

Legislative History for Connecticut Act

SB 610	FAX	PA 88	1998
House	1995-2014		(20)
Senate	1089, 1104, 1197, 1252-1254, 1882-1883, 1884-1885		(10)
Judiciary	1545-1548, 1698-1701		(8)
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1998

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1755-2110

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House of Representatives

Thursday, April 23, 1998

On page 15, Calendar 415, Substitute for Senate Bill Number 610, AN ACT CONCERNING COMPETENCY TO STAND TRIAL. Favorable Report of the Committee on Judiciary.

REP. CAPPIELLO: (138TH)

Representative Lawlor.

REP. LAWLOR: (99TH)

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

REP. CAPPIELLO: (138TH)

The motion is on acceptance and passage. Please proceed.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. This bill intends to solve two problems. First, the circumstances under which medication may be administered involuntarily to a defendant in a criminal case who has been found to be incompetent to stand trial and who is likely to be returned to competency with the involuntary administration of medication.

Second, it seeks to solve a problem which emerged in a case which received a great deal of notoriety involving a young man accused of murder where he had inflicted a gunshot wound on himself as part of the incident, allegedly, and as consequence received a

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brain injury and subsequently was found incompetent to stand trial.

In that particular case the case would be continued pursuant to the existing law. The time period to return the competency expired. The State was required to, in essence, drop the charges temporarily until such time as he returned to competency.

Well, a number of years went by and notwithstanding the efforts of the prosecutor to continue to have that person tested to see if he had regained competency, no such test took place. He ultimately enrolled in a university and was attending pre-med classes and apparently doing quite well academically. When the news media found out that this was going on they publicized the case and I think it was an embarrassment to all of us as policy makers and players in the criminal justice system that such a thing was possible. In other words, you could be found incompetent to stand trial on a murder charge, left alone for many years, no one ever followed up the test, and it had to be discovered by the news media.

So, this would solve that problem by allowing the court under these circumstances to order periodic testing to determine whether or not someone had been restored to competency, but only until the statute of

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limitations would expire in a particular case. That's the -- of course, that's the existing law.

In a murder case, by the way, there is no statute of limitations. So in a murder case there could be periodic testing for the remainder of the life of the one time defendant.

So, Mr. Speaker, I think it's an important bill. There is an amendment to correct one problem in the bill. The Clerk has LCO 3830. I would ask the Clerk call and I be permitted to summarize.

REP. CAPPIELLO: (138TH)

The Clerk does have LCO Number 3830, House Amendment Schedule "A". Clerk, please call. 3830, yes.

CLERK:

LCO Number 3830, House "A" offered by Representative Lawlor.

REP. CAPPIELLO: (138TH)

The motion is on adoption. Any comments, Representative Lawlor?

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. In the file copy on line 68 reference is made to a health care guardian, the appointment of a health care guardian to, in effect, advocate for the interest of the patient under these

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circumstances of the potential administration of medication involuntarily to restore the competency. There is no such position or designation as health care guardian under the current law.

So instead, this amendment substitutes reference to a licensed health care provider. In other words, a physician who would, in effect, act as the advocate appointed by the court to deal with these types of circumstances.

I urge adoption, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Any other comments? If not, all those in favor, signify by saying aye.

Oh, I'm sorry. Representative Prelli. I'm sorry.

REP. PRELLI: (63RD)

Thank you, Mr. Speaker. And Mr. Speaker, it's good to see you up there even if it is for reasons that we're not too happy about.

Mr. Speaker, through you, a question to Representative Lawlor.

REP. CAPPIELLO: (138TH)

Please proceed.

REP. PRELLI: (63RD)

Representative Lawlor, I've been trying to read this over and I didn't quite get to the end before they

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were ready to call the vote. If the person is indigent who is going to pay for the health care provider that's being appointed in this case? Would the court then have to pay or through the court services have to pay?

Through you, Mr. Speaker.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Through you, Mr. Speaker. I believe in almost every -- in every case, this would be paid for by the State. This is an attempt to restore someone to competency being ordered by the court. There are procedures under our existing law where defendants in criminal cases can subsequently be billed for certain types of services, public defenders or health care, etc. It's normally not the case, but it's possible. But since this is part of a criminal prosecution and it's being ordered by the court, the cost would be paid for by the State.

