

Senate, April 7, 1998. The Committee on  
Judiciary reported through SEN. WILLIAMS, 29th  
DIST., Chairman of the Committee on the part of  
the Senate, that the substitute bill ought to  
pass.

AN ACT CONCERNING COMPETENCY TO STAND TRIAL.

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

1 Section 1. Subsection (k) of section 54-56d  
2 of the general statutes is repealed and the  
3 following is substituted in lieu thereof:

4 (k) (1) When any placement order for treatment  
5 is rendered or continued, the court shall set a  
6 date for a hearing, to be held within ninety days,  
7 for reconsideration of the issue of the  
8 defendant's competency. Whenever the court  
9 receives a report pursuant to subsection (j) which  
10 indicates [either] that [(1)] (A) the defendant  
11 has attained competency, [or that (2)] (B) the  
12 defendant will not attain competency within the  
13 remainder of the period covered by the placement  
14 order OR (C) THE DEFENDANT WILL NOT ATTAIN  
15 COMPETENCY WITHIN THE REMAINDER OF THE PERIOD  
16 COVERED BY THE PLACEMENT ORDER ABSENT  
17 ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR WHICH  
18 THE DEFENDANT IS UNWILLING OR UNABLE TO PROVIDE  
19 CONSENT, the court shall set the matter for a  
20 hearing no later than ten days after the report is  
21 received. The hearing may be waived by the  
22 defendant only if the report indicates that he is  
23 competent. The court shall determine whether the

24 defendant is competent or whether he is making  
25 progress toward attainment of competency within  
26 the period covered by the placement order. If the  
27 court finds that the defendant is competent, he  
28 shall be returned to the custody of the  
29 Commissioner of Correction or released, if he has  
30 met the conditions for release, and the court  
31 shall continue with the criminal proceedings. If  
32 the court finds that the defendant is still not  
33 competent but that he is making progress toward  
34 attaining [competence] COMPETENCY, it may continue  
35 or modify the placement order. IF THE COURT FINDS  
36 THAT THE DEFENDANT IS STILL NOT COMPETENT AND WILL  
37 NOT ATTAIN COMPETENCY WITHIN THE REMAINDER OF THE  
38 PERIOD COVERED BY THE PLACEMENT ORDER ABSENT  
39 ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR WHICH  
40 HE IS UNWILLING OR UNABLE TO PROVIDE CONSENT, IT  
41 SHALL PROCEED AS PROVIDED IN SUBDIVISIONS (2) AND  
42 (3) OF THIS SUBSECTION.

43 (2) IF THE COURT FINDS THAT THE DEFENDANT  
44 WILL NOT ATTAIN COMPETENCY WITHIN THE REMAINDER OF  
45 THE PERIOD COVERED BY THE PLACEMENT ORDER ABSENT  
46 ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR WHICH  
47 THE DEFENDANT IS UNWILLING OR UNABLE TO PROVIDE  
48 CONSENT, IT MAY ORDER THE INVOLUNTARY MEDICATION  
49 OF THE DEFENDANT IF IT FINDS BY CLEAR AND  
50 CONVINCING EVIDENCE THAT: (A) TO A REASONABLE  
51 DEGREE OF MEDICAL CERTAINTY INVOLUNTARY MEDICATION  
52 OF THE DEFENDANT WILL RENDER HIM COMPETENT TO  
53 STAND TRIAL, (B) AN ADJUDICATION OF GUILT OR  
54 INNOCENCE CANNOT BE HAD USING LESS INTRUSIVE  
55 MEANS, (C) THE PROPOSED TREATMENT PLAN IS NARROWLY  
56 TAILORED TO MINIMIZE INTRUSION ON THE DEFENDANT'S  
57 LIBERTY AND PRIVACY INTERESTS, (D) THE PROPOSED  
58 DRUG REGIME WILL NOT CAUSE AN UNNECESSARY RISK TO  
59 THE DEFENDANT'S HEALTH AND (E) THE SERIOUSNESS OF  
60 THE ALLEGED CRIME IS SUCH THAT THE CRIMINAL LAW  
61 ENFORCEMENT INTEREST OF THE STATE IN FAIRLY AND  
62 ACCURATELY DETERMINING THE DEFENDANT'S GUILT OR  
63 INNOCENCE OVERRIDES THE DEFENDANT'S INTEREST IN  
64 SELF-DETERMINATION.

