
OLR Bill Analysis

sSB 450 (File 522, as amended by Senate "A")*

AN ACT CONCERNING CONNECTICUT VALLEY AND WHITING FORENSIC HOSPITALS.

SUMMARY

This bill makes various changes in the laws affecting Whiting Forensic Hospital and Connecticut Valley Hospital. Specifically, it does the following:

1. requires the Department of Mental Health and Addiction Services (DMHAS) to develop a plan, within available appropriations, to construct a new facility for Whiting Forensic Hospital and submit an interim report on the plan to the Public Health Committee by January 1, 2023 (§ 1);
2. starting October 1, 2022, reestablishes Whiting Forensic Hospital's 11-member advisory board as an oversight board, removes the DMHAS commissioner from the board's membership, and expands the board's duties (§ 2);
3. requires the Superior Court and the Psychiatric Security Review Board (PSRB), when holding hearings on the initial commitment, confinement, or conditional release of an acquittee (i.e., a person found not guilty of a crime due to a mental disease or defect), to also consider the acquittee's safety and well-being, in addition to the protection of society as under current law (§§ 3-5);
4. requires DMHAS, by January 1, 2023, to convene a working group to evaluate the PSRB and report its findings to the Public Health and Judiciary committees by January 1, 2024 (§ 6);
5. allows an acquittee, or person acting on the acquittee's behalf, to apply directly to the PSRB for a temporary leave order (§ 7);

6. requires DMHAS, before transferring an acquittee from maximum-security confinement to another facility for medical treatment, to consult with a licensed health care provider who evaluated and approved the transfer and eliminates the requirement that the department provide immediate written justification of the transfer to the PSRB (§ 8);
7. requires Whiting Forensic Hospital to establish a risk management review committee to review requests to transfer an acquittee from maximum-security confinement to a lower security division in the hospital for medical treatment (§ 8); and
8. requires DMHAS, in collaboration with the Department of Administrative Services (DAS), to evaluate state service classifications for physicians and senior level clinicians employed by Whiting Forensic Hospital (§ 9).

The bill also makes technical and conforming changes.

*Senate Amendment "A" replaces the underlying bill and removes the provisions (1) adding state behavioral health and psychiatric facilities to the statutory definition of "health care institution," (2) prohibiting state psychiatric hospital employees from performing an initial mental health examination on an acquittee committed to DMHAS custody, and (3) allowing Whiting Forensic Hospital and Connecticut Valley Hospital to directly authorize an acquittee's temporary leave without having to apply to the PSRB for approval. Among other things, it also (1) requires DMHAS to create a plan for a new Whiting Forensic Hospital facility, within available appropriations; (2) allows acquittees to apply directly to the PSRB for a temporary leave order; and (3) requires the Whiting Forensic Hospital oversight board to review official investigation reports on complaints about hospital conditions or mistreatment or neglect of patients or staff.

EFFECTIVE DATE: October 1, 2022, except provisions on the Whiting Forensic Hospital new facility plan, oversight board, PSRB working group, and state service job classifications take effect upon passage.

§ 1 — NEW WHITING FORENSIC HOSPITAL FACILITY

The bill requires DMHAS to develop a plan, within available appropriations, to construct a new facility for Whiting Forensic Hospital. When doing so, it requires the department to do the following:

1. consult with hospital patients and their legal guardians and family members, hospital staff, community mental health and health care providers that serve the patients, the Department of Correction commissioner, and any other relevant stakeholders the DMHAS commissioner determines;
2. conduct a comprehensive assessment of patients' needs, including the safety, recovery, and standard of care for treating patients in the new facility and a pathway to reintegrate patients into the community;
3. consider a facility design that incorporates, as an intrinsic part of the facility, spaces where patients can engage in self-enrichment, creative activities, educational pursuits, vocational training, and training in independent living skills to facilitate a safe transition into the community; and
4. develop an individualized care plan for each patient in the new facility that (a) engages the patient and, if deemed appropriate by the commissioner, the patient's family members or guardian as active participants in the care plan and (b) includes adequate preparation to enable the patient to reintegrate safely and successfully into the community.

