

Legislative History for Connecticut Act

	SB 295	PA 215	1996
Sen.	1865-1866, 3047-3051, 3122-3123		(15)
Hse.	6236-6243	-	(8)
Jud.	611-614, 754-758, 769-771		(12)
			total 36

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

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S-393

CONNECTICUT
GEN ASSEMBLY
SENATE

PROCEEDINGS
1996

VOL 39
PART 6
1702-2040

Calendar 365 is marked Go.

Calendar 366 is marked pass retained.

Calendar 367 is marked Go.

Calendar 368 is marked pass retained.

On Calendar Page 8, Calendar 378. Madam President, I would move that item to the Foot of the Calendar.

THE CHAIR:

Motion is to refer to the Foot of the Calendar. Without objection, so ordered.

SEN. FLEMING:

Calendar 381 is marked pass retained.

Calendar 382 is marked Go.

Calendar 384 is marked pass retained.

Calendar 385 is marked Go.

Calendar 386 is marked Go.

On Calendar Page 9, Calendar 388 is marked pass retained.

Calendar 391 is marked pass retained.

Calendar 393 is marked pass retained.

Calendar 396 is marked passed temporarily.

And Calendar 403 is marked pass retained.

On Calendar Page 10, Calendar 404, Madam

SB 295

President, I would move that that item be referred to the Committee on Public Health.

THE CHAIR:

Motion is to refer this item to the Committee on Public Health. Without objection, so ordered.

SEN. FLEMING:

Calendar 405. Madam President, I would move that that item be referred to the Committee on Education.

SB 571

THE CHAIR:

Motion is to refer to the Committee on Education. Without objection, so ordered.

SEN. FLEMING:

Calendar 406 is marked Go.

Calendar 407 is marked Go.

Calendar 408, SB395, File 584. Yes, Madam President, that item will be marked Go.

Calendar 409, SB424, File 585. Madam President, I would move that item to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

On Calendar Page 11, Calendar 410, SB473, File 586. Madam President, I would move that item to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

Calendar 411 is pass retained.

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Without objection, the item is PR'd.

SEN. UPSON:

And now it's my understanding we've gone through the Calendar once, Madam President. If we may have five minutes to review what's PT'd and then we'll come back in five seconds -- five minutes, stand at ease?

THE CHAIR:

The Chamber would stand at ease.

(SENATE AT EASE)

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes, Madam President, could we run the Consent Calendar and then follow -- we'll go back to the items that were PT'd?

THE CHAIR:

Would be glad to do that.

SEN. UPSON:

Thank you.

THE CHAIR:

At this time, would members please take their seat. Would the Clerk please announce a roll call vote on the Consent Calendar?

THE CLERK:

An immediate roll call vote on the Consent Calendar is being taken in the Senate.

An immediate roll call on the Consent Calendar is being taken in the Senate. Will all Senators return to the Chamber?

Page 1, Calendar 462, SJR72.

Page 4, Calendar 280, Substitute for HB5045.

Page 6, Calendar No. 351, Substitute for SB908.

Page 7, Calendar 393, Substitute for SB444.

Page 7, Calendar 395, Substitute for SB392.

Page 8, Calendar 401, Substitute for SB116 --

1116.

Page 9, Calendar 408, Substitute for HB5216.

Page 10, Calendar 418, Substitute for HB6977.

Page 12, Calendar 448, Substitute for HB5847.

Page 13, Calendar 449, Substitute for HB6733.

Page 13, Calendar 452, Substitute for HB5836.

Page 21, Calendar 157, SB203.

22, Calendar 204, Substitute for SB1052.

Page 22 -- no, I'm sorry, 23, Calendar 311,

Substitute for HB6671.

Page 25, Calendar 369, Substitute for SB1063.

Page 29, Calendar 70, Substitute for SB916.

THE CHAIR:

Before we open the machine, would we check, please, page 25, 369. I believe that item was pass retained.

THE CLERK:

All right. 369 is not on the Consent Calendar on page 25, Substitute for SB1063.

THE CHAIR:

All others are. The machine will be open.

THE CLERK:

An immediate roll call is being taken in the Senate. Will all Senators return to the Chamber?

An immediate roll call is being taken in the Senate. Will all Senators please return to the Chamber?

Senator Nickerson? Senator Coleman? And Senator Penn.

THE CHAIR:

Have all members voted?

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

THE CLERK:

Total number voting, 33; necessary for passage, 17. Those voting yea, 33; those voting nay, 0.

THE CHAIR:

Consent Calendar is adopted.

Senator Upson?

SEN. UPSON:

Yes, Madam President, on page 27, I move suspension of the rules to take up Calendar No. 316, Substitute for SB875, An Act Concerning Feasibility Studies, Bankers' Banks and Employment Requirements for Tax Credits for Financial Institutions Constructing New Facilities.

THE CHAIR:

Question is on suspension of the rules.

Without objection, Senator Upson.

SEN. UPSON:

And I'd mark it go. And I would ask the Clerk to call it and I'd yield to Senator Rennie.

THE CLERK:

Page 27, Calendar 316, Substitute for SB875, An Act Concerning Feasibility Studies, Bankers' Banks and Employment Requirements for Tax Credits for Financial Institutions Constructing New Facilities, as amended by Senate Amendment A, B and House Amendment A. Favorable report of Committee on Banks and Finance, File 512 and 766.

THE CHAIR:

Senator Rennie.

SEN. RENNIE:

Thank you, Madam President.

I move acceptance of the Joint Committee's favorable report, passage of the bill in concurrence with the House.

