

Legislative History for Connecticut Act

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GEN. ASSEMBLY  
HOUSE

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Is there objection? Seeing no objection, it's so ordered.

CLERK:

Calendar No. 122, File 125, House Bill No. 5078,  
AN ACT CONCERNING COMPETENCY TO STAND TRIAL. Favorable  
Report of the Committee on Judiciary.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Tulisano.

REP. TULISANO: (29th)

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

SPEAKER STOLBERG:

Will you remark, sir?

REP. TULISANO: (29th)

Mr. Speaker, the bill before us is designed in one  
part to make it clear that an individual who is determined  
not competent to stand trial may in fact be, if they escape  
from an institution that they're committed to, pending the  
trial, or in place for treatment, can in fact, be arrested  
and would be cause for rearrest if they escape from such  
a facility.

Also it establishes a time period for a report of  
examination of any defendant's competency in order to be

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able to stand trial.

And it also requires the notification to the prosecuting authority should they not return to a mental facility they may have been placed in, that the prosecuting authority be notified so that in fact, that arrest warrant I mentioned earlier could be issued. I move passage of the bill.

SPEAKER STOLBERG:

Rep. Tulisano, what is your pleasure sir?

REP. TULISANO: (29th)

I moved passage already, sir.

SPEAKER STOLBERG:

Will you remark further on the bill?

REP. FARR: (19th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Farr.

REP. FARR: (19th)

Mr. Speaker, the Clerk has an amendment. Will the Clerk please call LCO No. 2744, and I be permitted to summarize.

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 2744, which will be designated House Amendment Schedule "A". Will the

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Clerk please call.

CLERK:

REP. FARR: LCO No. 2744, designated House Amendment Schedule "A", offered by Rep. Farr of the 19th District.

SPEAKER STOLBERG:

Rep. Farr has asked leave to summarize. Is there objection? Seeing no objection, please proceed.

REP. FARR: (19th)

Mr. Speaker, this amendment would restrict the use of the insanity defense in Connecticut. It changes the present insanity defense, which allows a defendant to be excused from criminal liability if he lacks capacity to appreciate the wrongfulness of his conduct, or to control his conduct because of mental illness, to the so-called McNaughton test.

The McNaughton test would allow the defense of insanity, only if the defendant does not know the nature of the act he's committing, or recognize its wrongfulness. The language in this proposed amendment is the same language recommended last year by the Judiciary Committee. It was supported at that time by the Chief State's Attorney's Office. It is essentially the same language recommended by the American Bar Association, and the American Psychiatric Association. Mr. Speaker, I move adoption of the amendment.

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SPEAKER STOLBERG:

Will you remark further on the amendment?

REP. ONORATO: (97th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Onorato.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, I rise in opposition to the amendment, and I'll tell you what my reasons are. I'd like to correct a statement made by Rep. Farr. Last year the State's Attorneys was not on this bill. The State's Attorneys, the public defender, psychiatrists and the Judiciary at large, were in favor of the bill that ultimately passed from this Chamber, subject to the two corrections that we made.

The law prior to last year had the burden of proof on an insanity defense, upon the state. Based upon legislation adopted last year, that burden has shifted has shifted to the defendant. The state also had the burden of proof on the release provisions where they had to prove that the defendant was not sane. That burden, likewise, has shifted to the defendant to show that he was sane.

We argued this bill for over two and a half hours

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last year. This language does nothing to change what was said last year.

We have now a mechanism in place that's recognized keeping in standing with medical testimony. What this bill would do would be to roll back the state of the law for 200 years. That's what this bill does. 150 years, the McNaughton Rule.

The McNaughton Rule states that if you know the difference between right and wrong, it is not a defense to any insanity plea. Legislation and court decisions have been adopted throughout the years, which recognize that there are mental deficiencies in people, that is recognized by society. The law came to a point where the McNaughton Rule was overruled, and we had the irresistible impulse test. The irresistible impulse test states, even if you knew that the act was wrong, if you had an irresistible impulse to commit the act, which obviously had to be -- a psychiatrist had to confirm that fact, it wasn't just a matter of your say so, then that was an adequate defense for insanity.

I'm sure everybody in this Chamber recognizes that there are individuals, that there are people in society who are ill, who are sick, who may commit an act, and have neither the necessary intent to commit the act, or have

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uncontrollable urges that they're ultimately not responsible for, and thus are treated by psychiatrists or state hospitals until they are well enough again.

This bill does not take that into consideration. This bill says, this amendment says, rather, that even if you're sick, even if you can't help yourself, we don't care, it's not a defense, and you can't use it in an insanity plea. That's what this amendment says.

Society and legislatures have said, we recognize mental illness. We have a Department of Mental Retardation in this state. We have a Department of Mental Health in this state. They recognize that mental illness exists.

What this amendment does is roll all of that back. This bill says we won't recognize your illness if you commit a crime.

The law that we passed last year has been in the works a little over six months, from October. It took a tremendous burden off the state, on the going in stages and the coming out stages, and at the trial stage. Let us see how that provision works. Let us see what happens with the current law that we have. The current mechanisms that have been fought over for the last four years, see where that gets us.

This amendment doesn't get us anywhere. This

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amendment will not cure the individual. All this amendment does is lock the individual up, takes the defense away from him, if he doesn't have the intent to commit the crime.

We're the policy making body for this state. Connecticut is a bell weather state for the whole United States. It's one of the bell weather states. We're one of four or five bell weather states. This amendment would be the wrong thing to do. The provisions that we adopted last year were a long time coming, but they were the right thing to do, and I would say reject this amendment, see how the new law works. It'll work just fine.

There is a school of thought, I suppose that we ought to load the jails up with anybody that commits a serious crime. If you don't want to take into consideration the mental condition, then I suppose that you should adopt this amendment. That doesn't hurt anybody but society at large. It doesn't correct the situation, and it doesn't do anything for the insanity defense, and you might as well not have an insanity defense. This amendment is a terrible amendment, and I would urge this body to reject it.

