights.<sup>1</sup> The Patients' Bill of Rights was enacted because of the legislature's concern for the fair treatment of mental patients.<sup>2</sup> The Connecticut Supreme Court has held that the Patients' Bill of Rights does not apply to prisoners with psychiatric disabilities in the custody of DOC.<sup>3</sup> There is simply no analog to the Patients' Bill of Rights within the Connecticut state prison system.

Connecticut presently has no distinct statutory mechanism for transferring acquittees from an inpatient unit at Connecticut Valley Hospital to a correctional facility for reasons related to dangerousness, and imposing a pretrial monetary bond, and/or requiring an adjudicated insanity acquittee to serve a prison sentence prior to receiving psychiatric treatment and being restored to legal 'sanity' challenges modern notions of human decency. In summary, neither C.G.S. § 54-64a, the provisions of this bill, nor any Connecticut case provides the necessary legal criteria, standards, or judicial guidance for determining whether, or under what standards an adjudicated, criminally insane defendant can be involuntarily removed from a maximum security mental hospital and placed in a maximum security correctional facility.

For the foregoing reasons, the Office of Chief Public Defender urges this Committee to reject this proposal.

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<sup>1</sup> CONN. GEN. STAT. §§ 17a-540-550.

<sup>2</sup> *Mahoney v. Lensink*, 213 Conn. 548, 556 (1990).

<sup>3</sup> *Wiseman v. Armstrong*, 269 Conn. 802, 816, 818 (2004).