THE CHAIR:

Questions on passage and concurrence. Will you remark?

SEN. RENNIE:

Yes. Madam President, the House rejected Senate B and then added House A to this bill. Senate B, which was passed unanimously in the Senate had required the Commissioner to take some -- perform some duties under the bill and that is perhaps -- that is an issue that we will revisit at another time that is close at hand.

And this bill has taken on more significance than, I must say, it started out with as a feasibility study and bankers' bank bill, so that we'll -- I suggest that we pass this in the -- in concurrence with the House so that it can move on its way.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill? Will you remark further?

SEN. RENNIE:

Madam President, I move that this bill move to the Consent Calendar. No -- oh --

THE CHAIR:

Motion is to refer this item --

SEN. RENNIE:

Sorry. I withdraw that motion.

THE CHAIR:

Will you remark further on the bill?

If not, would members please take their seat.

Would the Clerk -- I'm sorry. Senator Sullivan.

SEN. SULLIVAN:

Thank you, Madam President.

I'm going to join, as hopefully everyone else is about to do in supporting this in concurrence with the House.

In doing that, however, I want to at least be on record that the gist of Senate B rejected by the House is not lost on this Senate, nor will be lost on this Senate or this Legislature as we go forward to consider other bills that may relate to the Banking Department.

It is unfortunate that the Banking Department has chosen in the House to strip off our amendment which attempted to place the same reasonable limits on that department as we place on other departments.

In deference to the need to act on the Swiss Bank Bill today, we shall do so today. But I am confident and we hope that the Banking Department will also note

that confidence that this Senate will return, act on an amendment on another bill, and continue to do what is right with respect to the otherwise unfettered authority of the Department of Banking.

Thank you.

THE CHAIR:

Thank you, Senator Sullivan.

Will you remark further? Senator Penn.

SEN. PENN:

Thank you, Madam President.

I'd just like to stand with concurrence of Senator Sullivan's remarks. And still say I still have a lot of problems with this bill. I still think it does not go far enough in supporting jobs for the State of Connecticut and the people that are supposed to represent classifying as a job's bill and a lot of other issues.

And I have problems understanding, trying to understand why the banking authority is trying to, won't say just manipulate, but also usurp the authority of this council, of this Chamber and the General Assembly process.

But with the notion of moving this bill forward, I, too, will support it. Thank you.

THE CHAIR:

Thank you, Senator Penn.

Will you remark further? Will you remark further?

If not, would the Clerk please announce a roll call vote. The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators return to the Chamber?

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

Have all members voted?

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

Would the Clerk --

THE CLERK:

Total number voting, 34; necessary for passage, 18. Those voting yea, 34; those voting nay, 0.

THE CHAIR:

The bill, as amended, is passed.

Senator Upson.

SEN. UPSON:

Yes, Madam President, I would move that this be immediately transmitted to the Governor?

THE CHAIR:

Without objection, so ordered.

SEN. UPSON:

Then, Madam President, on page 2, I would have you call 101, Calendar No. 101, which was PT'd.

THE CHAIR:

Senator Coleman?

SEN. COLEMAN:

Thank you, Madam President.

Madam President, I'd ask that the Journal please note that on the vote of the last Consent Calendar, I was out of the Chamber and did not hear the announcement that the vote was in progress and, therefore, missed casting my vote on the last Consent Calendar.

THE CHAIR:

The Journal will so note.

SEN. COLEMAN:

Thank you, Madam President.

THE CHAIR:

Senator Penn?

SEN. PENN:

Thank you, Madam President.

Also at the last roll call vote on the Consent Calendar, I was out of the Chamber on legislative business and ask that the Journal reflect I would cast

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SEN. FLEMING:

Yes, Mr. President, at this time I'd ask the Clerk to go, to return to an item previously marked pass temporarily. Calendar item 404, and that the Clerk please call that item.

THE CHAIR:

Will the Clerk call that item.

THE CLERK:

Page 23, Calendar 404, File 577, Substitute for SB295, AN ACT CONCERNING PATIENT'S RIGHTS AND THE ESTABLISHMENT OF A TASK FORCE TO STUDY INVOLUNTARY OUTPATIENT COMMITMENT. Favorable Report of Committee on Judiciary, and Public Health. The Clerk has five Amendments.

(Lieutenant Governor Rell in the Chair)

THE CHAIR:

Senator Upson.

SEN. UPSON:

Yes, Madam President, I move acceptance of the Joint Committee's Favorable Report, passage of the bill and permission to summarize.

THE CHAIR:

Question is on passage. Will you remark?

SEN. UPSON:

Yes, there are three Amendments I'd like to call

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Madam President. The first one will be LCO-5412.

THE CLERK:

Senate Amendment Schedule "A" LCO-5412, offered by
Senator Upson.

THE CHAIR:

Senator Upson.

SEN. UPSON:

I move adoption of this Amendment.

THE CHAIR:

Question is on adoption. Will you remark?

SEN. UPSON:

Yes, Madam President, the language is changed on determining whether or not someone's competency. For example, there's a new Supreme Court case, United States Supreme Court called Cooper vs. Oklahoma, which held that the Fourteenth Amendment due process clause does not allow states to inquire of criminal defendants to prove incompetency to stand trial under the standard of clear and convincing evidence.