The bill requires the DMHAS commissioner to submit to the Public Health Committee an interim report on the plan by January 1, 2023, and a comprehensive report by January 1, 2024.

§ 2 — WHITING FORENSIC HOSPITAL OVERSIGHT BOARD

Starting October 1, 2022, the bill reestablishes Whiting Forensic Hospital's 11-member advisory board as an oversight board and removes the DMHAS commissioner from the board's membership. It maintains the qualifications required for the other 10 members, who,

under current law and the bill, are appointed by the governor. The board is within DMHAS for administrative purposes only.

Similar to current law, the bill requires the oversight board to oversee the work of Whiting Forensic Hospital and consult and advise on any problems or concerns identified during its review of investigations as described below. Additionally, it expands the board's duties to also include the following:

1. reviewing the official report of every investigation conducted under state law and by a hospital accrediting organization of complaints on hospital conditions or the mistreatment or neglect of patients or staff made by patients or their family members, guardians, or legal representatives; staff; or members of the public;
2. making recommendations to the hospital and DMHAS on necessary actions to improve staff work, hospital conditions, or patient or staff treatment needed to address any complaints or staff concerns; and
3. beginning January 1, 2023, reporting annually to the Public Health Committee on any investigation results or recommendations.

The bill requires the board to request and review any necessary information from the hospital and DMHAS. The bill also makes related minor, technical, and conforming changes.

It also requires Whiting Forensic Hospital's superintendent and relevant state agencies, regardless of state law on the confidentiality of psychiatric records, to provide the oversight board with the official investigation reports, as described above.

Under the bill, "neglect" means the failure, through action or inaction, to provide a person with services necessary to maintain his or her physical and mental health and safety, including protection against incidents of inappropriate or unwanted sexual contact, harassment,

taunting, bullying, and discrimination.

§§ 3-5 — COMMITMENT AND DISCHARGE HEARINGS FOR ACQUITTEES

Current law requires the Superior Court and PSRB, when holding hearings on an acquittee's initial commitment, confinement, or conditional release, to primarily consider the protection of society. The bill requires the court and PSRB to primarily consider both the protection of society and the acquittee's safety and well-being. For hearings on an acquittee's discharge from custody, the bill requires the court to consider the protection of society as its primary concern and the acquittee's safety and well-being as its secondary concern.

By law, the Superior Court must hold an initial hearing to determine whether to discharge an acquittee or commit him or her to PSRB custody. Once the board takes jurisdiction over an acquittee, it must hold a hearing and decide (1) whether to commit the acquittee to the Department of Developmental Services (DDS) (if the person has an intellectual disability) or a state psychiatric hospital (i.e., Connecticut Valley Hospital or Whiting Forensic Hospital) and (2) what level of supervision and treatment the acquittee requires. An acquittee's commitment to the PSRB continues until discharged by a court order.

§ 6 — PSYCHIATRIC SECURITY REVIEW BOARD WORKING GROUP

Duties

The bill requires the DMHAS commissioner, by January 1, 2023, to convene a working group to evaluate the PSRB. The evaluation must examine the following:

1. recommendations about the PSRB made by the CVH Whiting Forensic Hospital Task Force established under PA 18-86;
2. methods to optimize the process by which someone (an "acquittee") is (a) committed to DMHAS custody after being found not guilty by reason of mental disease or defect and (b) released or discharged from custody, including through balancing society's protection, victims' rights, and the acquittee's

- health and well-being;
3. processes in place for committing and releasing an acquittee in states that do not have a body similar to the PSRB; and
 4. the processes for notifying a victim when an acquittee is released or discharged from custody.

Members

Under the bill, working group members must, at a minimum, include the following individuals:

1. a public health expert,
2. two members of the judiciary,
3. a defense attorney from the Judicial Department or Public Defender Services Commission,
4. the state’s attorney,
5. a licensed physician specializing in psychiatry,
6. two acquittees,
7. two victims of an acquittee or two representatives of an organization that advocates on their behalf, and
8. the DMHAS and DDS commissioners.