Through you, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Mr. Speaker. And then just one more question, through you to the proponent.

REP. CAPPIELLO: (138TH)

Proceed.

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REP. PRELLI: (63RD)

Representative Lawlor, if the person is in some way being incarcerated in the system -- maybe incarcerated is the wrong word, but being held in the system either at Whiting or at one of our prisons for some reason, would someone still have to be appointed in that case? Through you, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Through you. In almost every case the person would be incarcerated. This is after the arrest. A hearing has taken place to determine competency. A court has made a finding that the person is incompetent to stand trial. When that happens the case is continued for brief periods of time to see if the person can be restored to competency and it's anticipated that in some circumstances there maybe a recommendation that if medication is administered involuntarily to the defendant that will restore them to competency so that the trial can go forward. And in those cases, I think your question related to the cost. Yes, there would be the cost and as a safeguard, as a protection of the rights of the accused in that situation, if the person is not able to, in essence,

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consent because, after all, they have been found to be incompetent to stand trial which basically means they don't understand what's going on. They can't assist anyone in helping them out. If someone's in that situation, this just a safeguard to have some responsible person who is to look after and under certain circumstances advocate the interests of the patient or defendant involved in that situation.

If you look in the bill there's five separate factors which have to be found which create a relatively high standard to be present prior to the involuntary administration of medication. And obviously this is to attempt to avoid the situation where someone, in essence, is refusing to voluntarily participate in treatment that would restore them the competency in order to avoid being prosecuted for an offense.

Through you, Mr. Speaker.

REP. PRELLI: (63RD)

Thank you, Mr. Speaker. Then just one more quick question, I think. Through you, Mr. Speaker to Representative Lawlor. Representative Lawlor, could this person be like the head doctor at Whiting Forensic? Could that person be appointed? Through you, Mr. Speaker.

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REP. CAPPIELLO: (138TH)

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Through you. My sense that would be unlikely because there might be a potential conflict of interest in that type of a situation. A state employee involved in a certain amount of criminal justice work, that might not be the best advocate. I would think it would be like, in effect, a special public defender or someone like that who is sort of on the outside maybe volunteered to be on a list of that type who will be compensated appropriately for their services to step in and advocate or just to oversee the process, a second opinion, in effect.

REP. PRELLI: (63RD)

Thank you, Mr. Speaker. And thank you, Representative Lawlor. We had the same questions prior to this amendment on who that provider would be and I think this addresses it. That's why I wanted to get some of the points on record. I think this makes the bill a lot better and would urge your adoption of the amendment.

REP. CAPPIELLO: (138TH)

Any other comments? Representative Wallace.

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REP. WALLACE: (109TH)

Thank you, Mr. Speaker. Through you, Mr. Speaker, a question to the proponent of the amendment.

REP. CAPPIELLO: (138TH)

Please proceed.

REP. WALLACE: (109TH)

Thank you, Mr. Speaker. I want to make sure that I understand the underlying bill and then how the amendment changes that. If a person were mentally incompetent all their life and created a capital felony and were charged with murder, would -- under this bill medication would be given to that person though they may never have received it in the past so that they could be made competent to be put to death. Is that correct?

REP. CAPPIELLO: (138TH)

Representative Lawlor.

REP. LAWLOR: (99TH)

Through you, Mr. Speaker. No, that's not correct. This only relates to the competency to stand trial, not -- I think you maybe referring both to the potential availability of the insanity defense for the crime. So if you were, in effect, incompetent at the time of the crime, you're probably going to be found not guilty by reason of insanity. And subsequent to the imposition

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of a sentence, I do not think this particular procedure would apply to perspective capital punishment. At least I hope it wouldn't.

REP. WALLACE: (109TH)

The amendment states that the court shall appoint a licensed health care provider. My understanding -- and again, relating to the fact that if someone were to stand trial for commission of a felony -- my understanding is that the psychiatrists association that their ethics preclude them from treating a person to make them competent to stand trial again so that they would face the death penalty. I'm wondering who these licensed health care providers would be.