So we're now going to take out the standard of clear and convincing evidence, and change that with, a preponderance of the evidence. So, it'll say, a defendant is presumed to be competent. The burden of proving that the defendant is not competent by a preponderance of the evidence, etc., etc. So, we're

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changing the standards. Taking out clear and convincing, because the Supreme Court of the United States says that that is not constitutional, and substituting with the word, a preponderance of the evidence.

THE CHAIR:

Question is on adoption of Senate Amendment "A". Will you remark? Senator Looney.

SEN. LOONEY:

Thank you Madam President. Speaking in support of the Amendment, this is a very crucial and important Amendment. The recent Supreme Court case that Senator Upson cited, overturned a statute in Oklahoma which was substantially similar to our existing law, and it found that it created the, a situation in violation of the Fourteenth Amendment to the Constitution, whereby we had a, under the Oklahoma law, and under Connecticut law, the situation where the state, as it would be most cases be the state preceding to try, attempt to bring to trial someone who was questionably competent.

The state might proceed with a criminal trial after a defendant has shown that he is more likely than not incompetent, but not able to reach the threshold of clear and convincing evidence. The change to the preponderance of the evidence standard, as required in

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that decision, and now in our statute, will create that level of reasonableness where the state would not be bringing to trial someone who has been able to demonstrate that he should not be brought to trial because he is incompetent.

But have not been able to do so by clear and convincing evidence, although the weight of the evidence, the preponderance of the evidence, did go in that direction. We were one of four states that had that other standard. And that was ruled unconstitutional by the Supreme Court in that decision that was announced two weeks ago.

And commend Senator Upson for bringing it to the attention of the body and offering it as an Amendment on this bill. Thank you Madam President.

THE CHAIR:

Thank you Senator. Will you remark further on Senate Amendment "A"? If not, all those in favor indicate by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed nay? Aye's have it, Senate "A" is adopted. Will you remark further?

SEN. UPSON:

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Madam President, would the Clerk please call LCO-6108?

THE CLERK:

Senate Amendment Schedule "B" LCO-6108, offered by Senator Upson.

SEN. UPSON:

Yes, Madam President, I move adoption of this Amendment.

THE CHAIR:

Question is on adoption. Will you remark?

SEN. UPSON:

Yes, Madam President. I'd ask the thirty-six Senators to pay attention to this. This says the act shall take effect upon passage.

THE CHAIR:

Question is on passage. Actually, that's what the Amendment says.

SEN. UPSON:

That's correct.

THE CHAIR:

Will you remark further? Will you remark further? If not, all those in favor indicate by saying aye.

SENATORS:

Aye.

THE CHAIR:

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Opposed nay? Aye's have it, Senate "B" is adopted. Senator Upson.

SEN. UPSON:

Yes, Madam President, I move LCO-5706.

THE CLERK:

Senate Amendment Schedule "C" LCO-5706, offered by Senator Upson.

THE CHAIR:

Senator Upson.

SEN. UPSON:

I move its adoption.

THE CHAIR:

Question is on adoption. Will you remark?

SEN. UPSON:

This would set up a task force. The main bill says the task force, this determines the makeup of it, but the task force is to study issues relating to involuntary outpatient commitment, including the impact on community mental health service programs and clients.

But this only decides or talks about the actual makeup. And we did have some problems with this, but I think now it's worked out. I think there are eighteen members. A large one, but there be four members from Judiciary, four from Public Health. The Chairman of

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the Appropriations Subcommittee on Public Health or their designee.

One representative from the Office of Protection and Advocacy. One representative of the regional mental health boards. Everyone getting requisite appointments, that is the speaker has two, and the president of the Senate has two. From the Department of Mental Health and Addiction Services, two consumers.

That was important, the consumer aspect was added. That will come from the Majority Leader of the House. Connecticut Alliance for the Mentally Ill, representatives of the Connecticut Legal Rights Project, one service provider, one representative of the Connecticut Psychiatric Association.

Everyone, including the kitchen sink. And that is the makeup actually of the, this committee. And by the way, before I'm asked any questions on this, this is a very, I don't want to use the word "volatile" but we had, the hearing was very long. And that's why the task force is needed I believe, because of this subject matter. And there has to be inclusion of all groups.

THE CHAIR:

Question is on adoption of Senate Amendment "C".
Will you remark? Senator Sullivan.

SEN. SULLIVAN:

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Thank you Madam President, welcome back. The, two comments I guess. One is that, and we have another bill that actually we have offered an Amendment on to strike or change language like this. The subcommittees of Appropriations in fact don't exist in the sense that the committees of the legislature exist.

And so, when we constitute task forces and study groups, we are essentially referencing entities which are not creatures of the legislature at all, but creatures of the chair people of the Appropriations Committee. In addition to which I, unless I misread this, I note that it includes the chairman of the Appropriations Subcommittee, or their designees.

I do not note that it reads the ranking members of the subcommittee or their designees. Whereas, the remainder of the task force has been scrupulous in its attempts to provide a bipartisan balance. That's one observation.

The other is that I guess, and the virtues of having been here long enough to be wise enough, that the way to do a task force, unlike all the other ones that have gone to the Foot of the Calendar, some of which will reemerge by the end of the session in an omnibus bill, is to put your task force along with other things in a bill of general application.

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I'm not suggesting there's anything wrong with that. I'm only suggesting that we may need to think about the rule, not the rules, the informal rules, if you will, of the chamber, in terms of that sense of fairness to one and to all.

Task forces in general, I know, have been treated by the Majority Leader and by the majority party as an issue to be resolved at the close of the session, not to be created along the way. This is the first exception to that rule. So be it. But let's see what happens in the next few days. And at another point in time, we will have an opportunity to deal with this issue of subcommittees. It is not a good precedent for us to be setting.

