

Legislative History for Connecticut Act

NB 5672 PA 353 1976
Judiciary 363, 366-69, 374-75, 376-78, 381-82
House 2007
Senate 2223

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JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 2
293 - 573

1976

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JUDGE LEXTON: There seems to be an inconsistency between 109 and 112. We'll have to look at it again.

Now, "An Act Concerning Hearings On Competency To Stand Trial", 5672. The main objection that I would have in this bill is that it provides that every time after someone has been committed and the Mental Health Commissioner certifies that he's still incompetent, there has to be a hearing. I don't know for what purpose. We are drowning in hearings and now if he certifies that, of course, if he certifies that he's competent, then you have a provision here which says that if it is indicated in the report that the accused is able to understand such proceedings and to assist in his own defense, the court shall within ten days hold a hearing. I'm just wondering about the use of that word, shall. At the present time, defense counsel can waive that hearing and in most instances they do, unless they feel that there is something there which ought to be brought out in that hearing and perhaps find that the man is still incompetent and they don't of course. Here it would indicate that we would have to hold a hearing. There should be something in there, unless waived by the defendant or his counsel or something like that.

SEN. NEIDITZ: Well, Mr. Fitzgerald from the Department of Mental Health is here and he will explain it and perhaps the conflict or whatever can be worked out.

JUDGE LEXTON: We would not like to see hearings though if the Mental Health Commissioner keeps, unless you want to

SEN. NEIDITZ: Maybe some other requirements like federal

JUDGE LEXTON: Because we are just drowning in hearings and I understand there's some more being put on us from Superior Court.

There's just one more and that's in 5670. This provides for interim appointments by the executive board of the Court of Common Pleas to fill any vacancy in the offices of prosecuting attorney and assistant prosecuting attorney, rather than having the appointments made by the full bench. This, I think, is necessary because it may be that we now hold quarterly meetings on judges, we may cut those down and executive boards should be able to do this.

Mr. Gormley's office and I think Mr. Mulcahy whose here

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JUSTICE LOISELLE: I feel that it could be taken care of in the statutory amendments.

SEN. NEIDITZ: Any questions? Thank you very much. Carmine Lavieri.

CARMINE LAVIERI: Good afternoon ladies and gentlemen, Carmine Lavieri, President of the Connecticut Bar Association. I'd like not only to speak in favor of House Joint Resolution 44, but to urge with all the strength that I have that it be passed.

One of the key features of the seven points of the Bar Association's statement of principles which you have before you, I don't think I need to add anything more and say I hope it is passed.

REP. HEALEY: Thank you sir. John Fitzgerald.

JOHN FITZGERALD: Good afternoon. My name is John Fitzgerald, by training I'm a clinical social worker. I'm the chief psychiatric social worker with the State Department of Mental Health, administrator of pretrial, pre-sentence diagnostic clinic which is a federally funded project within the department that's heavily involved in the issue of competency which has to do with Bill No. 5672, "An Act Concerning Hearings On Competency To Stand Trial".

I see this primarily as a lot of housecleaning, but there's one feature of it that I strongly urge and support and that is now the new inclusion that upon a finding of incompetence, one can be committed to the Commissioner of Mental Retardation. This is really a very important addition. Because, sad to say, up to this attempted change, if the primary reason for finding an accused incompetent was their limited level of intellectual functioning, the statute as it now stands does not allow any option upon that finding, but to be committed to the Commissioner of Mental Health. And what in God's holy name is a kid whose going down to Norwich because he's intellectually limited going to accomplish at Norwich? So this gives you the option.

SEN. NEIDITZ: I think when we've had bills like this up before and I think that one of the problems that frankly we've run into that have come out of this committee or when I've been on the committee called Corrections, Welfare and Humane Institutions, is what this is driving at are those people, whatever age, who have never been identified

as being retarded and somehow they've gotten to age 16 or 17 or whatever and because of where they live or either protected family situation or whatever it is, they have never been so identified and we have had the problems from the citizen groups and whatever who are interested in the area of mental retardation that having come through at some point the criminal justice system, they should not be allowed in the facilities of our mental retardation facilities, etc. It's an emotional issue, but I think that that's why it has not been addressed. But I just hope that you understand it from that point of view.

JOHN FITZGERALD: Yes, I didn't mean to get emotional about it in terms of why it wasn't addressed but rather that it's very important because these same mentally retarded persons are now going to our state hospitals. What the relationship is between mental retardation and going to the hospital is purely coincidental. So this at least gives that person the opportunity to enter the system that's prepared to help them. Shall I address myself to some of the other changes?