REP. CAPPIELLO: (138TH)

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. I suppose it's theoretically possible that someone would be -- they would be attempting to restore someone to competency so they could stand prosecution in a capital case. However, I would point out given the extraordinary difficulty in obtaining a death sentence given the penalty phase involving mitigating and aggravating factors, etc., it's almost inconceivable that someone who actually at one point was found incompetent to

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stand trial could end up being subject to the death penalty if they were that troubled mentally. Although maybe in another state, but I just don't think it would happen in Connecticut, but to be sure, a physician who had a philosophical objection to participating in that type of prosecution would not be obligated to do so. But I find it very unlikely that this could be employed in a capital case. It just doesn't seem very likely at all.

Through you, Mr. Speaker.

REP. WALLACE: (109TH)

Thank you, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Any other comments? Representative Gyle.

REP. GYLE: (108TH)

Thank you, Mr. Speaker. Through you to Representative Lawlor. Representative Lawlor, I like Representative Wallace has serious concerns about this. I'd like also for you to repeat since I was unable to hear exactly who this legal health guardian is that is going to hold this person down and force medication down their throat.

Through you, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Representative Lawlor.

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REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. This guardian will not be the person who will administer the medication involuntarily. This is the person who the court would appoint to, in essence, advocate for the interests of the defendant during the process by which they would determine whether it is appropriate to administer medication involuntarily. This would not be the person who would administer the medication.

Through you, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Representative Gyle.

REP. GYLE: (108TH)

Again, through you, Mr. Speaker. Representative Lawlor, who would be the person who administers the medication should the other person decide that yes, he wanted that person to take medication?

REP. CAPPIELLO: (138TH)

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. First of all, the other person wouldn't decide. They would, in effect, be the advocate or the representative of the defendant or the patient in the hearing that would take place where a judge would decide whether or not to order involuntary

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medication.

I would assume that medication would be administered by personnel of the Department of Corrections or Department of Mental Health, depending on where the person is housed at the time the medication is administered.

Through you, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Representative Gyle.

REP. GYLE: (108TH)

Thank you, Mr. Speaker. I'm just going to make these few observations because this really disturbs me greatly.

I think that we are stepping on serious ethic, moral and legal turf here when we ask someone who has committed a crime, albeit mentally incompetent to be involuntarily medicated to become competent in order to stand trial for a crime which he did not know at the point that he is competent that he committed while he was incompetent.

I'd like to know who exactly is going to be the person who would force someone against their will to take psychiatric medication which as people may or may not know, sometimes takes up to a month to be effective if, indeed, that medication is to be effective. Whether

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or not the civil rights of that person is being tread upon once they become competent because they are having that medication. If they decide while competent they no longer want that medication, that they prefer to go crazy again, if you will, then what do we do? Do we ask the health care guardian to continue to keep them medicated against their will?

We have a case now pending in Mississippi on death row, mind you, where there is someone, who because of his medication, is judged legally competent to be put to death. And now that he's legally competent and knows that he's able to be put to death has asked the court to take him off his medication because he would rather be crazy and live.

These are serious ethical, moral, and legal decisions we're making here and I hope we wouldn't make them lightly. I'm very disturbed by somebody being involuntarily medicated. If it's for their own health and safety, absolutely. Not a doubt in my mind. But these medications have to be ongoing or people relapse. It's like having Diabetes. I would like my friends to understand you don't get cured of mental illness by taking a pill. It's like having a chronic condition. You have to continue to take this medication otherwise you will be out in the street and homeless which is

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what everyone was disturbed about when we emptied our mental institutions to people who we felt would be better served if they were in the community and nobody paid any attention to them once they became in the community. They stopped taking their medication and once again we had a problem.

Now here we go again on this same merry-go-round. This is a very serious thing we're doing. Don't make any mistake about it. And to make people submit to involuntary medication in order for them to be competent to stand trial doesn't sound like they're anybody's advocate, quite frankly because we're not making them competent in order to live good useful lives. We're making them competent so they can stand up on a witnesses stand and find out what they did that they shouldn't have done once they had a chemical imbalance. I find it disturbing. And certainly it's not something I can vote for at this point in time.