THE CHAIR:

Will you remark further on Senate Amendment "C"?
Senator Upson.

SEN. UPSON:

I appreciate the good Senator's comments. Quite frankly, this had all been in a bill form, what they're going to study. But because of, they had a problem at the hearing, they wanted to study it again. So, that's why we're here. But I appreciate Senator Sullivan's comments.

THE CHAIR:

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Question is on adoption of Senate Amendment "C".
Will you remark further? Will you remark further? If
not, all those in favor indicate by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed nay? Aye's have it, Senate "C" is
adopted. Senator Upson.

SEN. UPSON:

Mr. President, excuse me, Madam President. I
don't have any further Amendments. If there's any, I
think there's two other ones on the makeup, they can be
withdrawn.

THE CHAIR:

Will you remark further on the bill as amended?

SEN. UPSON:

Yes, Madam President, as I stated, this was a long
hearing in Judiciary. And it had to do with how
psychiatric facilities make medical treatment decisions
for psychiatric disabled people who are in-patients.
As I told you earlier, however, the study is on the
involuntary outpatient commitments. So that's going to
be studied. But as far as in house, it requires
facilities establish internal procedures for
involuntary medication, and to provide forty-eight hour

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notice, advance notice for the patient and his advocate.

There are advocates for the patients. So they could have a hearing, and they're given forty-eight hours notice if they're going to be given medication involuntarily. They can permit the patient's advocate to question physicians.

Also conservators would be authorized to consent to the administration of medication. And that could be up to 120 hours, and may be extended, I believe, it's for another period of time. Yes, the bill allows the probate court under certain conditions to extend the conservators. If there are no further questions, I'd move this to, is there a Consent Calendar, yes Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

THE CLERK:

Page 24, Calendar 412, Substitute for SB509, File 589. AN ACT EXEMPTING CERTAIN COMMERCIAL MOTOR VEHICLES FROM PROPERTY TAX AND CONCERNING THE APPORTIONMENT OF NET INCOME OF MOTOR CARRIERS. Favorable Report of Committee on Transportation, Finance, and Appropriations. Clerk has three

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the Senate. Will all Senators please return to the chamber.

THE CHAIR:

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

THE CLERK:

Total Number Voting	34
Necessary for Passage	18
Those Voting Yea	34
Those Voting Nay	0

THE CHAIR:

The bill as amended is passed. At this time, would the Clerk please call the Consent Calendar.

THE CLERK:

An immediate roll call on the Consent Calendar has been ordered in the Senate. All Senators return to the chamber. An immediate roll call on the Consent Calendar has been ordered in the Senate. Will all Senators please return to the chamber.

Page 23, SB 295 Calendar 404. Page 24, SB 509 Calendar 412.

THE CHAIR:

The machine will be open. Have all members voted? Senator Scarpetti. Senator Gunther. Have all members voted? If all members have voted, the machine will be

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locked. Clerk please take a tally.

THE CLERK:

Total Number Voting	34
Necessary for Passage	18
Those Voting Yea	34
Those Voting Nay	0

THE CHAIR:

Consent Calendar is adopted. Will you remark further on the Calendar?

SEN. FLEMING:

Madam President.

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

Yes, Madam President, that was the last bill, except for a few more, Madam President I would at this time like to, and would ask members to just pay attention. We're going to recommit a couple of items.

Madam President, I would ask at this time that SB153
Calendar item 207, I would move for recommitment of that
item.

THE CHAIR:

Motion is to recommit this item. Without
objection, so ordered. That's on Page 2, Calendar 207.

SEN. FLEMING:

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HOUSE

PROCEEDINGS
1996

VOL. 39
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VETO SESSION
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House of Representatives

Wednesday, May 8, 1996

Total Number Voting	149
Necessary for passage	75
Those voting Yea	149
Those voting Nay	0
Those absent and not voting	1

DEPUTY SPEAKER HYSLOP:

Bill as amended passes. Clerk please call
Calendar 574.

CLERK:

On page 13, Calendar 574, substitute for Senate
Bill Number 295. AN ACT CONCERNING PATIENTS RIGHTS AND
THE ESTABLISHMENT OF A TASK FORCE TO STUDY INVOLUNTARY
OUT-PATIENT COMMITMENT. As amended by Senate amendment
schedules "A", "B" and "C." Favorable report of the
committee on Public Health.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. I move acceptance of the
Joint Committee's favorable report and passage of the
bill in concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

Question is on acceptance and passage, will you
remark?

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. This bill provides greater rights for psychiatric patients with respect to their treatment. It allows such things as 48 hour advance notice of proceedings to determine the necessity of involuntary treatment.

It allows the patient and his advocate to question physicians who make determinations about involuntary medication, and it requires the appointment of conservators, specifically authorized to consent to the administration of medication.

The bill also establishes a task force to look at out-patient commitment and other alternatives to the problems that certain patients are facing once they are released into the community. At this time, Mr. Speaker, the Clerk has in his possession Senate amendment "A" LCO 5412 will he call and I be permitted to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk please call LCO 5412 previously designated Senate amendment "A" the Representative has asked leave to summarize.

CLERK:

LCO 5412, Senate "A" offered by Senator Upson.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

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REP. SCALETTAR: (114th)

Thank you Mr. Speaker. I move adoption of Senate amendment "A" which is an amendment that changes the standard from clear and convincing evidence to a preponderance of the evidence in determining a definitive competency to stand trial. And for further explanation, Mr. Speaker I would yield to Representative Radcliffe.