SPEAKER STOLBERG:

Will you remark further on the amendment?

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REP. FARR: (19th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Farr.

REP. FARR: (19th)

Mr. Speaker, I'd just point out that I wasn't allowed to comment on my own amendment.

SPEAKER STOLBERG:

I'm sorry. I didn't hear you.

REP. FARR: (19th)

I wasn't allowed to comment on my own amendment. I completed summarization, and then Rep. Onorato was prepared to comment on it.

SPEAKER STOLBERG:

Would you like to do that now, Rep. Farr?

REP. FARR: (19th)

Yes, Mr. Speaker. I would also ask that this amendment be published in the event that it does not carry. I would also ask for a roll call vote on this amendment.

SPEAKER STOLBERG:

Why don't we take those one at a time, Rep. Farr. The amendment will be printed in the Journal. The request at this point is for a roll call vote. All those in favor

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of a roll call vote, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

An adequate number is arrived at. When the vote is taken, it will be taken by roll.

Will you remark further on the amendment, Rep. Farr?

REP. FARR: (19th)

Mr. Speaker, I'd like to correct a comment that Rep. Onorato made, and that's that somehow this amendment is going to say that we don't care about somebody's mental capacity. I'd point out to you that what this amendment attempts to do is what has already happened in many cases in this state.

For example, and I'd like to give you two examples, one which shows how the insanity defense ought to operate and another one how it ought not to operate. Both were highly publicized cases which originated in West Hartford. In one of those cases a young man was charged with setting fires in synagogues, the very synagogue that he himself worshipped, while making phone calls to topless bars in Texas.

The young man, by the very nature of the act, obviously had mental illness. For whatever reason, that

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young man elected not to raise the insanity defense. His attorney did not raise the insanity defense. His family did not raise the insanity defense. He entered a plea of guilty, and how was that case disposed of? He was placed on probation. He was ordered, as a condition of that probation, that he seek the psychiatric help that he needs, and what that points out is the fact, if you don't allow the insanity defense, does not mean that insanity doesn't come up.

When it comes up is on sentencing where it appropriately belongs.

The other case, of course is a case the man who committed four murders, or allegedly committed four murders in my community, and went through a jury selection process that is called one of the longest jury selections in the history of the state, which took over six months, and the trial is still going. And the point is, what we've got to do is get insanity -- take insanity into account on the sentencing part of it, and not tie up the court with this extensive process of jury deliberation.

And let me give you some background. Rep. Onorato says that somehow we're on the forefront. I would suggest to you that we're behind the times. The trend in this country is exactly to do what this amendment proposes doing.

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What happened before, and Rep. Onorato is right, the so called McNaughton defense, which this amendment provides for was adopted about 1843, and what happened was that that defense, that language stood, in effect, until the 1940s and the 1950s, and then we thought we knew a lot about psychiatry, so what we did is we decided then that we were going to change the language and allow someone to raise the defense if they could show that they couldn't conform their conduct, or control their conduct because in fact they had a mental illness, and when that law was changed, it was assumed at that time, and all the proponents of that law said that what would happen is that a psychiatrist would come in and testify and it would resolve the issue once and for all. The expert would come in and tell you once and for all whether he could control his conduct. That hasn't happened.

We found out we don't know what we thought we were going to know about psychiatry. Today the defense of insanity is a train of experts on both sides, both contesting whether or not the individual had the capacity to conform his conduct or not, and the American Psychiatric Association now is abandoning their support for that language, the language which we have in our statute. They've abandoned that support because as they point out,

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that the distinction between the irresistible impulse and the impulse simply not resisted is a distinction between twilight and dusk. It's impossible to draw those distinctions. It's impossible for a jury to do this.

I think it's time that we went in the right direction, that we established the language that clarifies what the insanity defense ought to be, and that an individual who commits a crime because he may have some psychiatric problems can raise those psychiatric problems when it comes to sentencing, and nothing in this bill prohibits the individual from doing this. It seems to me this is a rational, compassionate approach to handle the dealing with mentally ill defendants in our court system.

SPEAKER STOLBERG:

Will you remark further on House Amendment Schedule "A"? Rep. Onorato.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Just a couple of comments. I guess Rep. Farr in his last statement put the question right before the assembly. What he's suggesting is to take an individual who may have a mental deficiency, have him go to trial, have him be convicted, and then after he's convicted, say at the sentencing stage, well, let's take into consideration any mental deficiencies that he

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might have had, let's take into consideration any lack of intent that he might have had, and when we're arguing the penalty stage.

That on its face is ludicrous, under the system, if you believe in this system of law. Those things should be taken into account at the trial. There are a lot of crimes in this state that require specific intent. He mentioned a murder case. That requires a specific intent, and it doesn't do anybody any good after the man's convicted, to say, he didn't have the necessary intent because he had a deficiency, so let's take that into consideration of the penalty.

And the fact that a jury took six weeks to get, has absolutely nothing to do with this issue. There are a lot of cases that took a lot longer for juries. No notoriety at all in those cases, but different problems creep up and have to be dealt with. It has nothing to do -- that is not a reason why this amendment should be adopted because the jury took so long to be picked.

I feel important to restate that what Rep. Farr wants to do by this amendment, is to convict the individual and then worry about his mental capacities or his intent at a later state. That's what this amendment would do. I would urge this body to reject this amendment, Mr. Speaker.

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SPEAKER STOLBERG:

Will you remark further? Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Mr. Speaker, members of the House, I rise in support of the amendment, and I know earlier this session, I had talked to my good friend, Rep. Tulisano and indicated I wouldn't speak on the amendment because we discussed the bill last year, but I want to remind the members that last year this amendment died on a tie vote. It was a very hotly debated item, and I encourage you to just pick up the amendment and read it.

Those of you who would strongly prefer a tightening up of the insanity defense, I think would probably want to support the amendment, and those who do not care to do that at this point in time, obviously would not want to do that. But I'd point out to you in lines 24 of the amendment, that we're talking about, in the old language, a person might potentially be allowed to use this defense when they lacked substantial capacity, fairly loose item.

