

Legislative History for Connecticut Act

SB 414	PA 189	1980
House - 4261-4266		6
Senate - 1359-1360, 1453 (consent)		3
Judiciary - 719, 797-798, 802, 806-807		6

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1980

VOL. 23
PART 14
3979-4362

House of Representatives

Wednesday, April 23, 1980

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khp

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill? Will you remark further on this bill?

If not, would the staff and guests please come to the Well of the House. Would the members please take their seats. The machine will be opened.

The House of Representatives is now voting by roll. Would the members please return to the Chamber. There is a roll call vote in progress in the Hall of the House. Would the members return to the Chamber immediately.

Have all the members voted? Have all the members voted? The machine will be locked. The Clerk will take the tally.

Clerk, please announce the tally.

CLERK:

Senate Bill 570

Total Number Voting	141
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Necessary For Passage	71
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Those Voting Yea	141
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Those Voting Nay	0
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Those absent and Not Voting	10
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DEPUTY SPEAKER FRANKEL:

The bill passes.

CLERK:

Calendar No. 527, File 444, Senate Bill No. 414, AN ACT

House of Representatives

Wednesday, April 23, 1980 283
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THE RIGHTS OF MENTALLY ILL. Favorable Report of the Committee
on Judiciary.

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint Committee's
Favorable Report and passage of the bill in concurrence with the
Senate.

DEPUTY SPEAKER FRANKEL:

The question is on concurrence of the Joint Committee's
Favorable Report and passage of this bill in concurrence with
the Senate. Will you remark, sir.

REP. TULISANO: (29th)

Yes, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, the purpose of this legislation is to prohibit
and protect the serial commitment of individuals --

DEPUTY SPEAKER FRANKEL:

Would the House please come to order. Would the House please

come to order. Excuse me, sir.

REP. TULISANO: (29th)

As I indicated, sir, the purpose and intent of this legislation is to prevent detention of persons under serial commitment. That is if one is committed, a mentally ill person is committed under emergency certificate, it would constrict the continuous issuance of emergency certificates without a hearing. The purpose of the hearings provide due process rights for the individual and if one were to give informed consent, it also requires one to give informed consent of any medical or surgical procedures that are performed. Unless, of course, the individual has been declared incapable of doing so by a probate court. And it also prohibits confinement of a voluntary mental patient under emergency certificate for more than 15 days. It is designed to protect the rights of individuals.

It has support of the Mental Health Law Clinic of the University of Connecticut, the Connecticut Department of Mental Health and the Connecticut Psychiatric Society as well as a number of legal services, individuals who helped in the development of the legislation. Again, it is once again designed to prevent the continuous commitment of individuals without getting a hearing in a due process here in a probate court and I move passage of the bill.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill? Will you remark further? If not, staff and guests please --

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REP. VAN NORSTRAND: (141st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

I just had one question, through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Please frame your question.

REP. VAN NORSTRAND: (141st)

Line 103, is there any ready definition of medically harmful delay?

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano, will you respond.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I don't believe there's a definition in the dictionary or in the statute however, what in context this is being designed whether or not a medical procedure should be given to an individual and the physician would have to make a decision if he would be harmed in a medical matter, physically, receive some damage if they do not get the treatment if they were waiting for either a consent or getting a court order to do it.

DEPUTY SPEAKER FRANKEL:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Thank you, Mr. Speaker. I'm not against the bill, I just wondered and I was curious if there had been any court decisions or anything that made that a phrase of art because obviously it's possible, as with any phrase, there's some sort of abuse.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill. Will you remark further. If not, staff and guests please come to the Well of the House. Members please take their seats. The machine will be opened.

The House of Representatives is now voting by roll. Would the members please return to the Chamber. There is a roll call vote in progress in the Hall of the House. Would the members return to the Chamber immediately.

Have all the members voted? Have all the members voted? If so, the machine will be locked. The Clerk will take a tally.

Clerk, please announce the tally.

CLERK:

Senate Bill No. 414

Total Number Voting	139
Necessary for Passage	70
Those Voting Yea	139
Those Voting Nay	0
Those absent and not Voting	12

House of Representatives

Wednesday, April 23, 1980 287

khp

DEPUTY SPEAKER FRANKEL:

The bill passes.

CLERK:

Calendar No. 528, File 435, Substitute for Senate Bill No. 322, AN ACT CONCERNING PAYMENT OF ATTORNEY'S FEES IN PROCEEDINGS TO VACATE OR CONFIRM TEACHER GRIEVANCE ARBITRATION AWARDS. Favorable Report of the Committee on Judiciary.