DEPUTY SPEAKER HYSLOP:

Questions on adoption, Representative Radcliffe do you accept the yield?

REP. RADCLIFFE: (123rd)

Yes Mr. Speaker, I do. Mr. Speaker, what this amendment will do is it would conform Connecticut law to the Supreme Court decision, the United States Supreme Court decision--Cooper vs Arizona--which was a statute similar to ours that placed the burden of going forward on a defendant once the issue of the defendant's competency was raised at trial.

The burden was then on the defendant by clear and convincing evidence which is a higher civil standard than the preponderance of the evidence, to prove competency. The Supreme Court felt that it was violative of due process to place such a higher clear and convincing standard on a defendant and presumably

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on the state as well if the state were to raise this issue.

Because the court reasoned the someone could be more probably than not incompetent and yet the trial would proceed because the proof didn't rise to the level of clear and convincing evidence.

Connecticut was one of only four states that had such a standard of clear and convincing. This will conform our standards to the due process requirements of the Supreme Court laid down in the Cooper case.

And Senate "A", and that's the reason that on Senate "A" on line 24 we substitute clear and convincing evidence which is a higher standard for that of a preponderance, which simply means more probable than not.

DEPUTY SPEAKER HYSLOP:

, Will you remark further on Senate "A"? If not, we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed. Ayes have it, Senate "A" is adopted, will you remark further on the bill as amended? Representative Scalettar.

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REP. SCALETTAR: (114th)

Thank you Mr. Speaker. The Clerk has in his possession, LCO 6108, Senate amendment "B" will he call and I be permitted to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk please call LCO 6108, previously designated Senate amendment "B."

CLERK:

LCO 6108, Senate "B" offered by Senator Upson.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. I move adoption of Senate amendment "B" which makes the bill effective on passage. Thank you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark? Question is on adoption, will you remark on Senate "B"? If not we'll try your minds.
All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed. Senate "B" is adopted. Will you remark further on the bill as amended? Representative Scalettar.

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REP. SCALETTAR: (114th)

Thank you Mr. Speaker. The Clerk has in his possession LCO 5706, Senate amendment "C" will he call and I be permitted to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk please call LCO 5706, previously designated Senate amendment "C."

CLERK:

LCO 5706, Senate "C" offered by Senator Upson.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. I move adoption of Senate amendment "C" which requires the Department of Mental Health to adopt regulations with respect to the treatment factor, which is the underlying statute here, and requires the task force mentioned to study alternatives to involuntary out-patient commitment. I move adoption Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Questions on adoption. Will you remark on Senate "C"? If not, we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER HYSLOP:

Those opposed? Senate "C" is adopted. Will you remark further on the bill as amended? Will you remark on the bill as amended? If not, staff and guests to the well of the House, the machine is open.

CLERK:

The House of Representatives is voting by roll call, members to the Chamber. The House is voting by roll call, members to the Chamber please.

DEPUTY SPEAKER HYSLOP:

Have all members voted? Please check the roll call machine to make sure your vote is properly recorded. The machine will be locked. Clerk please take a tally. Representative Boukus, Representative Boukus in the affirmative. Clerk please announce the tally.

CLERK:

Senate Bill Number 295 as amended by Senate amendment schedules "A", "B" and "C" in concurrence with the Senate.

Total Number Voting	147
Necessary for passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	3

kmr

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House of Representatives

Wednesday, May 8, 1996

DEPUTY SPEAKER HYSLOP:

Bill as amended passes. Clerk please call
Calendar 593.

CLERK:

On page 14, Calendar 593, substitute for Senate
Bill Number 59. AN ACT CONCERNING PUBLIC CHARTER
SCHOOLS. As amended by Senate amendment schedule "A."
Favorable report of the committee on Appropriations.

DEPUTY SPEAKER HYSLOP:

Representative Staples.

REP. STAPLES: (96th)

Thank you Mr. Speaker. Mr. Speaker, I move
acceptance of the Joint Committee's favorable report
and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

Questions on acceptance and passage, will you
remark?

REP. STAPLES: (96th)

Thank you Mr. Speaker. At this time I'd like to
call LCO 5469, previously designated as Senate "A" and
I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Will Clerk please call LCO 5469 previously
designated Senate amendment schedule "A."

CLERK:

JOINT
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tribe, yes.

REP. SCALETTAR: Thank you.

REP. LAWLOR: Are there other questions? If not, thank you very much.

KENNETH REEL: Thank you.

REP. LAWLOR: Senator Upson informs me that we are alternating back and forth so next on the first list is James McGayher, I think it is, Protection Advocacy.

JAMES MCGAYHEY: Good afternoon, Senator Upson, Representative Lawlor and members of the committee. My name is Jim McGayhey. I am the acting Executive Director of the Office of Protection and Advocacy for Persons with Disabilities.

I am here this afternoon to urge favorable action on SB295, AN ACT CONCERNING PATIENTS RIGHTS. This bill clarifies and strengthens provisions of existing law that define the rights of patients in psychiatric treatment facilities regarding involuntary administration of medication.

Essentially, the existing statute assures that patients will not be involuntarily medicated without an opportunity for a hearing before an independent hearing officer or in some cases, a probate judge.

Now the changes we are seeking are to clarify that the due process protections afforded by the statute also apply in situations where the patient has a conservator of the person and that there should be limits on the time frames for orders to involuntarily administer medication.