In line 25, the language goes on to read, that or either to appreciate the wrongfulness of their conduct. That's another rather loose phrase in comparison to what's being proposed to you, and the third concept is, or the individual was unable to control his conduct, to control

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his conduct.

RE: I don't know how many times we hear stories about individuals who maybe lost their patience, or what have you, and committed an act. They knew right from wrong. They knew they were committing a wrong, but they committed a wrong, and I think society, in general, believes very strongly that that person should be punished. I don't consider that to be a category that should fall under the insanity defense, and I know that there is a good number of people in the population that also do not support that concept.

I think this amendment is a rational amendment, regardless of what you've heard in conversation over the last few minutes. Take a look at the amendment, those of you who would like to tighten it up, I think might want to support the amendment. Those of you who don't want to deal with the issue at this point, perhaps you should vote no, but this body did have a tie vote last session. There were an awful lot of people who supported it last year, and I think perhaps some of the reasons why the bill did not pass with this amendment on it last year was because we had been debating other items in the bill for the better part of two hours.

This, I think should have been included in last

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year's insanity bill.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further on House "A"? Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I rise to oppose this amendment, and as you've already heard, of course, we did debate this bill for four years. We did, in the process of that debate, after the insanity defense reform was passed last year, do some negotiating with people from all sides of the issues, people who did some deep thinking about what is best for the people of the State of Connecticut, and for the State of Connecticut as a whole, including the State's Attorney's Office, including the public defender's office, including psychiatrists and psychologists and medical people who were involved about it, including concerned legislators.

And let me just say this, Mr. Speaker, I think some of the motivation for doing this this year has got something to do with this forthcoming November, not what's good for the people of the State of Connecticut. I understand that, but when you hear, someone has to know what's right from wrong, that is in the eyes of the beholder, not the actor,

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under this rule.

So although you say he knew he was taking a life, that is knowing right from wrong, but the motivation, the behavior, the intent, all that which is essential in both our moral and legal system of justice, both in many moral standards, that you knew what you were doing, you meant to do wrong, you were unduly motivated to do it, you weren't under mistake of fact, all of those things, under this rule couldn't be taken into consideration. And it would be unfair. It would be unjust not to allow that in an enlightened society.

It seems to me we are enlightened. It seems to me the great abuses that may have occurred, and I say may, because I wasn't convinced last year that any were did exist, any abuses that may have occurred under the old insanity act, certainly were taken care of last year, with regard to shifting of burdens. And particularly, the thing that people worry about the most, is the release mechanism. When one is put away after being found not guilty by reason of insanity, they're put into an institution.

And what complained about, Hinckley, and others. When will they be let out? Well, we made that a much more difficult decision last year. We put the burden on the defendant.

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Further, as we promised last year, we indicated that we would make a different release mechanism available to this legislature to act on this year, and that is a psychiatric review board, and the Judiciary Committee has, in fact, JFd to the floor, a bill that would add to our last year's insanity defense, establishing a psychiatric review board. That proposed legislation which will be coming before us, together with what we did last year, seems to me to be an enlightened, reasonable approach to the whole subject.

Certainly, we will not pass a law which is 100% perfect. You show me one law that we have done that, and I'll eat my tie right in front of you here. And I really would hope that we would reject this amendment and get on with the business of the day. Thank you, Mr. Speaker.

REP. O'NEILL: (98th)

Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further on the House Amendment Schedule "A"? Rep. O'Neill.

REP. O'NEILL: (98th)

Mr. Speaker, a question through you, to the Chairman of the Judiciary, please.

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SPEAKER STOLBERG:

Please frame your question, sir.

REP. O'NEILL: (98th)

Mr. Tulisano, I'd like to know how many other states in the country use McNaughton, number one, and number two, if a murder is committed on a federal reservation, what rule of law is used?

SPEAKER STOLBERG:

Rep. Tulisano.

REP. TULISANO: (29th)

With time I could get the information. I have it at my feet. I don't know offhand how many states use McNaughton any longer, or have gone back to it. Under the federal rule of law, it is basically the Connecticut law that is used on federal reservations. They have the generally the American Law Institute, which is basically one of the standards that our current insanity defense is. They do not use the McNaughton law on the federal reservation to the best of my knowledge.

REP. FARR: (19th)

Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further on the amendment? Rep. Farr, for the third time, I believe.

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REP. FARR: (19th)

The second time, the comment, Your Honor.

SPEAKER STOLBERG:

Second time, fine. Go ahead.

REP. FARR: (19th)

I'd like to just clarify a couple of things here. It's important to realize the bill does not change the elements of intent. It's been represented by the other side that my God, somebody no longer can raise the question of his intent. That's not addressed by this bill. The issue in this bill is simple. What happens under the present insanity defense, is an individual can claim not that he necessarily didn't know right from wrong, or didn't know what he was doing, but the claim of the insanity defense today, can be simply that he lacked the capacity to control himself, that because he was mentally ill, even though he intended to do it, and knew what he was doing, he simply lacked the capacity because of a history of mental illness.

When that was put into the statute, it was assumed that psychiatrists were going to be able to tell that. The fact of the matter is that no psychiatrist with any certainty can tell that, and so that's why, and as Rep. Tulisano has already let slip, states are going back to this standard.

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Because it's proved that we don't know as much about psychiatry as we thought we might know. We don't have the ability to tell, and the jury has no way of telling whether somebody had that capacity to control their conduct or not.

Under this bill, you'd still have to prove somebody intended their act. You'd still have to prove -- they could raise the defense that they didn't know what they were doing. They could raise the defense that they didn't know right from wrong. We don't abolish the insanity defense. We restrict it to those elements that are the elements that are most easy for a jury to make some determination about.