REP. HEALEY: Any help we can get we want.

JOHN FITZGERALD: Well, the idea that the court upon being notified that a person is competent shall hold a hearing within ten days and spelling that out to ten days is I think a good feature because the court, the hospital can report to the court its new finding of competency, but the court is not obligated within a particular period of time to respond to that report and sometimes we have people remaining in the hospital for four and five and more weeks after an opinion of competency has been rendered and they have not, they are not even aware of when their court appearance is. So I think that this puts a, I appreciate it's a burden, but I think it's an appropriate burden to put on the court that they should respond to that report of competency within a specific period of time. I don't think that's, it is a burden, but it's an appropriate one because the alternative to not putting that burden on the court is to allow someone to remain in the hospital who at least someone there has now rendered the opinion doesn't belong there.

REP. HEALEY: Mr. Chairman, am I missing something? Admittedly I'm scanning this very hastily, but I'm presently on Line 87 and it appears there's a 15 day time limit and

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you're simply changing that to 10 as far as this particular hearing you are talking about is concerned. I'm wondering what's so all important about the five day difference.

JOHN FITZGERALD: I guess it's my hope that by directing the bill directing itself to the change of 15 to 10 which, by the way has not been particularly complied with, that there will be a reemphasis on the importance of the court reacting within a particular period of time. In other words, the 15 days has not been complied with.

SEN. NEIDITZ: In other words, what you are really asking us to do is pass a law saying obey the law.

JOHN FITZGERALD: Touché. I think it does re-emphasize the importance of that by changing it. One might discover that it was there to begin with, yes.

I think that Judge Lexton, I think I overheard some of his concern and that of Section that begins on page 4, line 115, that says "if it is indicated in the report that the accused is able to understand such proceedings and assist in his own defense". In other words, the court is not obligated to get into the act if the hospital is continuing to find the person incompetent. The court only has to get back into the act if he is able to understand such proceedings and assist in his own defense. This is only proper because the person has been allegedly remanded to the Commissioner to begin with only until such time as he is able. So this says, if your report indicates that he is able, then you must respond and hold a hearing and address yourself to that issue.

SEN. NEIDITZ: If he is found not able, then no report would be sent.

JOHN FITZGERALD: That's how I read this. You have another change that says that a report is only due every nine months rather than six months. I have some trouble with that you know, what it really means, I feel I have to be candid with you, what it really means and I'm trying to make it personal because when you think of all the people out here, it can get kind of impersonal, it means that if somebody in my family was found incompetent and they could then be in the state hospital for as long as 18 months, then during that period of time, all they need necessarily be entitled to is a hearing.

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So, we send somebody down to the state hospitals and nine months from now there it's mandated that the court be reported to. And according to this, if they were reported to that the person was incompetent, we wouldn't have to deal with them for another nine months which would then be at the expiration of the maximum of 18 months and then if the hospital wanted to continue to hold them, they would have to probate them. Well, it bothers me a little bit.

SEN. NEIDITZ: The fact that the civil liberties problems in it, I mean we are talking about unnecessary expense perhaps.

JOHN FITZGERALD: I don't think there's, yes I'm sure you're right. It's all things considered a good bill and especially that part about opening up the option to commitment to the Commissioner of Mental Retardation is an admirably quality.

SEN. NEIDITZ: What is your telephone extension? Just give it to Mrs. Lindsay in case when we take up this bill there are questions.

JOHN FITZGERALD: 2696. Thank you gentlemen.

SEN. NEIDITZ: Mayor Blackstone. I know you have to get back to run the town of East Hartford, so come on up.

MAYOR BLACKSTONE: Thank you Mr. Chairman, members of the committee, I'm here this afternoon to speak just briefly on Committee Bill 5459. I have been made aware that there is a Senate Bill 339, file 49 on the same subject matter, but I would like to speak in favor of this bill. The towns of East Hartford and Manchester over the last nine months or so have been grappling with problems that exist in the present law trying to find facilities which we can sublease to the state court system. We think it's to the advantage of the court system primarily and they would be in power to do direct negotiations with the property owner rather than the communities to serve as a go-between or the middle-man and basically this proposed bill does provide for that and so we would request that you give it favorable report. Thank you.

MR. KEEFE: I think they find it very worthwhile. Most of them help out on the short calendar especially. You know they are very busy. So it's been I think a very good program. But one for the Appellate session would be continuing amount of business there or increasing amount of business is really insufficient, especially when you realize that those judges maintain a full trial schedule.