Other clarifications involve the amount of notice that is given before the hearing. We think that that has been a problem for us and further, that at least one of the physicians who was involved in making the determination that involuntary administration of medication is necessary should be present at the hearing or if necessary, if

requested, should be present at the hearing in order to answer questions.

The bill is organized into two sections. Section 1, which contains the clarifying language regarding conservators and which limits the life span of involuntary medication orders is essentially identical to a bill that died on the last night of the session last year. An amendment concerning people being treated by prayer alone, had been added in the House, but the Senate adjourned before it could take action on the amended version of the bill.

As you can see, that amendment's language has been included in this bill in subsection (j). There is also language permitting administration of medication of up to 240 days for people who are being continuously hospitalized. This language was added at the request of the Department of Mental Health. In fact, section 1 is the result of a negotiation process that involved DMH, the probate court administrator's office, our office and other patient rights advocates.

Section 2 of the bill is new this year. It requires that not less than 48 hour notice be given to a patient and/or his or her advocate if in fact an advocate is involved, before a facility holds an internal hearing to determine if the criteria for involuntary administration of medication had been met. This provision is needed because advocates from our office and from other advocacy organizations are sometimes receiving notice of hearings only hours before the hearings are actually held even though the facility may have scheduled a hearing several days earlier.

The section also lowers the age for giving informed consent from 18 to 16 years of age and this change is bringing the provision to this section of the statute in line with other -- the patients rights sections of the General Statutes.

There is one other piece that I want to call your attention to and that is that there is some language we would like to see added and I have

included it in the written testimony that I have submitted, but that is basically the language about making one of the physicians, at least one of the physicians available to answer questions at the hearing, if that is requested.

Thank you for your attention. I would be happy to answer any questions.

REP. LAWLOR: Senator Looney.

SEN. LOONEY: Thank you, Mr. Chairman. Good afternoon, sir. I would direct your attention to the one of the sections that you talked about, section (j), lines 159 to 163 regarding the treatment by prayer. It says, "that unless there are some substantial risks of physical harm to the patient or others, nothing in this section authorizes any form in involuntary medical, psychological, or psychiatric treatment of any patient who is being treated by prayer alone in accordance with a recognized spiritual method of healing". Recognized by whom?

JAMES MCGAYHEY: I don't know. This was language that was added at the request, I believe, the Christian Science group that had objected to the fact that there was -- there seemed to be a way to circumvent methods of healing that were recognized, at least, in case laws being acceptable. So I believe there is background case law on this, but I don't know that there is any statutory or any professional association that does it.

SEN. LOONEY: Alright. Also then, of course, that provision would be overridden by the first part if there is a substantial risk of physical harm to the patient or others and whose determination would it be if the substantial risk of physical harm? Would that be at the probate court or medical determination?

JAMES MCGAYHEY: Well, that is primarily a medical determination and in fact, all of the provisions of this mechanism can be suspended in case there is a determination that there is an urgent need or an emergency need to administer the medication. So there is flexibility there for the facilities and

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for the physicians to make those kinds of determinations.

SEN. LOONEY: Alright. I would think from the tenor of your comments that we might need some further definition of the word "recognized" or some establishment of criteria to avoid some --

JAMES MCGAYHEY: It is a very good point.

SEN. LOONEY: -- problems on that issue.

JAMES MCGAYHEY: Yes.

SEN. LOONEY: Thank you.

REP. LAWLOR: Are there other questions? Representative Scalettar.

REP. SCALETTAR: Thank you, Mr. Chairman. Good afternoon, sir. I just want to point out one technical issue. In the papers that you have given us, you said the additional language goes into line 16. It is not line 16 in the bill that we have in our bill books so maybe you could just get back to us later with the appropriate line that you want inserted.

JAMES MCGAYHEY: I have to confess, I typed that myself so it is probably just a typographical error.

REP. SCALETTAR: That is fine.

JAMES MCGAYHEY: I will follow up on that.

REP. SCALETTAR: Thank you.

REP. LAWLOR: Are there other questions from members of the committee? If not, thank you very much.

JAMES MCGAYHEY: Thank you.

REP. LAWLOR: Chief Strillacci. Chief, is someone going to testify together with you? No, okay.

JAMES STRILLACCI: Good afternoon. I am James Strillacci. I am the Chief of Police from West

SB 306

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ripple effect through all of the related businesses and industries.

Although we appreciate the intent of protecting property owners, unfortunately, the impact of this proposed bill, as written, is anti-business and confuses the role that hotels have in our society to provide temporary shelter. The over 2,000 year old hospitality industry is built on the premise that the innkeeper has guests, not tenants.

Thank you.

SEN. UPSON: (INAUDIBLE - MICROPHONE NOT ON) Thank you very much.

ELAINE SUMMERS: Thank you very much.

SEN. UPSON: (INAUDIBLE - MICROPHONE NOT ON)

ROD SAVOYE: Yes, sir. It was raised last year and didn't get to it.

SEN. UPSON: (INAUDIBLE - MICROPHONE NOT ON)

ROD SAVOYE: No, it was a request for a reliance on spiritual method of healing in lieu of medical involuntary medical treatment.

Anyway, should I go on with this? Chairman Upson and Chairman Lawlor and members of the committee, my name is Rod Savoye. I am a Christian Scientist on Publication for Connecticut.

I would like to speak in favor of SB295 concerning patients rights with particular reference to page five and paragraph J beginning on line 159.

The addition to the bill - - this addition affirms the practice of religious freedom and it is consistent with many accommodations in Connecticut General Statutes which recognize the rights of citizens to practice their religion and not to have that practice burdened by state mandated medical regiments.