Again, as far as how courts handle insanity, what the thrust of this is to say, is that insanity ought to be primarily a question raised at sentencing. And Rep. Tulisano said we can protect society because if somebody is found not guilty by reason of insanity, we'll get them off the streets anyway. I suggest to you that's not true. That most defense lawyers will tell you the cases you can get somebody off on insanity is the case where someone kills members of his family, and the reason you can successfully defend those is because of public, -- the jury will say, well, it's not likely to happen again. He

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killed his wife and his family, but he doesn't present a threat to society. It was obviously an insane act, but the jury doesn't feel threatened.

And when you put that individual into a mental hospital he no longer presents a threat to our society because he doesn't have any family left to kill. Unfortunately he may go out and get a new family, and that in fact has happened where we've had individuals who have gotten off on a plea of not guilty by reason of insanity, for killing a spouse and then gone off and gotten charged the second time for killing the second spouse.

I believe that this amendment puts some sanity back into the defense of insanity, and I would urge passage of the amendment.

SPEAKER STOLBERG:

Will members please be seated. Will staff and guests come to the well of the House. Will you remark further on House Amendment Schedule "A"? If not, the machine will be opened.

CLERK:

The House of Representatives is now voting by roll.  
Would the members please return to the Chamber immediately.  
The House of Representatives is now voting by roll. Would the members please return to the Chamber immediately.

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SPEAKER STOLBERG:

Have all the members voted? Have all the members voted and is your vote properly recorded? Is your vote properly recorded? If so, the machine will be locked and the Clerk will take a tally.

The Clerk please announce the tally.

CLERK:

House Amendment Schedule "A" to House Bill 5078.

Total number voting	147
Necessary for adoption	74
Those voting yea	62
Those voting nay	85
Those absent and not voting	4

SPEAKER STOLBERG:

The amendment is defeated.

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House Amendment Schedule "A".

After the enacting clause and before line 1, insert the following:

"Section 1. Section 53a-13 of the general statutes, as amended by Section 1 of public act 83-486, is repealed and the following is substituted in lieu thereof:

(a) In any prosecution for an offense, it shall be an affirmative defense that the defendant, at the time he committed the proscribed act or acts, (lacked substantial capacity,) as a result of mental disease or defect, (either to appreciate the wrongfulness of his conduct or to control

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his conduct within the requirements of the law.) DID NOT KNOW THE NATURE AND QUALITY OF HIS ACT OR THAT THE ACT WAS WRONG.

(b) It shall not be a defense under this section if such mental disease or defect was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or any combination thereof, unless such drug was prescribed for the defendant by a licensed practitioner, as defined in section 20-184a, and was used in accordance with the directions of such prescription.

(c) As used in this section, the terms mental disease or defect do not include (1) an abnormality manifested only by repeated criminal or otherwise anti-social conduct or (2) pathological or compulsive gambling."

In line 1, insert the words "Sec. 2." before the word "Section"

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SPEAKER STOLBERG:

Will you remark further on the bill? If not, will members please be seated.

REP. JAEKLE: (122nd)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Robert Jaekle of the 122nd District.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. Mr. Speaker, the Clerk has an amendment. It is LCO No. 2731. Would the Clerk please call and read the amendment.

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 2731, House "B".

Will the Clerk please call and read.

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CLERK:

LCO 2731, designated House Amendment Schedule "B", offered by Rep. Jaekle of the 122nd District. In line 200, after the period insert the following: "THE PROSECUTING AUTHORITY SHALL MAKE REASONABLE EFFORTS TO NOTIFY ANY VICTIM OR VICTIMS OF THE CRIME FOR WHICH THE DEFENDANT IS CHARGED OF SUCH DEFENDANT'S FAILURE TO RETURN TO THE FACILITY."

SPEAKER STOLBERG:

Rep. Jaekle, what is your pleasure?

REP. JAEKLE: (122nd)

I move adoption of the amendment.

SPEAKER STOLBERG:

Will you remark, sir?

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. Ladies and gentlemen, this is not the MacNaughton Rule. We are back into the file copy. As a little reminder, what the file copy of the bill does is place a requirement that should a defendant who was ordered placed in treatment not return from a work release or a furlough, that the prosecuting authorities be notified that this individual did not return to the institution who may then have a rearrest warrant issued and this person arrested. What the amendment

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does is have a requirement that once the prosecuting authority has been told that an individual who was charged with committing a crime has not returned to an institution, that he make reasonable efforts to notify the victim of the crime for which the defendant was charged.

And I think it should be fairly obvious why that should be. This is so that a victim would know that somebody who in their mind had committed a crime against them is on the loose. And depending upon what the crime was that was committed, the victim could then take reasonable precautions to safeguard himself and his family once he receives the information that this individual is again no longer institutionalized as they possibly had come to rely upon. And I urge the membership of the House to support the amendment.

SPEAKER STOLBERG:

Will you remark further on the amendment? Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, unfortunately I think I have to stand to oppose this amendment. It has great appeal. Unfortunately, however, I had a discussion with the Chief State's Attorney's office representative last week, and when he indicated it would be that this potentially the

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time for notifying may get lost in the shuffle because as a rearrest it would go down to the GA level. And in the event there were, the prosecutor involved, a rearrest would be a GA level they thought. If it got down to that level with a series of cases heard in one day, or coming in on per day level, if they didn't notify the person for two or three weeks after they received the notification from the hospital, then they think they might be subject to some potential liability.

I don't know whether I concur with that or not, but that was their position, and until I know more about that, I think I would have to oppose the bill this time.

SPEAKER STOLBERG:

Will you remark further on the amendment? Rep. Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. Mr. Speaker, I understand the concern of the prosecutor's office about being subjected to potential liability, and the only case that comes to mind as to why a prosecutor might be sued for a breach of this statute, should the amendment pass, is if the victim of the crime is indeed injured by the, I'm having trouble with the term, certainly the criminal defendant that once committed a crime against that victim

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got out of an institution and nobody told the victim that the criminal was on the loose, and the victim is not once injured, but a second time injured.

