



Testimony of Judge Robin Pavia and Alex Tsarkov before the Judiciary Committee on HB 5500, An Act Concerning Revisions to Various Laws Concerning Juror Compensation, the Department of Correction and Criminal Law and Criminal Procedure

Senator Winfield, Representative Stafstrom, Senator Flexer, Representative Quinn, Senator Kissel, Representative Fishbein, and members of the Judiciary Committee. This testimony is in support of Section 3, Section 8 and Section 9 of HB 5500, *An Act Concerning Revisions to Various Laws Concerning Juror Compensation, the Department of Correction and Criminal Law and Criminal Procedure*.

1. Connecticut Sentencing Commission – background information

First, we would like to give you some brief background information about the Connecticut Sentencing Commission. We are a permanent statutory commission consisting of Connecticut's stakeholders in the criminal justice system. Our membership includes the Commissioners of Correction, Emergency Services and Public Protection, and Mental Health and Addiction Services; the Chief State's Attorney; the Chief Public Defender; the State Victim Advocate; four judges; the chair of the Board of Pardons and Paroles; the undersecretary of the Criminal Justice Policy and Planning Division within the Office of Policy and Management; community advocates interested in the criminal justice system; as well as others vitally engaged in the criminal justice system.

2. Section 3 - Supervised Diversionary Program

Section 3 comes from the recommendations of the Connecticut Sentencing Commission, and would extend eligibility for the pretrial Supervised Diversionary Program in Connecticut to people with intellectual disabilities and people with autism spectrum disorder.

Under CGS § 54-56l, individuals who face certain charges that are not of serious nature and who have psychiatric disabilities or are veterans are eligible for the pretrial Supervised Diversionary Program. Qualifying individuals are referred to the Judicial Branch Court Support Services Division, which provides the court with an individualized treatment plan for the defendant. The charges are dismissed upon satisfactory completion of the assigned program.

Section 3 of HB 5500 would include individuals with intellectual disabilities and autism spectrum disorders among the populations eligible for the pretrial Supervised Diversionary Program. Additionally, for individuals with intellectual disabilities and autism spectrum disorders, the legislation would allow the Department of Developmental Services and the

Department of Social Services to assist the Judicial Branch Court Support Services Division in assessing the individual and in identifying appropriate services and treatment.

Diversions programs have numerous benefits. Such programs can address the root causes of incarceration, such as homelessness, economic insecurity, substance abuse, and mental illness.

The pretrial Supervised Diversionary Program in Connecticut has been generally successful. From 2009-2018, nearly 6,000 people were enrolled in the program, 85% of whom had their charges dismissed after successful completion. Moreover, the program population is diverse, serving participants of all ages (45% under 30; 55% over 30), races (67% white; 33% nonwhite), and genders (43% female; 57% male).¹

Although there is a need for more rigorous screening and data tracking, studies have shown that individuals with intellectual disabilities and autism are overrepresented in the criminal justice system. According to the Bureau of Justice Statistics (2016), cognitive disabilities were the most commonly reported type of disability by federal and state incarcerated individuals surveyed (23% of the male population and 37% of the female population).² Research has indicated that individuals with autism are seven times more likely to intersect with the criminal justice system.³ Estimates of the prevalence of autism spectrum disorders among incarcerated populations vary, in part due to the evolving understanding of the conditions and screening tools. Redirecting these individuals towards treatment and services, as is already done for those with psychiatric disabilities, would be a more compassionate and effective response.

Other jurisdictions have recently begun moving in this direction. In 2021, Maricopa County in Arizona introduced the Developmental Disabilities – Felony Diversion Program, which offers a diversion alternative for individuals with developmental disabilities who are charged with lower level felonies, have a minimal criminal history, and are at low risk to reoffend.⁴ New Jersey implemented a similar program, connecting individuals with developmental disabilities to community-based treatment as an alternative to incarceration.⁵ Washington and California allow for diversion of individuals with developmental disabilities, but only for misdemeanor and select felony defendants.⁶ In 2023, Nevada passed legislation to establish a statewide diversionary program for at-risk youth with autism.⁷ Finally, various jurisdictions in Florida, Illinois, Ohio

¹ Connecticut Sentencing Commission, *Report to the Governor and the General Assembly on Pretrial Diversionary Programs* (Dec. 12, 2020), <https://ctsencingcommission.org/wp-content/uploads/2022/12/Pretrial-Diversionary-Programs-Report-Final.pdf>.

² Bureau of Justice Statistics, *Survey of Prison Inmates, 2016: Disabilities Reported by Prisoners*, <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>; Bureau of Justice Statistics, *Disabilities Among Prison and Jail Inmates, 2011–12*, <https://bjs.ojp.gov/content/pub/pdf/dpji1112.pdf>.

³ Colleen M. Berryessa, *Judiciary Views on Criminal Behavior and Intention of Offenders with High-functioning Autism*, 5(2) *Journal of Intellectual Disabilities and Offending Behavior* 97 (2014), <https://doi.org/10.1108/JIDOB-02-2014-0002>.

⁴ Maricopa County Attorney's Office, *Developmental Disabilities – Felony Diversion Program (DD-FDP) Overview* (Nov. 10, 2021), <https://www.maricopacountyattorney.org/DocumentCenter/View/2111/MCAO-DD-FDP-Diversion-Program-Handout---Public>.

⁵ The Arc of New Jersey, *Criminal Justice Advocacy Program*, <https://www.arcnj.org/programs/criminal-justice-advocacy-program/criminal-justice-advocacy.html>.