Another bill I is 5670, "An Act Concerning Interim Appointments Within The Judicial Department". And essentially this is an attempt to try to have appointments made, interim appointments made by, the Executive committees of the Superior Court or by the Executive Committees of the Court of Common Pleas and so that appointments of various positions are not made by your senior judge or the presiding judge or by the full bench or in some other matter, the statutes now are very divergent in the matter in which vacancies are filled and we think, that for good personal administration, it should be the executive committee of each court. Give them the authority to fill vacancies between judges meetings and we have 61 judges on the Court of Common Pleas. It's absurd, everytime there's a vacancy, for example, in the position of prosecuting attorney, that they would be required to meet to fill that vacancy. Judges have other things to do. So that having an executive committee which is empowered to do these things will facilitate appointments.

The way it works is the nominees come from the resident judges to the executive committee and if the person, you know, looks good then the executive committee will make the appointment. It takes nothing away from the resident judges, selection of power.

SEN. NEIDITZ: And they do it in their usual political way, anyway.

MR. KEEFE: Correct. The other bill, 5672, "An Act Concerning Hearings On Competency to Stand Trial", Mr. Fitzgerald has spoken in favor of this bill and I'm not going to repeat everything he says as such. I would like to call your attention, however, to Line 103, 104. The present law, if the person is found to be incompetent to stand trial, allows the court to commit for up to 18 months. It's unclear, at least to me, I think after talking with Mr. Fitzgerald to him, whether that is applicable if the

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charge for which the accused stands charged, is only punishable or is punishable by a lesser term. So I think that should be cleared up and this at least puts it on the table. It says notwithstanding such maximum period, it may exceed the maximum period to which the accused may have been sentenced. So, if for example, I'm charged with a crime punishable by twelve months imprisonment under the way this bill now reads I could be committed for up to 18 months.

But if that is not the committee's, the committee does not feel that is proper, I think they should at least clarify the question that the term of commitment may never exceed the maximum for which I may be sentenced.

Now, line 114 and 115, under the existing law, if a person is committed through the Commissioner of Mental Health, the Commissioner of Mental Health, if he finds that the person is competent to stand trial is suppose to submit a report to the court and under existing law he has to, in any event, submit a report every six months regardless of whether he finds the person to be competent to stand trial. Also, under present law, however, it requires a hearing every time one of these reports is submitted, one of these reports every six months and we feel that that is totally unnecessary if the commissioner has found that the individual is not competent to stand trial. It's unnecessary and also expensive to hold a hearing. So this would clarify that situation in that a hearing, a court hearing, would only be required if the Commissioner in his report indicated that the accused was now able to stand trial, was now able and competent to stand trial.

There's one other bill, 5744, which "An Act Concerning The Time Within Which A Rule of Court becomes effective". This eliminates the 60 days after promulgation and I would speak in favor of this bill because it sometimes becomes very important for the judges to promulgate rules to be effective almost on passage, especially when the legislature passes legislation which is effective on passage. Sometimes that legislation requires implementing rules for which we can't wait 60 days.

SEN. NEIDITZ: Incidentally, Mr. Keefe while you are bringing up that subject, on that larger bill which with all those

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technical amendments, does that have an effective date on it and should that be effective on passage or should that go to the October 1st date?

MR. KEEFE: 403, administration of duties and interim appointments, 5670. 5670 is effective June 1, 1976. I think that's a good date for that particular one. The administration bill 403.

SEN. NEIDITZ: Law clerk area and if your law clerks are, if a new law clerk is coming in, they like to know what they are doing in June rather than October.

MR. KEEFE: I'm glad you mentioned that, I think that should be effective on passage.

REP. HEALEY: For the entire bill or just Section 16?

MR. KEEFE: I would say the entire bill.

REP. HEALEY: Well, when I visualize problems as far as Section 2 is concerned because it wouldn't be generally circulated and yet this mandates that the change in the form of a writ.

SEN. NEIDITZ: QUESTION INAUDIBLE.

MR. KEEFE: With the exception of that particular section, I would like to see the bill effective on passage.

SEN. NEIDITZ: It's just that I guess I keep reminding myself that when we have other meetings later on, the effective date on some these things are something that we should talk on. Mr. Mulcahey.

MR. MULCAHEY: Mr. Chairman, members of the committee, I should like to speak in support of Raised Committee Bill 5672, "An Act Concerning Hearings On Competency To Stand Trial". On behalf of the chief state's attorney's office and the state attorneys and the prosecuting attorneys, we support this legislation. We notice, as has been stated, that this provides an alternative for committment to the Commissioner of Mental Retardation. We would only state that we agree with Mr. Fitzgerald as to his reasons that were stated for this alternative. However, we would certainly hope that in the case of individuals posing a very serious security risk charged with very serious crime and judiciated incompetent to stand trial that the Commissioner will see to it that these individuals are committed to Whiting or a facility having

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adequate security to assure that the public will be protected against their escape or untimely release.