65 (3) IF THE COURT FINDS THAT THE DEFENDANT IS  
66 UNABLE TO PROVIDE CONSENT TO TREATMENT WITH  
67 PSYCHIATRIC MEDICATION, IT SHALL APPOINT A HEALTH  
68 CARE GUARDIAN TO REPRESENT THE DEFENDANT'S HEALTH  
69 CARE INTERESTS BEFORE THE COURT. NOTWITHSTANDING  
70 THE PROVISIONS OF SECTION 52-146e, THE HEALTH CARE  
71 GUARDIAN SHALL HAVE ACCESS TO ANY AND ALL

72 PSYCHIATRIC AND MEDICAL RECORDS OF THE DEFENDANT.  
73 THE HEALTH CARE GUARDIAN SHALL FILE A REPORT OF  
74 HIS OR HER FINDINGS WITH THE COURT NOT LATER THAN  
75 THIRTY DAYS AFTER HIS OR HER APPOINTMENT. THE  
76 COURT SHALL SET THE MATTER FOR A HEARING NOT LATER  
77 THAN TEN DAYS AFTER THE HEALTH CARE GUARDIAN'S  
78 REPORT IS RECEIVED.

79 Sec. 2. Subsection (m) of section 54-56d of  
80 the general statutes is repealed and the following  
81 is substituted in lieu thereof:

82 (m) If at any time the court determines that  
83 there is not a substantial probability that the  
84 defendant will [become competent] ATTAIN  
85 COMPETENCY within the period of treatment allowed  
86 by this section, or if at the end of that period  
87 the court finds that the defendant is still not  
88 competent, the court shall either release the  
89 defendant from custody or order the defendant  
90 placed in the custody of the Commissioner of  
91 Mental Health and Addiction Services, the  
92 Commissioner of Children and Families or the  
93 Commissioner of Mental Retardation. The  
94 commissioner given custody or his designee shall  
95 then apply for civil commitment according to  
96 sections 17a-75 to 17a-83, inclusive, 17a-270 to  
97 17a-283, inclusive, and 17a-495 to 17a-528,  
98 inclusive, AS AMENDED. The court shall hear  
99 arguments as to whether the defendant should be  
100 released or should be placed in the custody of the  
101 Commissioner of Mental Health and Addiction  
102 Services, the Commissioner of Children and  
103 Families or the Commissioner of Mental  
104 Retardation. IF THE COURT ORDERS THE RELEASE OF A  
105 DEFENDANT CHARGED WITH THE COMMISSION OF A CRIME  
106 THAT RESULTED IN THE DEATH OR SERIOUS PHYSICAL  
107 INJURY, AS DEFINED IN SECTION 53a-3, OF ANOTHER  
108 PERSON, IT MAY, ON ITS OWN MOTION OR ON MOTION OF  
109 THE PROSECUTING AUTHORITY, ORDER, AS A CONDITION  
110 OF SUCH RELEASE, PERIODIC EXAMINATIONS OF THE  
111 DEFENDANT AS TO HIS COMPETENCY. SUCH AN  
112 EXAMINATION SHALL BE CONDUCTED IN ACCORDANCE WITH  
113 SUBSECTION (d) OF THIS SECTION. UPON RECEIPT OF  
114 THE WRITTEN REPORT AS PROVIDED IN SAID SUBSECTION  
115 (d) THE COURT SHALL, UPON THE REQUEST OF EITHER  
116 PARTY FILED NOT LATER THAN THIRTY DAYS AFTER THE  
117 COURT RECEIVES SUCH REPORT, CONDUCT A HEARING AS  
118 PROVIDED IN SUBSECTION (e) OF THIS SECTION. SUCH  
119 HEARING SHALL BE HELD NOT LATER THAN NINETY DAYS