REP. PIER: (15th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Pier.

REP. PIER: (15th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and adoption of the bill in concurrence with the Senate.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance of the Joint Committee's Favorable Report and adoption of the bill in concurrence with the Senate. Will you remark, sir.

REP. PIER: (15th)

Mr. Speaker, Ladies and Gentlemen, this is a very simple, relatively brief bill. All we really do is authorize the granting of reasonable attorney's fees to prevailing parties when an attempt

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1980

VOL. 23
PART 5
1282-1686

Wednesday, April 16, 1980

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THE PRESIDENT:

Would you remark, Senator.

SENATOR DEPIANO:

Yes. Under existing law where a board of education or a teacher or teachers bargaining agent has unsuccessful moved to vacate or confirm an arbitration award, the court has no authority to award attorney's fees to the prevailing party. This bill would permit the court to award reasonable attorney's fees and costs to the prevailing party. This bill would permit the court to award reasonable attorney's fees and costs to the prevailing party in such action.

If there is no objection, I move this be placed on the Consent Calendar.

THE PRESIDENT:

Any objection to moving the bill to the CONSENT CALENDAR. Hearing none, it is so ordered.

THE CLERK:

Cal. 322, File 444. Senate Bill 414. AN ACT CONCERNING THE RIGHTS OF MENTALLY ILL. Favorable report of the Committee on Judiciary.

THE PRESIDENT:

Senator DePiano.

SENATOR DEPIANO: (23rd)

Mr. President, I move for acceptance of the committee's joint favorable report and passage of the bill.

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THE PRESIDENT IN THE CHAIR

THE PRESIDENT:

Question is on acceptance and passage. Will you remark, Senator?

SENATOR DEPIANO:

Yes. This bill would require the informed written consent of any involuntary mental patient before any medical or surgical procedures are performed unless the patient has been declared incapable of caring for himself by the Probate Court, whereupon then his legal representatives would have to give the permission.

If there is no objection, I move it be placed on the Consent Calendar.

THE PRESIDENT:

Further remarks? Objection to placing it on Consent. Hearing neither, it is so ordered.

THE PRESIDENT:

Proceed, please.

THE CLERK:

Cal. 323, File 446. Substitute for Senate Bill 470.
AN ACT CONCERNING THE STATUTE OF LIMITATION FOR WAGE ENFORCE-
MENT CLAIMS. Favorable report of the Committee on Judiciary.

THE PRESIDENT:

Senator Skelley.

Wednesday, April 16, 1980

171.

roc

The vote is 35 Yea - 0 Nay. Absent and Not
 Voting 1. THE BILL IS PASSED.

THE PRESIDENT:

Clear the machine please. We are voting on the
 Consent Calendar itself. The machine is open. Have all
 senators voted? The machine is closed. The Clerk will
 take a tally.

The vote is 36 Yea - 0 Nay. THE CONSENT CALENDAR
 IS PASSED. SB 294, SB 1, HB 5025, SB 363, SB 667, SB 563, SB 260,
 SB 414, SB 470, SB 561, SB 565, SB 569, SB 570, SB 573,
 SB 575, SB 642, SB 606, SB 723, HB 5067, HB 5227, HB 5770,
 THE PRESIDENT: HB 5830, HB 5912, HB 5913

I understand that there is also additional pages
 of today's Agenda to adopt, Senator Lieberman, prior to
 adjournment?

SENATOR LIEBERMAN:

Yes, Mr. President. I do want to indicate to the
 Clerks that I do not intend to suspend the rules to send
 matters to the House tonight because there is at least one
 that someone may move for reconsideration on tomorrow.

Mr. President, I would move for adoption of the
 additional two pages of the Agenda at this time.

THE PRESIDENT:

You have heard the motion. Without objection, it is
 so ordered, The Agenda is adopted and incorporated by refer-
 ence into the Senate Journal and Senate Transcript.

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JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 3
578-875

1980

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JUDICIARY

March 14, 1980

MR. FRANCIS: I'm going to leave two things with you. I'll leave my testimony with you and then the Connecticut Youth Services did a study on family with service needs and its impact on community based youth services. It's a monster and I know you don't have a lot of time to take a look at that but I'll be available for questions if you have any.

REP. TULISANO: Dr. Arnold Johnson.

DR. ARNOLD JOHNSON: Mr. Chairman and members of the Committee. I am Arnold W. Johnson, Jr. I'm Deputy Commissioner for Treatment Services in the Department of Mental Health. Mr. Engelbrach is distributing to you my testimony on the two department raised bills. I have several bills I want to comment on.