REP. CAPPIELLO: (138TH)

Any other comments? Representative Farr.

REP. FARR: (19TH)

Thank you, Mr. Speaker. I think when you're up there for a while you will learn that you can't look for where the sounds are coming from because it's coming from the speakers.

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I think we're getting a little off base here. As I understand it we're still on the amendment and I think it's important for the body to understand a couple of things.

First of all, the issue we're dealing with here is not whether or not somebody was mentally ill when they committed the crime. Under the laws of this state and of our country even if you were competent at the time you committed the crime you can't be tried while you're not competent. So somebody might have committed a crime, you put them on trial and the court determines that they can't participate in their own defense because they're not competent to participate.

Now, what the courts have decided and it's the case, State vs. Garcia, the Supreme Court has said that there are circumstances under which the court can order someone to involuntarily have medication if that will make them competent to stand trial. That's the -- I believe that's cited in the OLR Report. So, that's already the case law. And what this bill is attempting to do is to put some reasonable restrictions on that. So this isn't a bill that's intended to create a whole new body of law and do to the defendant something which can't now be done because the courts have already held you can do this. In fact, we worked closely with the

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Public Defender's Office on this in attempting to make sure there are safeguards.

So, passage of this bill will ensure safeguards for the defendant. It won't put the defendant in some risk that he doesn't already have. And as far as the individual amendment before us, the amendment greatly improves the bill. It again puts some standards and safeguards, but it does not -- the amendment that we're debating does not say that the health care provider is going to administer the medication or that he's going to decide whether to administer the medication. All the amendment says is that to protect the defendant we're going to grant him some new rights that they don't currently have and one of those rights is to have a health care provider, a physician examine the defendant and report back to the court and report back to the court with that health care provider's opinion as to what some of the risks are to administering that medication.

Now, if you don't want to give defendants these rights, then vote against the amendment and the court already has the power to order the administration of medication against someone's will, but the court won't have any guidance as to do that. Maybe a court will grant the defendant all of the protections granted in

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this amendment and maybe they won't, but I think this is a reasonable amendment. The underlying bill is a reasonable bill attempting to deal with a serious problem out there and I urge passage of both the amendment and the bill.

Thank you, Mr. Speaker.

REP. CAPPIELLO: (138TH)

Any other comments? Yes. Representative Winkler.

REP. WINKLER: (41ST)

Thank you, Mr. Speaker. It's great to see you up on the dias.

Just to add some clarification, this is not the first time that we have passed legislation or attempted to pass legislation that would require someone to take medication against their will. We passed legislation, I believe, it was last year dealing with those patients that had Tuberculosis that were not compliant with their medication. So I think this is a good amendment and I would urge the Chamber to support it.

Thank you.

REP. CAPPIELLO: (138TH)

Any other comments? Any other comments? If not, all those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

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REP. CAPPIELLO: (138TH)

All those opposed, nay. The ayes have it. The amendment is adopted.

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

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.

REP. CAPPIELLO: (138TH)

Have all members voted? Please check the roll call machine and make sure your vote is properly cast. If so, the machine will be locked.

Please take the tally. Clerk, please take the tally.

Clerk, please announce the tally.

CLERK:

Substitute for Senate Bill Number 610, as amended by House Amendment Schedule "A"

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	132
Those voting Nay	13

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Those absent and not voting 6

REP. CAPPIELLO: (138TH)

The bill, as amended passes.

Any announcements or points of personal privilege?

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Mr. Speaker. Mr. Speaker and colleagues, it's my pleasure today to have a special guest with me and as I've done every year since I've been up here, we've asked the sixth grade classes in my district to have their students prepare an essay and send that essay to us and the person who we choose as the best essay gets to be the Representative for a day.

So, with me today is Colleen Shop and Colleen, if you would like to stand up who is my Representative for a day and she's a sixth grade student from North Canaan.

And also with us -- with Colleen is her mother and father, Heather and Michael Shop. If they would like to stand up. They're in the Well of the House. So we can welcome them also. I will tell you that Colleen wrote a very good essay on child abuse in the effect of child abuse and how it's affecting our society and she came up with some great ideas and maybe what I should do is make a copy of this and we might be able to get some

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THE CHAIR:

Thank you, Senator Upson. Will you remark further? Will you remark further? Senator Williams.