And in that case, I think the prosecuting authority should be liable. All the amendment says is that they have to make reasonable efforts to notify the victim that the criminal defendant is on the loose, where the victim had all reasonable grounds to believe that he'd been institutionalized because that's the context of this bill, so that they can take the precautions to prevent harm of the victim. And I think it makes a lot more sense to prevent the victim from being harmed than it does to worry about a prosecutor being sued after the victim has been harmed.

That's what this amendment should accomplish, and if the prosecutors will abide by making reasonable efforts to notify the victim, there shouldn't even be any liability. It's worthy of support.

SPEAKER STOLBERG:

Will you remark further on the amendment? If not, all those in favor, we're about to vote on House Amendment Schedule "B". If you're prepared. All those in favor of the amendment, please indicate by saying aye.

REPRESENTATIVES:

Aye.

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SPEAKER STOLBERG:

All those to the contrary, nay.

REPRESENTATIVES:

No.

SPEAKER STOLBERG:

The no's clearly have it. But I haven't gavelled it yet, and if anybody doubts the call, I would be glad to entertain any motion.

REP. JAEKLE: (122nd)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Jaekle.

REP. JAEKLE: (122nd)

I'd like to request a roll call on this, please.

SPEAKER STOLBERG:

Request is for a roll call. All those in favor of a roll call please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

Adequate number is arrived at. Will all members please be seated. Staff and guests come to the well of the House. The machine will be opened.

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CLERK:

The House of Representatives is now voting by roll.

Would the members return to the Chamber immediately. The House of Representatives is now voting by roll. Would the members please return to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted, and is your vote properly recorded? If so, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

House Amendment Schedule "B" to House Bill 5078.

Total Number Voting	146
Necessary for Adoption	74
Those Voting Yea	90
Those Voting Nay	56
Those Absent and Not Voting	5

SPEAKER STOLBERG:

The amendment is adopted. Clearly volume does not always indicate quantity. Will you remark further on the bill? If not, will members please be seated. Will staff and guests come to the well of the House. The machine will be opened.

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CLERK:

The House of Representatives is now voting by roll.  
Would the members please return to the Chamber immediately.  
The House of Representatives is now voting by roll. Would  
the members please return to the Chamber immediately.

SPEAKER STOLBERG:

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

Will the Clerk please announce the tally.

CLERK:

House Bill 5078, as amendment by House Amendment  
Schedule "B".

Total Number Voting	143
Necessary for Passage	72
Those Voting Yea	143
Those Voting Nay	0
Those Absent and Not Voting	8

SPEAKER STOLBERG:

The bill is passed. Rep. Brooks, do you seek the  
floor?

REP. BROOKS: (95th)

Yes, Mr. Speaker. We request a suspension of the  
rules for immediate consideration of House Joint Resolution  
No. 58.

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SPEAKER STOLBERG:

The bill is passed.

CLERK:

Calendar Page 45, Calendar No. 122, File No. 125 and File No. 445, House Bill No. 5078, AN ACT CONCERNING COMPETENCY TO STAND TRIAL, as amended by House Amendment Schedule "B". Favorable Report of the Committee on Judiciary. The Senate rejected House Amendment Schedule "B" on April 11, 1984.

SPEAKER STOLBERG:

Rep. Alfred J. Onorato of the great city of New Haven.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER STOLBERG:

Will you remark?

REP. ONORATO: (97th)

Thank you. Mr. Speaker, the Clerk has an amendment, LCO No. 2731, designated House Amendment "B".

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 2731, House "B". Will the Clerk please call and read.

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CLERK:

LCO No. 2731, previously designated House Amendment Schedule "B", offered by Rep. Jaekle of the 122nd District.

In line 200, after the period insert the following:

"The prosecuting authorities shall make reasonable efforts to notify any victim or victims of the crime for which the defendant is charged of such defendant's failure to return to the facility."

REP. ONORATO: (97th)

Thank you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Onorato.

REP. ONORATO: (97th)

I move rejection of the amendment.

SPEAKER STOLBERG:

Will you remark on the motion to reject House "B"?

REP. ONORATO: (97th)

Thank you, Mr. Speaker. This would require the prosecutor to make reasonable efforts to notify victims of crimes for which the defendant is back on the street. The Senate was concerned, as were we who voted against the amendment originally concerned, that the notification procedures 1.) upon the prosecutor's office, and 2.) upon

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the possible lawsuits that may arise if notice is not given, and 3.) how the prosecuting attorneys are going to know if the individual is on the street without some information elsewhere, and they're not geared for it and there's no money for it either. I would move rejection of the amendment.

SPEAKER STOLBERG:

Motion is to reject. Will you remark on the motion to reject, Rep. Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. I rise in opposition to the motion to reject and in favor of the amendment. I heard the objections from the prosecutors. They're afraid of being sued if they fail to notice a victim of a crime that the defendant who is alleged to have caused some harm to that individual does not return from a work release or some sort of vacation leave and actually goes out and commits some harm to that victim.

Because that's what it's going to take. The prosecutors would probably be sued if they failed to notify a victim that the defendant did not return to the facility. If that defendant did indeed cause harm to the original victim of the crime, and if the victim could show that had he received notice from the prosecutor, the

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harm might have been prevented. Well, in that particular case, I think about the least you could do to the prosecutor is have him be sued and liable for what in effect was his complicity in a defendant causing repeated harm to a victim.

I don't think that's the worst thing that should happen to the prosecutor in that case, but I don't think that's the end of the world if that happens. Mr. Speaker, I would like to ask that when the vote is taken on this amendment it is taken by roll call.

SPEAKER STOLBERG:

The motion is for a roll call. All those in favor of a roll call, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

Adequate number is arrived at. When the vote is taken, it will be taken by roll. Will you remark further on the motion to reject?

REP. JAEKLE: (122nd)

Mr. Speaker, if I may continue.

SPEAKER STOLBERG:

Rep. Jaekle.