The first bill I want to comment on is number 414. This is an act concerning the rights of the mentally ill and it addresses the prevention of possible abuses of the serial use of the 15 day physicians emergency certificate. We do not object to this. We're generally supportive of the idea of these precautions. The third section in that bill addresses the ability of an involuntary patient to fine for his own medical and surgical procedures. And this is not addressed in the law the way it is. This needs to be. An involuntary patient is not necessarily incompetent to fine for his own medical and surgical procedures.

So we are supportive in general of bill 414. The second bill I'd like to comment on is number 476. This is an act concerning the establishment of a commission to study the defense of insanity. The defense of insanity is a controversial issue these days in certain amount of chaos nationwide. We are in favor of and support bill 476 to establish this study commission. Next bill I'd like to comment upon is bill 483 which is a Department of Mental Health bill. This is a proposed act concerning confinement in mental hospitals of inmates of correctional institutions. You have a copy of my testimony before you. Section 17194a concerning the transfer of mentally ill inmates from correctional institutions to other state institutions was declared unconstitutional by a federal district court in the case of Chesney vs Adams in 1974. In 1976 P.A. 76190 was passed which replaced 17194a with 17194b through g. This act was in direct response to Chesney vs Adams and essentially changed the procedure involved in the transfer of mentally

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kjm

JUDICIARY

March 14, 1980

MS. WRIGHT: (continued)

that change. However--the bill has been introduced today by

REP. TULISANO: Would you also include other murders, too, or just rape/murder?

MS. WRIGHT: Rape/murder is the one that you have and we're in support of that. Connecticut... we hope you'll take that into consideration.

REP. TULISANO: I understand that. We can go with anything with the statutes when we get through with them. My indication is that we have the feeling that you're talking about all violent taking of life not just whether rape was involved.

MS. WRIGHT: We are addressing ourselves merely at this point and I am not free to make a decision on the part of the team which represents a variety of congregations and denominations.

REP. ONORATO: Did I understand you say that you're speaking for this bill?

MS. WRIGHT: We're speaking for the bill to establish rape/murder as a capitol felony; however, the language in that bill goes on to say that it would be punishable by death and we are opposed to the death penalty.

REP. TULISANO: Thank you.

MS. WRIGHT: Thank you very much.

REP. TULISANO: Thank you for waiting so long. Shelley White?

SHELLEY WHITE: I promise indifference to the hour. I will keep my remarks within one minute. My name is Shelley White and I'm with the Legal Services Training and Advocacy Project and I'm here to speak in support of Senate Bill 414, An Act Concerning Rights of Mentally Ill Patients. This bill makes several small, but extremely important changes in the bills -- in the laws that exist to protect the rights of mentally ill patients. In Sections I and II, it closes up a loophole in Emergency Commitment Statutes which have been used by mental health facilities to hold patients beyond the period of time the legislature had intended that they be held. Section III permits a voluntarily admitted patient who has not been declared legally incompetent to consent to his or her medical or surgical procedures subject, of course, to certain restrictions

MS. WHITE: (continued)

when there is an emergency and the situations consent can be waived. The bill has been endorsed already today by the Department of Mental Health. The Deputy Director from the Office of Protection and Advocacy was here to speak on behalf of the bill and left testimony but he had to leave. It's also supported by the Mental Health Association and it is not opposed by the Connecticut Psychiatric Society so we hope you'll take that into consideration.

It's a very important bill for mentally ill patients but the changes that it makes are not controversial.

REP. TULISANO: Thank you.

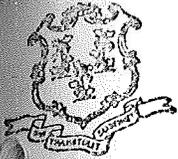
MS. WHITE: Thank you.

REP. TULISANO: Patricia Weel? Pat? It's getting quiet in here.

PATRICIA WEEL: I'll be very brief. My name is Patricia Weel and I am a member of the Connecticut Alliance Against Sexual Assault and I'm here to speak in support of Senate Bill 304 and Senate Bill 247. As far as Senate Bill 247, An Act Establishing Rape/Murder As A Capitol Felony, there is certainly no crime more offensive to the community than rape/homicide. It should be included with those crimes qualifying for the maximum penalty and that's, basically, our position.

MS. WHITE: I do agree with the previous speaker on my personal feelings about the death penalty and I do believe that life imprisonment is a more appropriate sentence if it was enforced -- life imprisonment. On Senate Bill 304, An Act Concerning The Disclosure Of Address By Rape Victims, a significant number of assault victims move, changing their address after a sexual assault. This is particularly true of victims who have been assaulted in their homes. Basically, this is because victims no longer feel safe in their own home and well as their specific fear that the assailant will return. In a recent trial in New Haven, one of the first concerns was whether she would have to disclose her new address in open court.