SEN. WILLIAMS:

If there's no objection, I would move this to the Consent Calendar.

THE CHAIR:

Motion is to place this item on the Consent Calendar. Is there objection? Seeing none, so ordered.

THE CLERK:

Calendar Page 13, Calendar 276, File 388, Substitute for SB610 An Act Concerning Competency to Stand Trial. Favorable Report of the Committee on Judiciary.

Correction, Mr. President. The matter should be Calendar Page 12, Calendar 274, File 392, SB607 An Act Concerning the Supervision of Probationers. Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. I move adoption of the Committee's Favorable Report and passage of the bill.

THE CHAIR:

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Senate

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further? Will you remark further on the bill? Senator Williams.

SEN. WILLIAMS:

If there is no objection, I would move this to the Consent Calendar.

THE CHAIR:

Is there objection to moving this item to the Consent Calendar? Seeing none, so ordered.

THE CLERK:

Calendar Page 13, Calendar 276, File 388,
Substitute for SB610 An Act Concerning Competency to Stand Trial. Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Jepsen.

SEN. JEPSEN:

Mr. President, I would ask that we PT this at this time. If I could announce our anticipated schedule for the evening. We will take up one more bill, change a marking from PT to Go. This would be on Page 10, Calendar 262, SB261.

And after we do that bill, we'll take a break, a dinner break. Democrats are serving Chinese food tonight. We'll take a dinner break at which time the different caucuses can discuss the energy deregulation

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the markings that I've already indicated and at it's conclusion there are approximately eight bills on that list. There will be a short additional list as a new Go list which I will announce at that time.

At this time, from that previous Go list, I would like to move two items to the Consent Calendar. Page 13, Calendar 276, SB670 I move to the Consent Calendar. SB610

THE CHAIR:

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

SEN. JEPSEN:

And on Page 23, Calendar 127, SB349 I move to the Consent Calendar. That item was Page 23, Calendar 127, SB349.

THE CHAIR:

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

SEN. JEPSEN:

Thank you, Madam President. At this time, I would ask the Clerk to return to the Call of the Calendar of the Go list with the understanding that after I believe, one, two, six bills are taken up, a second Go list, a short Go list will be announced.

THE CLERK:

Returning to Calendar Page 13, Calendar 281, File

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this morning, I should say. (APPLAUSE) And it's a
boy! Thank you. (APPLAUSE)

THE CHAIR:

Thank you, Senator Eads. Congratulations, Jane.
Before we do personal announcements, may we call the
Consent Calendar.

THE CLERK:

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

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

Madam President, Third Consent Calendar begins on
Calendar Page 1, Calendar 114, SB394.

Calendar Page 2, Calendar 120, Substitute for
SB409.

Calendar 121, SB410.

Calendar 142, Substitute for SB408.

Calendar Page 13, Calendar 276, Substitute for
SB610.

Calendar 278, Substitute for SB318.

Calendar 281, Substitute for SB600.

Calendar Page 14, Calendar 283, Substitute for
SB604.

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Calendar Page 15, Calendar 289, Substitute for
SB580.

Calendar Page 16, Calendar 297, HB5616.

Calendar Page 15, Calendar 292, Substitute for
SB411.

Calendar Page 21, Calendar 92, Substitute for
SB306.

Calendar Page 22, Calendar 110, SB403.

Calendar Page 23, Calendar 127, Substitute for
SB349.

Calendar 133, Substitute for SB481.

Madam President, that completes the Third Consent,
Calendar.

THE CHAIR:

Would you once again announce a roll call vote,
please. The machine will be opened.

THE CLERK:

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

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

THE CHAIR:

Have all members voted? If all members have

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voted, the machine will be locked. The Clerk please
take a tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 3.

Total number voting 35; necessary for adoption,
18; those voting "yea", 35; those voting "nay", 0.
Those absent and not voting, 1.

THE CHAIR:

Consent Calendar is adopted. At this time the
Chair will entertain points of personal privilege or
announcements. Senator Harp.