With reference to the bill overall, I certainly agree that it does facilitate and streamline the procedure considerably. It does away, as Mr. Keefe stated, with unnecessary hearings and the requirement being that a hearing be held only when it is determined by either Commissioner that the particular individual is capable to stand trial. We agree with the nine month period as opposed to the six month period for holding hearings.

With reference to line 67, the change from a prompt hearing, this would be the initial hearing after the individual has been evaluated by the clinical team, the change is from a prompt hearing to a ten day hearing, I have some reservation as to whether or not perhaps a prompt is not a better term. As Mr. Fitzgerald contends, this particular legislation spells out the time period. Of course, the question comes up then, if the time period is not met, what is the remedy? Even where it is prompt, the only remedy presumably would be a writ of habeas corpus or an addition for a writ of habeas corpus. I just question what really the necessity is to specify in terms of days particularly at that stage, the initial stage, since at that point, normally in many, many instances the particular person the accused may be out on bond at any rate. That is prior to the time that he is actually committed.

This encompasses a procedure whereby the clinical evaluation is made either on an outpatient basis or the initial clinical evaluation or upon a visitation by the team as to the particular correction facility in the jail.

SEN. NEIDITZ: Excuse me Mr. Mulcahey, I understand what you are saying and sometimes having the ten days in there, I mean we did set up the team, it isn't so much looking at it from what is the remedy and the petition for habeas corpus as it is for the form or check list within a department. If they see that the statute says ten days, they would do it in ten days, if you say prompt that can mean anything from tomorrow till next fall, after vacation or something like that.

The problem I have is if something is not complied in within the ten days, do I have my people over there defending the petition for a writ of habeas corpus or something like that.

MR. MULCAHEY: Probably that won't happen if it happens on the eleventh or twelfth day or the fifteenth day or the eighteenth day, probably, yes you might be if it was past thirty days.

SEN. NEIDITZ: Well, also with reference to fifteen days, the change the reduction from fifteen to ten in line 87, now this would be after the commitment to either the Commissioner of Mental Health or the Commissioner of Mental Retardation. Presumably, if at any time, while the individual is so committed, that either of the commissioners finds that the person is now competent or prepares a report to that effect, then this reads as I understand it, that the court shall fix a time within ten days for a hearing. In other words, hold a hearing within ten days, schedule the hearing within ten days or a given date. Is that the other way of reading it?

Well, I'm just wondering we did have some litigation over in the federal court in which the prosecutors and clerks were named defendants when a particular hearing was not held within the fifteen days.

MR. MULCAHEY: Under this language or a language analogous?

SEN. NEIDITZ: Yes, language analogous, yes this particular line 87, just changes fifteen to ten or actually reduces the time period, the language is basically the same. The allegation was that there was a violation of the incompetent person's civil rights because a hearing was not actually held within the fifteen day period so perhaps if we are going to put times in this. Number one, I would question the reduction from fifteen to ten and number two, perhaps there should be a degree of clarity in there whereby it is clear that the, that within the ten days all that is required is that the hearing be in fact scheduled as opposed to, in fact, being held.

We'll refer that to Mr. Borden of our Clarity Committee.

MR. MULCAHEY: I think the intent is clear that it's the other way, the way the bill was originally drafted. Frankly I think it was meant to have the hearing within ten days not just have a.

SEN. NEIDITZ: Well, it was poorly drafted in the first instance.

to six weeks. Obviously these are very long trials. Another five or six weeks and now if certainly if the grand jury proceeding, the proceeding merely for the return of the true bill is also going to be an adversary proceeding. We can add another five or six weeks on to the process.

DAVID BORDEN: Mr. Chairman, David Borden counsel for the committee, Mr. Mulcahey are you aware that the proposed rules to this Superior Court, in this case Superior Court, don't provide for counsel in the grand jury, but do provide for the court reporter to be there and availability IS INTERRUPTED.

MR. MULCAHEY: I'm sorry I meant to comment on that and that is what I had intended to say is that certainly under the proposed rules, which are before a rules committee now, added provisions regarding the record that is kept at an indicting grand jury, the disclosure of that record, etc., and I certainly feel that those rules, if they finally do become rules of the Superior Court be given a chance in lieu of any legislation along this line.