This addition to the bill brings it into accord

with the Religious Freedom Restoration Act, a federal law in 1993 and Connecticut's act concerning religious freedom. Both bills were passed by overwhelming bi-partisan majorities in Congress under General Assembly respectively.

Both laws stipulate that the government may not substantially burden one's exercise of religion except if the government can demonstrate that there is a compelling state interest and that particular law actually furthers that compelling interest.

Forcing medical, psychological or psychiatric treatment on one who chooses to rely exclusively on spiritual treatment certainly burdens that citizen's religious practice. It is far from proven that forcing medical treatment actually furthers governmental interest.

There are many cases of healing mental illness through prayer alone. Not all these healings are sudden. Sometimes treatment must be continued for extended periods of time before healing is complete.

The law should allow for such treatment to continue so long as the patient desires it unless there are substantial risk of physical harm.

Someone spoke on this earlier in the day. Specifically about this paragraph j and Senator Looney asked a question. And the end of this phrase says, "unless there is a substantial risk of physical harm to the patient or others, nothing in this section authorizes any form of involuntary medical, psychological or psychiatric treatment of any patient who is being treated by prayer alone in accordance with a recognized spiritual method of healing."

The reason that phrase was put in was to assure that patients would have a proven spiritual method of healing. But Senator Looney's question recognized by whom raises maybe an impossible question, what benchmark do you establish that makes it recognized.

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I have had three hours to think about this, but I can't come up with wording that would satisfy that question. Maybe another word merchant can help me, but if push came to shove, I would have to end the sentence by the words "prayer alone" and strike out "in accordance with a recognized spiritual method of healing."

That concludes my comments unless anyone has a question.

REP. SCALETTAR: I have a question to ask you about your comments. I support this amendment and I did, when it was brought up before, but I am wondering if you would support it if the sentence ended "unless there is substantial risk of physical harm to the patient or others, nothing in this section authorizes any form of involuntary medical, psychological or psychiatric treatment of any patient". Suppose a patient just refused it because he or she didn't believe in it or didn't want it? Do you think that is appropriate?

ROD SAVOYE: That's an issue, I think, the facility administrator would have to make whether he feels that the patient is receiving proper care by simply saying I don't want it. Presumably, the facility administrator or a probate court or somebody who wanted to have some assurance that the patient is being help, if not through medication, through spiritual treatment, but is receiving help.

REP. SCALETTAR: Thank you.

ROD SAVOYE: Does that answer the question?

REP. SCALETTAR: Yes.

THOMAS BEHRENDT: Okay. Good evening. I am Thomas Behrendt. I am legal director of the Connecticut League of Rights Project. We advocate for persons with mental health and psychiatric disabilities and we support SB295.

It provides needed clarification of the provisions of existing law enacted in Public Act 93-369. Specifically, it clarifies the process in cases

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where the patient or respondent has a previously appointed conservator of the person.

In addition, it provides for an extension of a conservator's authority to give informed consent to medication beyond the 120 day period in the current law for an additional 120 days where the respondent remains continuously hospitalized, such extensions are to be made by the same probate court and only if the underlying predicates, the respondent's incapacity to give informed consent and the need for medication persists as attested in a new evaluation by two qualified physicians and the head of the hospital.

The bill also conforms with case law addressing Public Act 93-369, specifically the cases Moses J. vs. Hunter and Doe vs. Hunter. It is the product of a work group which consisted of the Probate Administrator, Judge Kurmay, the Department of Mental Health and Addiction Services, the State Office of Protection and Advocacy and the Connecticut League of Rights Projects.

Section 2 of the bill adds to simple and needed provisions. The first is 48 hour notice of hearings and second, is lowering to age 16 the age for giving informed consent which is consistent with existing statutes.

We would also urge adoption of the change submitted by the State Office of Protection and Advocacy and discussed earlier today. And actually it was Jim McGahy, the acting director of the Office of Protection and Advocacy. There was some question about what line of the bill it applies to. I believe it is line 66. I think that was a typo on his paper.

At any rate, thank you very much. I would be glad to answer any questions.

SEN. UPSON: Representative O'Neill.

REP. O'NEILL: You say that lowering the age to 16 is consistent with existing statutes. I am not familiar with this particular area, so maybe you

could help me out. What statutes are you talking about?

THOMAS BEHRENDT: I have to plead that I am not thoroughly up to speed on that. I know that in the discussions of the working group that we had, they were pointed out as this was a bill that was substantially drafted last year. I don't have that in my materials today. I am not sure whether that was in the Office of Protection and Advocacy's materials that were submitted or not.

One of the problems is that my organization -- we just work with adult clients of the Department of Mental Health and Addiction Services. I don't have occasion to deal with that on a day-to-day basis. I would be glad to look into it and get back to the committee.

REP. O'NEILL: Well, I can check the statute. I was just asking because you said it relates to existing statutes and I am curious. Somehow I had the impression that you had to be over 18 to give informed consent for most things. But if you don't recall --

THOMAS BEHRENDT: There are -- in case law, I am aware of a number of mature minor exceptions in areas such as custody and a number of other areas, but I do know just from the work group meetings that we had last year, that there are provisions of statute which speak to age 16.

REP. O'NEILL: Thank you.

SEN. UPSON: Are there any further questions? Thank you very much.

THOMAS BEHRENDT: Thank you.

SEN. UPSON: Thank you. Charles Duffy.