SEN. HARP:

Thank you, Madam President. I'd like to announce
that the Public Health Committee will meet tomorrow at
2:00 p.m. in Room 2D.

THE CHAIR:

Thank you, Senator. Are there other
announcements? Senator Penn.

SEN. PENN:

Thank you, Madam President. Just to remind the
members of the circle and all invited guests to the
annual spring fling tomorrow night by the Black and
Puerto Rican Caucus where we can do the electric slide.

THE CHAIR:

Thank you, Senator.

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THE CHAIR:

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

THE CLERK:

Calendar 276, Files 388 and 606, Substitute for SB610 An Act Concerning Competency to Stand Trial, as amended by House Amendment Schedule "A". Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I move adoption of the Committee's Favorable Report and passage of the bill in concurrence with House "A".

THE CHAIR:

The question is passage of the bill in concurrence with the House. Will you remark? Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. Again, this bill was before us and was discussed extensively at the time. But House Amendment "A" pertains to the part of the bill which provides authorization to involuntarily medicate a defendant when they would not be competent to stand trial without such medication.

On the underlying bill, the defendant would have a

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health care guardian appointed to take stock of their health and be able to report back to the court as to the need for such medication.

House Amendment "A" changes health care guardian to health care provider. It requires the provider have special training. It requires courts to appoint the provider before ordering a defendant involuntarily medicated and other similar details. I think that's a good addition that doesn't otherwise upset the bill and I would urge passage.

THE CHAIR:

The question before us is for passage. Will you remark? Will you remark? Senator Williams.

SEN. WILLIAMS:

If there's no objection, I would move this to the Consent Calendar.

THE CHAIR:

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

Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. At this time, I'd ask the Clerk to call the Second Consent Calendar.

THE CHAIR:

Mr. Clerk, would you announce a roll call vote on

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the Consent Calendar and call it, please.

THE CLERK:

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

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

Madam President, the Second Consent Calendar begins on Calendar Page 24, Calendar 120, Substitute for SB409.

Calendar Page 25, Calendar 272, Substitute for SB490.

Calendar 276, Substitute for SB610.

Madam President, that completes the Second Consent Calendar.

THE CHAIR:

Thank you, Sir. Would you once again announce a roll call vote. The machine will be opened.

THE CLERK:

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

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators

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please return to the Chamber.

THE CHAIR:

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

THE CLERK:

Motion is on adoption of Consent Calendar No. 2.

Total number voting, 34; necessary for passage, 18, those voting "yea", 34; those voting "nay", 0. Those absent and not voting, 2.

THE CHAIR:

The Consent Calendar is adopted. Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. At this time I move suspension of the rules for the purpose that all bills acted upon in this Chamber requiring further House action be immediately transmitted to the House of Representatives.

THE CHAIR:

Motion is for suspension of the rules. Without objection, so ordered. Senator Jepsen.

SEN. JEPSEN:

At this time, Madam President, I would ask that the Chamber stand in recess for approximately one hour to an hour and a half for a dinner break and we will

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Garcia criteria of the Garcia guidelines laid out by the Connecticut Supreme Court. What we're asking is that he judges be given some guidance through statutes in order for this to occur more quickly.

REP. FARR: Let me make it clear. All I was concerned about is I didn't want to codify the Garcia decision if, in fact, that was delaying treatment and if you felt that there was some change we make, then I wanted to hear that so that we could not have delays in treatment.

DR. PAUL AMBLE: No, we are not proposing any substantive changes to the decision of the Supreme Court. We're just asking that these be laid out in the statutes so that it can be followed more efficiently.

REP. FARR: Thank you.

REP. WINKLER: Further questions? Thank you very much.

DR. PAUL AMBLE: Thank you.

SEN. WILLIAMS: Deborah Fuller and Melissa Farley to be followed by Representative Alex Knopp and Senator Lou DeLuca.

DEBORAH FULLER: Good afternoon. My name is Deborah Fuller. I'm here today with Melissa Farley on behalf of the Judicial Branch. We have several bills that we're going to testify on briefly.