DAVID BORDEN: I have another question on Bill No. 5672, the competency to stand trial. The bill as drafted lengthens the time for the periodic reports six months to nine months and it also mandates a hearing only when the report indicates that the accused is able to understand the proceedings against him, etc. There's no provision I gather from reading this, in the present law, and nor would there be under this bill for hearing at the request of the accused or his counsel if he disagrees with the report. For example, I can conceive of a situation where the report may say, he's not able to stand trial and the accused and his counsel say he is able to stand trial and maybe have their own psychiatrist who will say so and yet they may, might under this provision, have to wait until the next nine months report. I take it you wouldn't see any problem putting in a provision in there saying that at any time that the accused request or his counsel feels entitled to a hearing on the question, or would you?

MR. MULCAHEY: No, I would have no objection to that modification of this statute. I think that regardless of such a specific provision in this act, that if that was the accused position and the position of his attorney IS INTERRUPTED.

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MR. BORDEN: He would probably get a hearing anyway.

MR. MULCAHEY: On habeas corpus perhaps some other matter, but in any event I agree I think it should be spelled out in the legislation.

SEN. NEIDITZ: Just one other question. In the confidentiality or the sanctity of the grand jury or whatever, is that a problem? Do proceedings of grand juries routinely leak, sometimes leak,

MR. MULCAHEY: I think it's a very serious problem in the area of investigatory grand juries and the area of indicting grand juries, I think and again from my background in the federal system, I just feel that there should be some provision under limited circumstances for making the record available to the accused at a reasonably early date. I don't know if I have answered your question. I don't see the confidentiality or the secrecy being that important once a true bill is returned. If a true bill has not been returned or certainly during the course of the proceeding itself, then I certainly think the secrecy should be maintained, the confidentiality maintained.

SEN. NEIDITZ: Any other questions? Thank you Mr. Mulcahey. Mr. Podolsky.

RAPHAEL PODOLSKY: My name is Raphael Podolsky from the Connecticut Legal Services Program. I want to speak in regard to two bills before the committee, No. 5747 involving Venue in small claims action and 5694 involving non-judge lawyers as to hear small claims action.

The first of these bills, 5747 is one which I would like to endorse the testimony you have already heard from Judge Lexton. From our perspectives as attorneys representing typically representing defendants, we have seen the frequency of the practice of bringing a suit in what's really an inconvenient form for the defendant. The problem is broader than just small claims. It happens in the Court of Common Pleas as well, but this certainly is, this bill will be a major step in the right direction.

Our experience then has been that the problem has been most common in home solicitation sales or financing

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Calendar No. 560. House Bill No. 5909. File 470.

Calendar No. 561. House Bill No. 5785. File #68.

Calendar No. 564. Substitute for House Bill No. 5729.

File 467.

Calendar No. 571. Substitute for Senate Bill No. 575.

File 348.

Calendar No. 574. Substitute for Senate Bill No. 178.

File 340.

Calendar 577. Substitute for Senate Bill No. 399. File 334.

Calendar No. 579. Substitute for Senate Bill No. 415.

File 376.

Calendar No. 582. Substitute for Senate Bill. NO. 622.

File 338.

On page 3. Calendar No. 583. Senate Bill No. 441. File 246.

Calendar No. 604. Substitute for Senate Bill No. 446.

File 375

Calendar No. 609. Substitute for Senate Bill No. 350. File

401.

Calendar No. 613. Substitute for House Bill No. 5672. File 517.

Calendar No. 622. Substitite for House Bill No. 5186.

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Calendar 599, File 518, Favorable Report of the Joint Standing Committee on Judiciary. House Bill No. 5357. AN ACT CONCERNING DISSOLUTION OF CORPORATIONS BY FORFEITURE.

SENATOR NEIDITZ:

Mr. President.

THE CHAIR:

Senator Neiditz.

SENATOR NEIDITZ:

Move acceptance of the committee's favorable report and passage of the bill in concurrence with the House and on the Consent Calendar.

THE CHAIR:

Hearing no objections, so ordered.

THE CLERK:

Calendar 600, File 517, Favorable Report of the Joint Standing Committee on Judiciary. Substitute for House Bill 5672. AN ACT CONCERNING HEARINGS ON COMPETENCY TO STAND TRIAL.

SENATOR NEIDITZ:

Mr. President.

THE CHAIR:

Senator Neiditz.

SENATOR NEIDITZ:

Move acceptance of the committee's favorable report and passage of the bill in concurrence with the House and on the Consent Calendar.

THE CHAIR:

Hearing no objection, so ordered.