120 AFTER THE COURT RECEIVES SUCH REPORT. IF THE COURT  
121 FINDS THAT THE DEFENDANT HAS ATTAINED COMPETENCY,  
122 HE SHALL BE RETURNED TO THE CUSTODY OF THE  
123 COMMISSIONER OF CORRECTION OR RELEASED, IF HE HAS  
124 MET THE CONDITIONS FOR RELEASE, AND THE COURT  
125 SHALL CONTINUE WITH THE CRIMINAL PROCEEDINGS.  
126 PERIODIC EXAMINATIONS ORDERED BY THE COURT UNDER  
127 THIS SUBSECTION SHALL CONTINUE UNTIL THE COURT  
128 FINDS THAT THE DEFENDANT HAS ATTAINED COMPETENCY  
129 OR UNTIL THE TIME WITHIN WHICH THE DEFENDANT MAY  
130 BE PROSECUTED FOR THE CRIME WITH WHICH HE IS  
131 CHARGED, AS PROVIDED IN SECTION 54-193 OR 54-193a,  
132 HAS EXPIRED, WHICHEVER OCCURS FIRST. The court  
133 shall dismiss, with or without prejudice, any  
134 charges for which a nolle prosequi is not entered  
135 when the time within which the defendant may be  
136 prosecuted for the crime with which he is charged,  
137 as provided in section 54-193 OR 54-193a, has  
138 expired. Notwithstanding the erasure provisions of  
139 section 54-142a, police and court records and  
140 records of any state's attorney pertaining to a  
141 charge which is nolle or dismissed without  
142 prejudice while the defendant is not competent  
143 shall not be erased until the time for the  
144 prosecution of the defendant expires under section  
145 54-193 OR 54-193a. A defendant who is not civilly  
146 committed as a result of an application made by  
147 the Commissioner of Mental Health and Addiction  
148 Services, the Commissioner of Children and  
149 Families or the Commissioner of Mental Retardation  
150 pursuant to this section shall be released. A  
151 defendant who is civilly committed pursuant to  
152 such an application shall be treated in the same  
153 manner as any other civilly committed person.

154 JUD COMMITTEE VOTE: YEA 36 NAY 0 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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**FISCAL IMPACT STATEMENT - BILL NUMBER sSB 610**

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Judicial Department, Department of Mental Health and Addiction Services, Criminal Justice Agencies

**EXPLANATION OF ESTIMATES:**

The bill's provisions concerning involuntary medication would result in savings to the Judicial Department. Since these provisions codify the State v. Garcia Supreme Court decision, there would not be a fiscal impact. However, to the extent that the bill clarifies procedures for the courts to follow, case timeframes would be reduced in some cases, thereby freeing up resources for other cases.

The bill's provisions concerning periodic competency examinations would result in additional pressure on the criminal justice system to the extent that individuals are found to require further community supervision or incarceration. These pressures, in conjunction with other penalties, could lead to a need for additional resources in the future. It should be noted that sHB 5021 (the revised Appropriations Act for FY 1998-99 as favorably reported by Appropriations) includes \$5.4 million to address overcrowding in the state's prisons and jails. In addition, the Public Defender Services Commission is currently under suit by the American Civil Liberties Union relating to the inadequacy of funding for public defenders.

This bill may result in net savings for the Department of Mental Health and Addiction Services (DMHAS). The department will realize higher pharmaceutical costs from court mandated medication of those found not competent to stand trial. However, if these individuals attain competency sooner due to this medication, they will be transferred back to the judicial system, thus resulting in saving for DMHAS through reduced costs related to ongoing treatment. It is anticipated that these savings will more than offset the increased medication costs.

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### OLR BILL ANALYSIS

sSB 610

#### AN ACT CONCERNING COMPETENCY TO STAND TRIAL

**SUMMARY:** This bill changes the law on competency to stand trial by:

1. authorizing the court to order the involuntary medication of criminal defendants who are not competent to stand trial but who could attain competency with such medication;
2. requiring courts to appoint a health care guardian for such defendants who are unable to consent to treatment with psychiatric medication; and
3. requiring courts to hold a hearing to reconsider a defendant's competency within 10 days after receiving a report that the defendant will not attain competency within the remainder of any court-ordered placement without the administration of psychiatric medication that he is unwilling or unable to consent to take.