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REP. JAEKLE: (122nd)

Thank you. I think we're now at a place where we choose between furnishing some protection --

SPEAKER STOLBERG:

Rep. Jaekle, just a moment please. The Chair is going to ask all members, staff, and guests currently in conversation to desist or remove themselves outside the Chamber..

Rep. Jaekle, please proceed.

REP. JAEKLE: (122nd)

Mr. Speaker, we're now asked to choose between protecting a prosecutor who doesn't call a victim to tell him that the defendant that had committed a crime against him is on the loose. That's the choide. Side with the victim or side with the prosecutor.

Side with the prosecutor so he doesn't get sued, or side with the victim so that he doesn't end up being repeatedly harmed by the defendant that hasn't even stood trial for the offense because he was considered incompetent to stand trial and ordered detained in an institution. And as for the concern that the prosecutors may not know, the amendment triggers in first the facility notifies the prosecutor to get him arrested, as they should, and when the prosecutor is issuing the arrest

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warrant, all it means is getting on the phone to the victim and maybe nothing more than alerting him that the defendant is back on the street so the victim might lock their doors or bring their children inside or keep an eye on them.

If the choice is the prosecutor being sued or the victim being harmed again, I'm going to side with the victim. I urge we not support rejection of the amendment and repass the amendment.

SPEAKER STOLBERG:

Will you remark further on the motion to reject House "B"?

REP. ONORATO: (97th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Onorato.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, this amendment that I'm asking this body to reject puts the onus basically on the GA's. So the prosecutor's on the GA. In a city like New Haven, where you have five prosecutors and you have over 225 cases a day, in cities like Hartford or Bridgeport or where you have the same thing, and if this body year after year sees no reason or sees no need to

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increase prosecutorial staff, sees no need to give support services to the GA's, sees no need to do anything with the geographical area. Now we're putting a burden on them that if an individual fails to return to a facility, that some third person would have to notify the prosecutor's office after a certain period of time, who knows how long, they would have to notify them.

Then the prosecutor would have to get a file out and try to notify the victim. And at best, what are we talking about? Perhaps a week, two weeks. And maybe something happens in there. Just from a point of view of fairness the amendment is no good.

Nobody says that the thought that victims should be notified is not a good idea. What we're saying is that the way this amendment is drafted and the burden that you put on these prosecutors is an unworkable burden and in the long run would be expensive to the State, and I move rejection, Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further on the motion to reject House "B"?

REP. KEMLER: (18th)

Thank you, Mr. Speaker. Mr. Speaker, I rise to also object to not rejecting this.

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SPEAKER STOLBERG:

Would you like to rephrase that?

REP. KEMLER: (18th)

Let me rephrase that. I rise to object to rejection of this amendment. I think that this is an appropriate safeguard for victims, and I don't think we should shift the burden to the victim of not knowing when someone has not reappeared where they were supposed to be.

I would sustain the action of the floor of this House in its first action on that amendment. Thank you.

SPEAKER STOLBERG:

Rep. Kemler spoke against rejection of House "B". Will you remark further?

REP. WOLLENBERG: (21st)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, Rep. Onorato talked about the burden on the prosecutors and in the first place a facility must notify the prosecutor. That's in the bill. In the second place, it says reasonable efforts to notify, which is just that. It is not that much of a burden on the prosecutorial

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staff. I don't have the figure as to just how many people this means that they'd have to notify or how many people are incarcerated under these terms, but it is not that much of a burden on the prosecutorial staff.

I must disagree with Mr. Onorato.

SPEAKER STOLBERG:

Will you remark further on the motion to reject House "B"?

REP. KRAWIECKI: (78th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Mr. Speaker, for all of the same reasons that some of the folks previously have stated and for two additional reasons, I rise to speak against the rejection of this amendment. Those two reasons being that this body has acted on at least two occasions within the last three years on very specific victim notification processes, those being during the plea bargaining process and the second being in parole hearings.

I think it's a very reasonable amendment. I think in addition that it's a very wise step to protect the victim from this type of activity, and I would encourage

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the body to not go along with Rep. Onorato.

SPEAKER STOLBERG:

Will you remark further on the motion to reject House "B"? Rep. Parker.

REP. PARKER: (31st)

Thank you, Mr. Speaker. I rise to oppose the motion to reject also. Rep. Onorato's states some figures. For instance, the figure 500 something cases in Bridgeport. But how many of those deal with the mentally incompetent and how many of those have escaped their facility? I think the figure was very deceiving. There will not be an overburdening amount of people involved in this case, so the prosecutors will not be overburdened. Thank you.

SPEAKER STOLBERG:

Will you remark further on the motion to reject House "B"? If not will members please be seated. Staff and guests to the well of the House. The motion is to reject House "B". A green vote rejects House "B". A red vote leaves House "B" intact. The machine will be opened.

CLERK:

The House of Representatives is now voting by roll. Will the members return to the Chamber immediately.

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The House of Representatives is now voting by roll. Will the members please return to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted? Have all the members voted, and is your vote properly recorded? If so, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

Motion to reject House Amendment Schedule "B" to House Bill 5078.

Total Number Voting	147
Necessary for Adoption	74
Those Voting Yea	15
Those Voting Nay	132
Those Absent and Not Voting	4

SPEAKER STOLBERG:

The motion to reject House "B" is defeated. House "B" is therefore adopted. Will you remark further on the bill as amended, which is in the same form as originally passed by the House? If not, will members please be seated. Staff and guests come to the well of the House. The machine will be opened.

CLERK:

The House of Representatives is now voting

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by roll. Will the members return to the Chamber immediately.

The House of Representatives is now voting by roll. Will the members return to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted? Have all the members voted, and is your vote properly recorded? Have all the members voted, and is your vote properly recorded? If so, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

House Bill 5078 as amended by House Amendment Schedule "B".

SPEAKER STOLBERG:

Will the Clerk please wait. Rep. Tulisano was on his feet. Rep. Tulisano, what is your pleasure, sir?

REP. TULISANO: (29th)

In the negative, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Tulisano in the negative.