The first bill that I would like to address is SB610, AN ACT CONCERNING COMPETENCY TO STAND TRIAL, the bill that you were just discussing.

We just have some minor concerns with the bill as it's drafted and we've laid that out in the testimony that I have submitted to the committee.

The next bill that I would like to address is SB611, AN ACT CONCERNING ACCESS TO RECORDS FOR VICTIMS OF ALCOHOL RELATED ACCIDENTS. We would suggest that the following be language be substituted in lieu of what is currently the new

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the system if those spaces are begging.

SEN. WILLIAMS: Thank you very much. Next is Doctor Paul Amble to be followed by Deborah Fuller and Melisa Farley.

DR. PAUL AMBLE: Good afternoon, Senator Williams, Representative Lawlor, and members of the Judiciary Committee. I'm Doctor Paul Amble, a forensic psychiatrist with the Department of Mental Health and Addiction Services.

I am here to testify in support of SB610, AN ACT CONCERNING COMPETENCY TO STAND TRIAL. In May of 1995 the Connecticut Supreme Court in the case of State of Connecticut vs. Garcia established criteria to be used by the Superior Court in determining when to order the administration of psychiatric medication on an involuntary basis in order to restore an incompetent criminal defendant to competency to stand trial.

Essentially, the court must find five factors. The first, for reasonable degree of medical certainty involuntary medication of the defendant will render him incompetent to stand trial. Two, an adjudication of guilt or innocence cannot be had using less intrusive means. Three, the proposed treatment plan is narrowly tailored to minimize the intrusion on the defendant's liberty interests. Four, the proposed drug regime will not cause an unnecessary risk to the defendant's health. And five, the seriousness of the alleged crime is such that the criminal law enforcement interest of the state in fairly and accurately determining the defendant's guilt or innocence override the defendant's interest in self determination.

Although it is understandable that the court requires time to establish that these criteria are met, many courts are unfamiliar with the Garcia decision or find it ambiguous regarding procedures and without statutory guidance require continuances to read and interpret the decision. Additional delays are caused when the court decides that the defendant is mentally unable to consider the recommendation for medication and then appoints a

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health care guardian to represent the defendant's health care interests.

The Garcia decision has substantially increased the length of hospitalization needed for restoration of competency when medication is necessary and the defendant is unwilling or unable to consent to treatment.

During this extended period of hospitalization while the court considers involuntary medication the hospital is unable to provide clinically appropriate and necessary treatment. SB610 will codify the Garcia decision in statute and will provide the court with procedural guidance on the issue of involuntary medication. It establishes reasonable time frames for the court to follow, thus reducing the need for continuances which delay both the hospital's ability to provide necessary treatment and the ability of the court to resolve the criminal matter. The Department of Mental Health and Addiction services also supports the proposed changes to subsection (m) of the Connecticut General Statute 54-56d, the competency to stand trial statute which would permit the court to order annual examinations of defendants who are found incompetent and not restorable and who are released by the court.

Thank you.

SEN. WILLIAMS: Any questions? Representative Farr.

REP. FARR: Just one question on the -- you made a statement that under the Garcia decision the hospitals are no longer able to treat the individual? They have to delay a treatment plan?

DR. PAUL AMBLE: That's absolutely correct. What happens when an individual is found not competent to stand trial and then sent in-patient for restoration of competence, the defendant who is brought into the hospital has the ability, as all patients in the hospital, to refuse medication treatment. So that could stall their treatment plan. In other words, the time that it takes to restore them to competence so that they can then

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return to court and be adjudicated.

Now, granted other methods of treatment can continue such as individual therapy or group therapy, but a principal form of treatment these days is psycho-tropic medications.

REP. FARR: I'm still not following this. The defendant right now without the Garcia decision, if the defendant goes into the hospital right now he can refuse treatment.

DR. PAUL AMBLE: Yes.

REP. FARR: And you're saying the Garcia decision somehow would change that rule?

DR. PAUL AMBLE: The Garcia decision has not changed the defendant's ability to refuse medication. What it's done is essentially provide a framework under which the hospital and the courts can follow in order to force medications if it's deemed appropriate.