The bill also authorizes courts to order periodic examinations for defendants who, after being charged with killing or seriously injuring another person, are released from custody because they are not competent to stand trial.

It requires the court to dismiss charges of child sexual assault against defendants who do not attain competency within the statute of limitation specified in law.

EFFECTIVE DATE: October 1, 1998

#### **FURTHER EXPLANATION**

##### **Forced Medication**

The bill authorizes the court to have defendants involuntarily medicated when they have been found not competent to stand trial and will not attain competency during any period of court-ordered treatment without psychiatric medication that they will not or cannot consent to take. Before issuing the order, the court must find, by clear and convincing evidence, that:

1. to a reasonable degree of medical certainty, involuntary medication will render the defendant competent to stand trial;
2. it cannot make an adjudication of guilt or innocence by less intrusive means;
3. the proposed treatment plan is narrowly tailored to minimize the intrusion on the defendant's liberty and privacy;
4. the proposed drug regime will not cause an unnecessary risk to the defendant's health; and
5. the charges against the defendant are so serious that the state's criminal law enforcement interests in fairly and accurately determining his guilt or innocence override his interest in self-determination.

##### **Health Care Guardians**

The bill requires the court to appoint a health care guardian to represent the defendant's health care interests before the court if it finds the defendant is unable to consent to treatment with psychiatric medication. The guardian must report his findings to the court within 30 days of his appointment and the

court must schedule a hearing no later than 10 days after receipt. The bill provides that the law on psychiatrist-patient privilege cannot be asserted to deny health care guardians access to the defendant's psychiatric and medical records.

### **Periodic Examinations**

The bill authorizes the court, on its own motion or that of a prosecutor, to order periodic competency examinations as a condition of release for defendants who are not competent to stand trial and who are charged with killing or seriously injuring another person. As with examinations conducted during court-ordered placement, court-appointed psychiatrists or the Department of Mental Health and Addiction Services (DMHAS) commissioner conducts periodic examinations. The examiners must complete the examination within 15 days after the date it is ordered and report to the court within six days thereafter.

Once the court receives the report, the parties have 30 days to request a hearing. And the court must conduct one, if at all, within 90 days after receipt. If the court finds that the defendant has attained competency, it must continue with the criminal proceedings and either return the defendant to the custody of commissioner of correction or release him if he has met the conditions of release.

The bill provides that court-ordered periodic examinations must continue until the court finds that the defendant has attained competency or the statute of limitation for prosecuting the offense has expired, whichever occurs first.

## **BACKGROUND**

### **Competency to Stand Trial**

By law, a court can order treatment for a defendant it finds incompetent to stand trial if treatment will render him competent. Treatment may be conducted on an inpatient or outpatient basis and may last for 18 months or the maximum possible sentence the defendant faces, whichever is less. The people providing treatment must provide the court with status reports on the defendant. Once the court receives these reports,

it must schedule a hearing to reconsider the defendant's competency.

If the court at a final competency hearing finds that the defendant is not competent or will not likely become competent, it must release him or place him in the custody of the DMHAS commissioner for civil commitment. After the statute of limitation for prosecuting the defendant expires, the court must dismiss the charges.

### Limitation of Prosecutions

There is no time limit on prosecuting a person for a capital felony, class A felony (such as first-degree kidnapping and first-degree arson), and arson-murder. All other felonies must be prosecuted within five years. All other offenses must be prosecuted within one year. But sexual abuse, sexual exploitation, or sexual assault of a minor must be prosecuted within two years after the minor reaches age 18 or within five years after the victim notifies the police or prosecutor of the offense, whichever is earlier, but in no event less than five years after the crime is committed.

### Related Case Law

In State v. Garcia, 233 Conn. 44 (1995), the state Supreme Court held that there are some circumstances under which a court may authorize the involuntary medication of a defendant in order to render him competent. The criteria the court established for determining when these circumstances exist are the same as those required in the bill.

In State v. Curtis, 22 Conn. App. 199 (1990), the Appellate Court held that a trial court lacked statutory authority to order a defendant found incompetent to stand trial and unlikely to regain competency if treated to submit to annual competency examinations as a condition of release.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 37      Nay 0