CHARLES DUFFY: Thank you Mr. Chairman and members of the committee. As long as the microphone is on and the transcript will still record my comments --

REP. LAWLOR: You are paid by the hour, that's why.

**Yale-New Haven
Hospital**

20 York Street, New Haven, CT 06504

March 1, 1996

Senator Thomas Upson
Representative Michael Lawlor
Co-Chairs, Judiciary Committee
Hartford, CT 06106

Dear Sen. Upson and Rep. Lawlor:

On behalf of Yale-New Haven Hospital, I want to share some concerns regarding section j of proposed SB 295, AAC PATIENT'S RIGHTS. I have consulted those in the hospital's Office of Legal Affairs who work closely with those on the psychiatric inpatient floor.

It is the view of those in that office, that the language of proposed section j would pose a serious obstacle to treatment of patients who are in need of care to be discharged from the hospital. The newly passed PA 95-257 regarding involuntary medication for psychiatric patients has worked reasonably well at Yale-New Haven Hospital. Likewise, most changes proposed in SB 295 do not present a problem and in fact represent the manner in which YNH and the New Haven Probate Court currently operate.

The exception to this is section j. This section would "unless there is a substantial risk of physical harm to the patient or others..." exempt patients who are "being treated by prayer alone in accordance with a recognized spiritual method of healing". Unfortunately, this is not what we're talking about in the case of certain involuntary committed psychiatric patients. This law has no real effect outside of an inpatient setting. Therefore, patients who are in the hospital are there because they have signed themselves in, or because they have been involuntarily committed because they meet stringent criteria (i.e. danger to themselves or others, or "gravely disabled", which means they can not provide for one of their basic human needs, i.e. , food, shelter, safety or clothing. Added to the requirement are even more stringent criteria imposed by PA 95-257. Together, these requirements protect patient's rights.

It is the view of the legal office that section j would establish a loophole by which a patient could seek to avoid medication which may be his or her only route to leaving the hospital. I respectfully request that section j be removed from this otherwise sound proposal.

Warm Regards,


Phyllis K. Medvedow
Community and Government Relations

p.c.: Stuart Warner, Legal Affairs/Risk Management
Members of the Judiciary Committee
Third Congressional District



STATE OF C O N N E C T I C U T

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CONNECTICUT 06120-1551

TESTIMONY OF THE OFFICE OF PROTECTION AND ADVOCACY
BEFORE THE JUDICIARY COMMITTEE

regarding

S.B. 295, AAC PATIENTS' RIGHTS

Presented by:
James D. McGaughey
Acting Executive Director
March 1, 1996

Good afternoon. I am Jim McGaughey, Acting Executive Director of the Office of Protection and Advocacy for Persons with Disabilities. I am here this afternoon to urge favorable action on Bill No. 295, An Act Concerning Patients' Rights.

This bill clarifies and strengthens provisions of existing law that defines the rights of patients in psychiatric treatment facilities regarding involuntary administration of medication. Essentially, the existing statute assures that patients will not be involuntarily medicated without an opportunity for a hearing before an independent hearing officer or, in some cases, a probate judge.

The changes we are seeking are to clarify that 1) the due process protections afforded by the statute also apply in situations where the patient has a conservator of the person; 2) there should be limits on the time frames for orders to involuntarily administer medication; 3) facilities need to give adequate notice (48 hours) of hearings to the patient's advocate; and 4) one of the physicians who have to determine that the patient is incapable of giving informed consent for the medication must be available to answer questions at the hearing.

The bill is organized into two sections. Section 1, which contains the clarifying language regarding conservators and limits the life-span of involuntary medication orders, is essentially identical to a bill that died on the last night of the session last year. An amendment concerning people being treated by prayer alone had been added in the House, but the Senate adjourned before it could take action on the amended version of the bill. As you can see, that amendment's language has been included in this bill in subsection (j). The other change from last year's bill is language permitting administration of medication for up to two-hundred and forty days for people who are being continuously hospitalized. This language was added at the request of the Department of Mental Health. In fact, Section 1 is the result of a negotiation process that involved DMH, the Probate Court Administrator's Office, our Office, and other patient

advocates.

Section 2 of the bill is new this year. It requires that not less than 48 hour notice be given to a patient and his or her advocate (if an advocate is involved) of a facility's intention to hold an internal hearing to determine if the criteria for involuntary administration of medication have been met. This provision is needed because advocates from our Office, and other advocacy organizations are sometimes receiving notice of hearings only hours before the hearings are held, even though the facility may have scheduled the hearing days earlier. The section also lowers the age for giving informed consent from eighteen to sixteen years of age. The change in age is to bring these provisions of the statute into alignment with the other patients' rights sections of the general statutes.

There is one more addition we feel is needed that is not included in the version of the bill before you. In line 16, after the word "witness", we would urge that you insert the words:

INCLUDING, IF REQUESTED, ONE OR BOTH OF THE PHYSICIANS WHO MADE THE DETERMINATIONS REGARDING THE PATIENT'S CAPACITY TO GIVE INFORMED CONSENT AND THE NECESSITY OF THE MEDICATION FOR THE PATIENT'S TREATMENT, AS REQUIRED IN SUBSECTION (e),

Physicians who make judgements that people are not capable of giving informed consent, and that involuntary administration of medication is necessary to effect treatment clearly have a central role in this whole process. Due process rights are unfairly restricted when at least one of them is not available to answer questions at the hearing. These witnesses are not always necessary, but they should be available if requested.

Thank you for your attention. If there are any questions, I will try to answer them.