REP. BROOKS: (95th)

Mr. Speaker, in the affirmative please.

SPEAKER STOLBERG:

Rep. Brooks in the affirmative. Rep. Niedermeier.

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REP. NIEDERMEIER: (134th)

Mr. Speaker, in the affirmative, please.

SPEAKER STOLBERG:

Rep. Niedermeier in the affirmative.

Will the Clerk please now announce the tally.

CLERK:

House Bill 5078 as amended by House Amendment  
Schedule "B".

Total Number Voting	146
Necessary for Passage	74
Those Voting Yea	144
Those Voting Nay	2
Those Absent and Not Voting	5

SPEAKER STOLBERG:

The bill is passed.

At this point are there any announcements or points  
of personal privilege? Any announcements or points of  
personal privilege?

REP. NEUMANN: (62nd)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Otto Neumann.

REP. NEUMANN: (62nd)

Thank you, Mr. Speaker. For purposes of an

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recorded? Have all the members voted? Have all the members voted? Have all the members voted? Have all the members voted and is your vote properly recorded? If all the members have voted, the machine will be locked and the Clerk will take a tally.

SPEAKER STOLBERG:

Rep. Buckley.

REP. BUCKLEY: (41st)

Thank you, Mr. Speaker. In the negative, please.

SPEAKER STOLBERG:

Rep. Buckley in the negative.

Will the Clerk please announce the tally.

CLERK:

House Bill 5888.

Total number voting 142

Necessary for passage 72

Those voting yea 68

Those voting nay 74

Those absent and not voting 9

SPEAKER STOLBERG:

The bill is defeated.

At this time the House should note that File No. 445, a reprint of File 125, House Bill 5078, AN ACT CONCERNING COMPETENCY TO STAND TRIAL, is in the posture

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of a disagreeing action. The House on 4/4 adopted the bill, with House Amendment Schedule "B". The Senate on 4/11 rejected House Amendment Schedule "B". The House on 4/24 readopted House Amendment Schedule "B".

The final action on the bill was 144 to 2. The Committee on Conference at this time that the Speaker would appoint would include Representative Onorato, one of the negative votes. In the affirmative, Rep. Jaekle, and Rep. Ritter.

The Chair will designate Rep. Ritter the Chairman of the Conference Committee and request that the Conference Committee meet as soon as Senate counterparts are appointed and report back to the Chamber if possible, at your earliest convenience.

Are there any announcements or points of personal privilege at this time?

REP. MICUCCI: (79th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Micucci.

REP. MICUCCI: (79th)

We have a photographer in the audience here, the brother of Senator Stephen Casey of Bristol. I'd like to have the House stand and recognize him, please.

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SENATE

WEDNESDAY  
APRIL 11, 1984

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Is there any objection to placing the item on Consent?  
Hearing no objection, the matter will go on Consent.

THE CLERK:

Cal. 302, Files 125 and 445. House Bill No. 5078.

AN ACT CONCERNING COMPETENCY TO STAND TRIAL, as amended by  
House Amendment Schedule B. Favorable report of the Committee  
on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

At this time, before I move acceptance of the Joint  
Committee's favorable report, I do plan on asking the chamber  
to Reject House Amendment Schedule B.

THE CHAIR:

The Clerk will call House Amendment Schedule B.

THE CLERK:

The Clerk has House Amendment Schedule B. LCO No. 2731.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, the House amended this bill by "B" which  
requires the prosecutor to make reasonable efforts to notify  
any victim or victims of the crime of the defendant's failure

## SENATE

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to return to the facility and it does it almost on a voluntary basis. It seems to me that if the prosecutor was allowed to do that, it suggested that they do it, it could create some serious problems that would leave the State of Connecticut subject to suit, if, in fact, the prosecutor failed to do it. It is kind of a hybrid. It neither mandates it or makes it permissive and for that reason, I would move rejection of that amendment.

THE CHAIR:

Will you remark further on the motion to Reject. If not, the issue before the chamber is the Rejection of House Amendment Schedule B. All those in favor will signify by saying Aye. Those opposed Nay. The Ayes have it. SENATE AMENDMENT A IS REJECTED.

On the bill itself, Senator?

SENATOR OWENS:

It would require that those who conduct an examination to determine a criminal defendant's competency to stand trial file their report within ten days and further requires the examiner sign the report and specify that they do not have to be notarized. And then the bill goes on, failure of the defendant to return to the facility could constitute sufficient cause for his rearrest upon the order of the court. It's a

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## SENATE

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GOOD piece of legislation and I would ask, if there is no objection, that this bill be placed on Consent.

THE CHAIR:

Any objection to placing the item on Consent? Hearing no objection, the matter will go on the Consent Calendar.

THE CLERK:

Cal. 303, File 275. House Bill No. 5168. AN ACT CONCERNING THE DEFINITION OF STATE OFFICERS AND EMPLOYEES IN CLAIMS AGAINST THE STATE. Favorable report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, I move acceptance of the Joint Committee's favorable report and passage of this bill.

THE CHAIR:

Will you remark, Senator?

SENATOR OWENS:

It would make it clear, Mr. President, for the purposes of claims against the state of connecticut, an associate attorney general falls within the category and the definition of state officers employees. You remember last year, we set

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SENATOR OWENS:

Yes. While the senators are coming back to the chamber, I would just like to make an announcement that after the public hearing of the Judiciary tomorrow at twelve o'clock, there will be a committee meeting and that's for the record. Thank you.

THE CHAIR:

Any other announcements? The Clerk will now call the Consent Calendar for today.