⁶ Spokane County Community Services, *Spokane County 5177 Mental Health Prosecutorial Diversion Program*, <https://www.spokanecounty.org/4253/Spokane-County-Diversion-Program>; Cal. Pen. Code §§ 1001.20 to 1001.34.

⁷ Nevada Senate Bill 411 (2023), <https://legiscan.com/NV/text/SB411/id/2817707/Nevada-2023-SB411-Enrolled.pdf>.

offer a specific mental health court that develops individualized treatment plans for defendants with developmental disabilities.⁸

3. Section 8 & 9 - Competency to Stand Trial

Sections 8 and 9 come from the recommendations of the Connecticut Sentencing Commission.

The competency to stand trial process, as outlined in CGS § 54-56d, exists to restore competence to individuals who, due to mental impairment, cannot comprehend the legal proceedings against them nor assist in their own defense. This bill would make various changes to the process.

Under Section 8 of the bill, the court shall order a competency exam except for when the most serious crime charged against the defendant is a misdemeanor, in which case “the court may order a competency examination only after considering, based on all available information, whether participation by the defendant in a jail diversion program is not appropriate.” We note opposition from the Office of the Chief Public Defender to this section.

Under Section 9 of the bill, there is a presumption for misdemeanor cases that outpatient treatment is the least restrictive placement appropriate unless there is good cause to find otherwise. For all cases, the proposal lists a number of factors for judges to consider in determining the least restrictive placement appropriate and available to restore competence. These factors include (A) the nature and circumstances of the alleged crime; (B) the defendant's record of criminal convictions; (C) the defendant's record of appearance in court; (D) the defendant's family and community ties; (E) the defendant's willingness and ability to engage with treatment; (F) whether the defendant's use of substances would interfere with the defendant's ability to be successful in such placement; (G) any psychiatric symptoms experienced by the defendant and the nature and severity of the symptoms; and (H) any other relevant factors specific to the defendant and their circumstances.

A growing consensus is calling on states to consider diversion before automatically ordering a competency evaluation. Recent national reports on competency to stand trial⁹ recommend that low-level, nonviolent defendants forgo competency restoration in favor of more holistic diversionary programs. Notably, one such report was produced by the National Judicial Task

⁸ See Administrative Order 2023-30-Crim: Felony Mental Health Court, Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (Oct. 20, 2023), <https://www.17th.flcourts.org/wp-content/uploads/2023/10/AO-2023-30-Crim-FELONY-MENTAL-HEALTH-COURT.pdf>; Kane County Alternative Treatment Court (Illinois), *Kane County Treatment Alternative Court Participant Handbook*, <http://courtservices.countyofkane.org/Documents/TAC%20Participant%20Handbook%202020.pdf>; Common Pleas Court General Division, Cuyahoga County (Ohio), *Mental Health and Developmental Disabilities Court*, <https://cp.cuyahogacounty.us/court-resources/specialty-courtsprograms/mental-health-and-developmental-disabilities-court/>.

⁹ See Substance Abuse and Mental Health Services Administration, *Foundation Work for Exploring Incompetence to Stand Trial Evaluations and Competence Restoration for People with Serious Mental Illness/Serious Emotional Disturbance* (2023), <https://store.samhsa.gov/sites/default/files/pep23-01-00-005.pdf>; National Center for State Courts, National Judicial Task Force to Examine State Courts' Response to Mental Illness, *Leading Reform: Competence to Stand Trial Systems* (Aug. 2021), https://www.ncsc.org/data/assets/pdf_file/0019/66304/Leading_Reform-Competence_to_Stand_Trial.pdf; *Just and Well*, *supra* note 9.

Force to Examine State Courts' Response to Mental Illness. According to the Task Force's report:

If there are other effective options in which system players have confidence, the competency process will be used more sparingly, and more appropriately. By diverting defendants to appropriate targeted interventions and services and reserving the competency to stand trial mechanism for fewer cases and for circumstances for which the process is more proportionate, resources would be better spent and the outcomes for everyone, including the defendants, would be better.¹⁰

The report also recommended prioritizing outpatient restoration whenever feasible: "Treatment should generally be provided in the least restrictive setting that is appropriate, so unless there is a safety to the community concern or other clinical issue, treatment should be in the community."¹¹

Furthermore, the financial burden of competency restoration is significant. According to DMHAS estimates, the state of Connecticut spends approximately \$200,000 per inpatient restoration.

Several jurisdictions have already adopted policies aligned with the legislative changes proposed in this bill. Miami-Dade County (FL) and Bexar County (TX), for example, rarely employ competency restoration for misdemeanor offenses, instead diverting defendants to mental health treatment.¹² Tennessee and Florida favor outpatient restoration, reserving inpatient restoration for cases of absolute necessity.¹³ Finally, New York compels courts to consider specific factors when determining the appropriateness of inpatient restoration.¹⁴ Instituting similar policies in Connecticut would promote the judicious use of public funds, support evidence-based treatments that reduce recidivism, and preserve connection to community.

We thank the Committee for raising this important legislation and urge the Committee's JOINT FAVORABLE Report of Sections 3, 8 and 9.

¹⁰ *Leading Reform*, *supra* note 12, at 6.

¹¹ *Id.* at 7.

¹² *Resolution or Resignation*, *supra* note 10.

¹³ Tenn. Code § 33-7-301; Fla. Stat. § 916.13.

¹⁴ New York Office of Mental Health, OMH Guidance for Implementation of Outpatient Competency Restoration (OCR) (Dec. 7, 2023), <https://omh.ny.gov/omhweb/forensic/dfs-guidance.pdf>.