REP. FARR: But how does that delay getting the defendant to voluntarily use drugs or take medication?

DR. PAUL AMBLE: To voluntarily use drugs?

REP. FARR: Well, you're not going to be able to do it if he objects in any event.

DR. PAUL AMBLE: Well, we can do it if he objects.

REP. FARR: Under the court order you can do it if he objects. If he's not competent -- but you've said the Garcia decision delays -- often times results in the delay of treatment because the hospital will no longer treat him with drugs.

DR. PAUL AMBLE: Yes. I guess what we're talking about is not that the Garcia decision is a bad decision. That's not what we're saying. What we're saying is that the way the courts are now carrying out the process causes a great deal of delay.

The bill that we're suggesting actually follows the

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**TESTIMONY BY DR. PAUL AMBLE
FORENSIC PSYCHIATRIST, DMHAS
March 16, 1998**

Good afternoon, Senator Williams, Representative Lawlor, and members of the Judiciary Committee. I am Dr. Paul Amble, a forensic psychiatrist with the Department of Mental Health and Addiction Services, and I am here to testify in support of House Bill 610, An Act Concerning Competency to Stand Trial.

In May of 1995, the Connecticut Supreme Court, in the case of *State of Connecticut vs. Garcia*, established criteria to be used by the Superior Court in determining when to order the administration of psychiatric medication on an involuntary basis, in order to restore an incompetent criminal defendant to competency to stand trial.

Essentially, the court must find that:

- (1) To a reasonable degree of medical certainty, involuntary medication of the defendant will render him incompetent to stand trial;
- (2) An adjudication of guilt or innocence cannot be had, using less intrusive means;

- (3) The proposed treatment plan is narrowly tailored to minimize intrusion on the defendant's liberty interests;
- (4) The proposed drug regimen will not cause an unnecessary risk to the defendant's health;
- (5) The seriousness of the alleged crime is such that the criminal law enforcement interests of the State in fairly and accurately determining the defendant's guilt or innocence override the defendant's interest in self-determination.

In addition to delays caused by the need to establish that these criteria are met, many courts are unfamiliar with the Garcia decision, or find it ambiguous regarding procedures, and, without statutory guidance, require continuances to read and interpret the decision.

Additional delays are caused when the court decides that the defendant is mentally unable to consider the recommendation for medication, and then appoints a health care guardian to represent the defendant's health care interests.

The Garcia decision has substantially increased the length of hospitalization needed for restoration of competency when medication is necessary and the defendant is unwilling or unable to consent to treatment. During this extended period of hospitalization while the court considers involuntary medication, the hospital is unable to provide clinically appropriate and necessary treatment.

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House Bill 610 will codify the Garcia decision in statute and will provide the court with procedural guidance on the issue of involuntary medication. It establishes reasonable time frames for the court to follow, thus reducing the need for continuances which delay both the hospital's ability to provide necessary treatment and the ability of the court to resolve the criminal matter.

The Department of Mental Health and Addiction Services also supports the proposed changes to subsection (m) of C.G.S. 54-56d, the Competency to Stand Trial statute, which would permit the court to order annual examinations of defendants who are found incompetent and not restorable, and who are released by the court.

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Judiciary Committee Public Hearing
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S.B. 610, An Act Concerning Competency to Stand Trial

Testimony of Deborah J. Fuller

Thank you for the opportunity to appear before you today to address some concerns that the Judicial Branch has with S.B. 610, An Act Concerning Competency to Stand Trial, as drafted.

The bill, on lines 70-71, states that "The health care guardian shall file a report of his or her findings with the court..." However, the language in this section does not specify what those findings should address. If the committee intends that the health care guardian address the items referenced in section 1(k)(2) of the bill, you may want to consider clearly referencing this section.

Lines 105-106 refer to a hearing conducted in accordance with subsection (e) of section 54-56d, and specify a time frame of not later than 90 days after the court receives the report for the hearing. However, the time frame in the new language in the bill is inconsistent with the existing time frame in §54-56d(e), which requires the court to hold a hearing not later than ten days after the written report is received.

The committee may want to consider clarifying what "conditions of release" are referred to in line 110.

Thank you for your attention to these concerns.

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