THE CLERK:

The following is a list of items on today's Consent Calendar:

Page one - Cal. 27. Page two - Cals. 144, 165 and 168.  
Page three - Cals. 181, 209 and 211. Page four - Cals. 232  
and 235. Page five - Cals. 240, 242, 245. Page six - Nothing.  
Page seven - Cals. 278, 279 and 280. Page eight - Cal. 285.  
Page nine - Cals. 287, 288, 289, 291 and 292. Page ten - Cals.  
293, 294, 295 and 296. Page eleven - Cals. 299, 300, 301,  
302 and 303. Page twelve - Cals. <sup>304,</sup> 307, 308. Page thirteen -  
Cals. 309, 310, 311 and 314. Page fourteen - Cals. 316, 317,  
318, 319. Page fifteen - Cals. 320, 321, 322, 324. Page SB461  
HB5724  
sixteen - Cals. 325, 328, 330. Page seventeen - Cal. 331.

SB-15, SB56, SB53, SB285, SB109, HB5410, HB5422, SB370, SB71, SB167, SB540, SB374  
SB557, SB361, SB102, SB127, SB433, HB5929, HB5535, HB5540, HB5706  
HB5708, HB5715, HB5371, HB5784, HB5590, HB5508, HB5686, HB5078, HB5168  
HB5227, HB5549, HB5631, HB5512, HB5584, HB5700, HB5705, HB5712, HB5715,  
HB5709, HB5714, HB5165, HB5677, HB5147, HB5560, HB5762, HB5202, HB5520,

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TRAILER SESSION

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SENATE

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MAY 8, 1984

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House A and Senate A. Passed House on 5/4 with House A and C and Senate A.)

THE CHAIR:

Senator Daniels.

SENATOR DANIELS:

Mr. President, I move adoption of the Committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

Do you wish to remark?

SENATOR DANIELS:

Yes. What this bill does is permit the conveyance of state land to the Town of Enfield upon the condition that that town turn over the proceeds of the sale of the land to the state. That is the bill, Mr. President.

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

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Page nine, under the heading Committee on Conference, Cal. 302, Files 125 and 445. House Bill 5078. AN ACT CONCERNING COMPETENCY TO STAND TRIAL, as amended by House

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SENATE

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TUESDAY  
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defendant's failure to return to the facility. That was the point of contention.

The report of the Committee on Conference provides that if the defendant, who has been ordered placed for treatment, fails to return to the facility, the person in charge of the facility has to, within twenty-four hours of the defendant's failure to return, report the failure to the prosecuting authority. Upon receipt of that report, the prosecuting authority, with available resources, within available resources, make reasonable efforts to notify any victim for which the defendant is charged of such defendant's failure to return to the facility.

I would ask that the report of the Committee on Conference be adopted, Mr. President.

THE CHAIR:

Any objection? This item is placed on the Consent Calendar.

THE CLERK:

Cal. 329, Committee on Conference, File 54. Substitute for House Bill 5204. AN ACT CONCERNING SPECIAL POLICEMEN FOR THE DIVISION OF SPECIAL REVENUE, as amended by Senate Amendment Schedule A. Favorable Report of the Committee on Public Safety. (House rejected Senate Amendment Schedule A

1984 GENERAL ASSEMBLY

SENATE

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THE CHAIR:

Please give your attention to the Clerk who will call SB618-HB5794  
the items that were put on the Consent Calendar. HB5742-HB5704

THE CLERK:

Page one - Cal. 570. Page two - Cals. 590, 642, 666, HB5605-HB5755  
673, 685, 737. Page three - Cals. 753, 762, 772, 775. HB5824-HB5629  
Page four - Cals. 776, 777, 778 and 27. Page five - Cals. HB5796-HB5162  
38, 60, 61, 143, 147. Page six - Cals. 242, 271, 277, HB5088-HB5707  
282 and 345. Page seven - Cals. 369, 372, 383, 391, 465. HB5733-HB5239  
Page eight - Cal. 501. Page nine - Cals. 302, 329. Page SB15-SB43-SB108  
ten - Cal. 656. SB312-SB489

I believe that completes the list of items on today's SB261-SB540  
Consent Calendar, Mr. President. SB379-SB536  
SB484-SB470  
SB276-SB455  
SB578-SB606  
SB346-HB5084  
HB5078-HB5204  
SR15

THE CHAIR:

Any omissions, corrections? The machine is open.  
Please record your vote. Has everyone voted? The machine  
is closed. The Clerk please tally the vote. RESULT OF THE  
VOTE: 35 Yea. 0 Nay. THE CONSENT CALENDAR IS ADOPTED.

Senator Robertson.

SENATOR ROBERTSON:

Thank you very much, Mr. President. Mr. President, I  
would like to announce that the Republican caucus will begin  
at one-thirty, sir. And i would also like to ask in accordance

JOINT  
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ATT. PODOLSKY: Well, from the point of view of the constitutional issue I think that you have to make, if you want the tenant to be covered by the foreclosure and therefore to be subject to the foreclosure judgment, then constitutionally you have to make the tenant a party.

Now if you make them a party, it doesn't matter if you serve the lis pendens because I mean, being a party gives you notice of the action. The lis, this bill allows the serving of the lis pendens and not making them party. In effect what they would have to do is they would have to figure out that when they get the lis pendens they should go to a lawyer, they're supposed to have the lawyer move to have them made a party defendant and have them intervene. That is not, I don't think that complies with the constitutional standard, that is the notice must be meaningful and must be related to the kind of situation you're talking about.

Especially when it's easier to make them a party. So that I think that if that is the route the committee wants to take, that is to say to put the tenant into the foreclosure action, or to make that a possibility, you have to make them a party. That in fact was the law in Connecticut until 1955. They were not found, you could not use an execution of ejection to get possession against a tenant unless they were party.

What it really means is going back to the pre-1955 law. I don't think that's the best way to resolve it, but I think it is a better way to resolve it than this bill attempts to do.

REP. SAMOWITZ: One of the problems has always been, how does the plaintiff or the foreclosing bank know who the tenants were?

ATT. PODOLSKY: Well, in a sense that is one reason why it is better to wait until after the law day when they in effect become the landlord to deal with that. The way they would find out presumably, they'd ask the mortgagor. Or I suppose they could send a person out and check the mailboxes. I mean, it seems to me there are some practical problems for the bank who tries to use that approach. But they cannot, you cannot have a, you don't