She was concerned not only for herself, but also for her young children. She feared retaliation not only by the defendant, but by his friends as well. The crime of rape is



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR HANDICAPPED
AND DEVELOPMENTALLY DISABLED PERSONS

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March 14, 1980

TESTIMONY

Before the Judiciary Committee on Friday, March 14, 1980, at 1:00 PM in the Judiciary Room concerning Bill No. 414.

My name is Stan Kosloski and I am the Assistant Director of the Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons. I am here to speak to you in favor of Bill No. 414.

Committee Bill No. 414, An Act Concerning the Rights of Mentally Ill persons, represents badly-needed reforms in Connecticut's current laws governing the confinement and medication of mentally ill persons. Emergency certification is just that - a procedure to be used only in the case of a serious emergency. Such procedures should never be used in any way not required by a genuine state of emergency. Subsection (6) of Section 17-206d is, likewise, aimed at dealing with a situation of "an extremely critical nature." It should not be used to by-pass anyone's basic due process rights. I, therefore, urge this Committee to act favorably on Bill No. 414.

Thank you.

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Statement of Judith Lerner
Before The Judiciary Committee

March 14, 1980

Judith Lerner
Director, Mental Health Law Clinic
University of Connecticut School of Law

I am speaking on behalf of my clients in requesting your support for Raised Committee Bill No. 414, An Act Concerning The Rights of the Mentally Ill.

Section 1: Section 1 closes a loophole in the present law. Under existing law a person may be hospitalized pursuant to a physician's emergency certificate for 15 days, plus an additional 15 days if a petition for commitment is filed with the probate court. The legislature clearly intended to limit the time in which a person may be held without a hearing to 30 days, by specifically eliminating the 45 day hold in Public Act 77-595.

There is no specific prohibition, however, against serial emergency certificates. A person conceivably could be sent from facility to facility indefinitely on a physician's emergency certificate, and never receive a hearing. Certain private facilities are taking advantage of this loophole to send patients to state hospitals on a second emergency certificate, thus lengthening the period of detention without a hearing. Section 1 permits only 2 serial emergency certificates, and limits the period of confinement pursuant to both certificates to 15 days from the issuance of the original certificate, as intended by the legislature.

Section 2: In an analogous situation under Section 17-187(a), existing law requires that a voluntary patient be released within 5 days, excluding Saturdays, Sundays and holidays, after he or she has given written request for release, unless an application for commitment is filed with the probate court. In Public Act 77-595, the legislature specifically changed the 10 day period of notice to a five day period to avoid longer detention without release or a hearing for voluntary patients.

As in Section 17-193, however, there is no specific provision prohibiting a facility from sending a voluntary patient who requests release to another facility on an emergency certificate. Such a practice clearly violates the patient's rights to release or a speedy hearing. Further, private hospitals use the possibility of an emergency certificate to a state hospital as a threat to coerce voluntary patients to withdraw requests for release. Such coercion violates the spirit, although not the letter of existing law. This portion of the proposed bill would conform the law to justice and legislative intent.

Testimony of Judith Lerner
March 14, 1980

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Section 3: Present law permits the performance of medical and surgical procedures on an involuntary mental patient, without his or her consent, if consent is obtained from guardian, next of kin, or a doctor appointed by the probate court.

This section requires consent by the patient unless he or she has been declared legally incapable of caring for him or herself in a competency hearing in probate court. In an emergency when a legally competent patient is deemed incapable of informed consent, medical or surgical procedures may be performed, as under existing law, when authorized by a guardian, next of kin or physician appointed by the probate court. If obtaining such third party consent would cause a medically harmful delay, then medical or surgical procedures may be performed without the authorized third party consent. Furthermore, emergency medical or surgical procedures without third party consent are permitted in cases involving incompetent patients, if obtaining third party consent would cause medically harmful delay.

This section provides desirable protection for mental patients without restricting proper treatment or creating hazardous delays by requiring unnecessary third party consent.

Conclusion: This proposed bill is uncontroversial, as far as I am aware, and is endorsed by the Mental Health Association of Connecticut. It protects significant rights, yet requires no expenditure of taxpayer's money.

I understand that this committee has patiently considered complex and comprehensive revisions of Connecticut's mental health legislation for the past few sessions. Much of the major work is done in the area of patient's rights. This proposed bill, however, addresses important issues still remaining to complete the task of assuring full human rights to inmates of our mental institutions.

Thank you very much for your kind consideration.