The bill requires the DMHAS commissioner to select the working group’s chairpersons from among its members. The chairpersons must schedule the working group’s first meeting within 60 days after the bill takes effect.

Report

The bill requires the working group chairpersons to report the group’s findings to the Judiciary and Public Health committees by January 1, 2024.

§ 7 — TEMPORARY LEAVES FOR ACQUITTEES

Under existing law, the Connecticut Valley Hospital or Whiting Forensic Hospital superintendent or DDS commissioner may apply to the PSRB to request an order granting an acquittee temporary leave. If the PSRB grants the order, the bill requires the board to notify the victim of the acquittee's temporary leave.

The bill allows an acquittee, or a person acting on the acquittee's behalf, to also apply to the PSRB for a temporary leave order. Applications may be submitted no more than once every six months from the date of the acquittee's initial commitment hearing. Under the bill, the PSRB is not required to hold a hearing on an acquittee's first temporary leave application any earlier than 90 days after the acquittee's initial commitment hearing.

Upon receipt of an application, the bill requires the board to request the DDS commissioner or hospital superintendent to report on whether they believe the temporary leave should be granted, including facts supporting their opinion. If the board holds a hearing on the application, it must be held within 30 to 90 days after the application is filed.

If the board grants the application, the acquittee may be permitted to temporarily leave the hospital or DDS custody, either by him- or herself or under the charge of a guardian, relative, or friend. The temporary leave may be limited to certain times and conditions, as the superintendent or DDS commissioner deems appropriate, unless the temporary leave order provides otherwise. The bill also requires the PSRB to notify the victim of the acquittee's temporary leave.

In practice, temporary leave orders are generally used to help certain acquittees begin the transition process back into the community. They may include visits to community facilities for treatment or services or short visits with family members and friends, among other things. Conditions may be set for the temporary leave, including assigning a family member, friend, or guardian to supervise the acquittee and permitting the hospital, acquittee, or acquittee's supervisor to return the acquittee to the hospital if doing so is in the acquittee's or public's best

interest.

§ 8 — MAXIMUM-SECURITY CONFINEMENT OF ACQUITTEES

Existing law authorizes DMHAS to transfer an acquittee from maximum-security confinement to another facility (e.g., hospital or emergency department) for medical treatment if the treatment is unavailable in the maximum-security setting or would pose a safety hazard due to the use of certain medical equipment or material.

The bill (1) requires DMHAS to, before doing so, consult with a licensed health care provider who evaluated and approved the acquittee's transfer and (2) eliminates current law's requirement that the department provide immediate written justification to the PSRB. It instead requires DMHAS to notify the PSRB of the transfer at the most reasonable time, as determined by the hospital superintendent, but within 48 hours of the transfer.

As under current law, DMHAS must also (1) ensure that the acquittee's custody conditions at the other facility are equivalent to those of maximum-security confinement and (2) transfer the acquittee back to the maximum-security setting after the medical treatment is complete.

Additionally, the bill requires Whiting Forensic Hospital to establish a risk management review committee comprised of the hospital's licensed clinical professionals and administrators to review requests to transfer an acquittee from maximum-security confinement to a lower security division in the hospital for medical treatment. If the hospital's superintendent believes that the acquittee's transfer would safely advance his or her supervision and treatment, he may effectuate the transfer. The bill requires the superintendent to notify the PSRB of the transfer at least 48 hours in advance. The board must then notify each of the acquittee's victims of the transfer.

§ 9 — STATE SERVICE CLASSIFICATIONS FOR WHITING FORENSIC HOSPITAL CLINICIANS

The bill requires DMHAS, in collaboration with DAS, to evaluate state service classifications for physicians and senior level clinicians

employed by Whiting Forensic Hospital. Specifically, the department must determine whether these classifications are in the appropriate compensation plans needed to attract and retain experienced and competent hospital employees. Under the bill, the DMHAS and DAS commissioners must jointly report on their evaluation to the Public Health Committee by January 1, 2023.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 30 Nay 0 (03/30/2022)