Legislative History for Connecticut Act

Public Act:	01-41	
Bill Number:	6535	
Senate Pages:	1970, 2021-2023	4
House Pages:	1562-1566	5
Committee:	Judiciary: 762-769, 814-817, 847-849	15

Page Total: 24

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

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S-457

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2001

VOL. 44
PART 7
1799-2156

252 is PR.

256 is Go.

271 is to be passed temporarily.

286 is PR.

Page 6, 288 is PR.

292, PR.

297 is Go.

315 is PR.

318 and 319 are PR.

Page 7, 322 is Go.

333 is to be passed temporarily.

334 is PR.

338 is to be passed temporarily.

344, H.B. 6535 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

346, H.B. 6557 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Page 8, 363, S.B. 823 I move to the Committee on Planning and Development.

THE CHAIR:

Without objection, so ordered.

THE CHAIR:

Mr. Clerk, would you first announce a roll call vote on the Consent Calendar and then call those items, please.

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, the First Consent Calendar begins on Calendar Page 2, Calendar 123, S.B. 1254.

Calendar Page 5, Calendar 256, Substitute for S.B. 175.

Calendar Page 6, Calendar 297, S.B. 1119.

Calendar Page 7, Calendar 345, Substitute for H.B. 6535.

Calendar 346, Substitute for H.B. 6557.

Calendar Page 9, Calendar 396, Substitute for H.B. 6925.

Calendar Page 10, Calendar 453, H.B. 65, correction H.B. 6775.

Calendar Page 11, Calendar 454, Substitute for H.B. 6860.

Calendar Page 12, Calendar 462, Substitute for H.B. 6642.

Calendar 463, Substitute for H.B. 6660.

Calendar 464, Substitute for H.B. 6740.

Calendar 465, H.B. 6628.

Calendar Page 13, Calendar 476, H.B. 5307.

Calendar Page 14, Calendar 483, Substitute for H.B. 6796.

Calendar Page 17, Calendar 290, Substitute, correction, Calendar 209, Substitute for S.B. 1389.

Calendar 214, Substitute for S.B. 1219.

Calendar Page 19, Calendar, correction. On Page 17 it was Calendar 214, Substitute for S.B. 1209.

Calendar Page 19, Calendar 264, Substitute for S.B. 1381.

Calendar Page 20, Calendar 294, Substitute for S.B. 419.

Calendar Page 21, Calendar 323, Substitute for S.B. 177.

Calendar Page 24, Calendar 486, S.R. 25.

Madam President, that completes the First Consent Calendar.

THE CHAIR:

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

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

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

THE CLERK:

Motion is on adoption on Consent Calendar No. 1.

Total number voting 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

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

Last chance. Are there any announcements or points of personal privilege? Seeing none, Mr. Clerk.

THE CLERK:

Madam President, the Clerk is in possession of Senate Agendas No. 2 and 3 for Thursday, May 17, 2001,

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SPEAKER LYONS:

Have all the members voted? Have all the members voted? Would the members please check the machine to make sure that your vote is accurately recorded. If all the members have voted the machine will be locked and the Clerk will take a tally. The Clerk will please announce the tally.

CLERK:

HB6834.

Total Number Voting	149
Necessary for Passage	75
Those voting Yea	149
Those voting Nay	0
Those absent and not voting	2

SPEAKER LYONS:

The bill passes. Will the Clerk please call Calendar 71.

CLERK:

On page three, Calendar 71, Substitute for HB6535, AN ACT CONCERNING INDEMNIFICATION OF COURT APPOINTED HEALTH CARE GUARDIANS. Favorable report of the Committee on Judiciary.

SPEAKER LYONS:

Representative Feltman you have the floor sir.

REP. FELTMAN: (6th)

Thank you Madam Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill.

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage, will you remark?

REP. FELTMAN: (6th)

Thank you. Madam Speaker, we have a technical amendment. I'd like to call LCO 4915, and ask permission to summarize.

SPEAKER LYONS:

The Clerk has in his possession LCO 4915, which will be designated House "A." Will the Clerk please call, the gentleman has asked leave to summarize.

CLERK:

LCO 4915, House "A" offered by Representatives Godfrey, Fritz, and Currey.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6th)

Thank you Madam Speaker. This is just a screening amendment to correct archaic language and modernize it, changing the word save to hold, and I move passage of the amendment.

SPEAKER LYONS:

Thank you sir, the question before the Chamber is on adoption. Will you remark, will you remark on the amendment that is before us? If not let me try your minds, all those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed nay, that ayes have it the amendment is adopted. Will you remark further on the bill as amended?

REP. FELTMAN: (6th)

Thank you Madam Speaker. The purpose of this bill is to in situations where if someone has been direct, if a criminal defendant has been remanded to the Department of Mental Health for treatment prior to trial, because they are unable to participate in a trial under their present mental condition.

And in a situation where psychiatric drugs are needed and the patient or the defendant is unable to participate in that decision by reason of their mental disability the court is required to appoint a health care guardian. The health care guardian is someone who is not a state employee necessarily, is not a state employee but is acting on behalf of the state in making the recommendations about the psychiatric treatment,

psychiatric drugs to be administered to the defendant.

Because they're acting on behalf of the state and the furtherance of the state activity we propose and it's been unanimously recommended that this person be given liability for their ordinary course of business in acting as the health care guardian of the criminal defendant.

SPEAKER LYONS:

Thank you sir. Will you remark? Will you remark further on the bill that is before us? If not, staff and guests come to the well, members take your seats, the machine will be 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.

SPEAKER LYONS:

Have all the members voted? Have all the members voted? Would the members please check the machine to make sure that your vote is accurately recorded. If all the members have voted the machine will be locked and the Clerk will take a tally. The Clerk will please announce the tally.

CLERK:

HB6535 as amended by House "A."

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Those absent and not voting	6

SPEAKER LYONS:

The bill as amended passed. Will the Clerk please call Calendar 239.

CLERK:

On page twenty, Calendar 239, Substitute for HB6697, AN ACT CONCERNING DIRECT PRIMARIES. Favorable report of the Committee on Planning and Development.

SPEAKER LYONS:

Representative Knopp you have the floor sir.

REP. KNOPP: (137th)

Thank you Madam Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill.

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage, will you remark?

REP. KNOPP: (137th)

Madam Speaker the purpose of this bill is to establish in Connecticut the same type of direct primary system that exists in 46 of the other states. It will

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can remember it happening a number of years ago.

So right now the prosecutors are not supposed to do that, as I understand it.

In the - I guess the whole thing that concerns me about this whole area is, in effect, it's almost a - it's a fine system which is a system we've set up where somebody is fined in sort of a non-judicial manner. In other words, the prosecutors are saying to the defendant, okay, if you give $500, we'll nolle the charge. And then now we're saying you have to give it into the Criminal Injuries Fund, but there are no guidelines as to how much you're supposed to give. So what happens if you go in and the prosecutor says, okay, you give $5,000 and I'll nolle the charge? The charge itself carries certain, often times will allow certain fines to be imposed, but what we've created here is a system with no guidance at all to the court or the prosecutor as to what is a reasonable contribution.

So, I'm a little bit concerned about this whole concept and I agree with you that if we go back and say, okay, now you can give to charities, that a prosecutor whose on the board of some charity can go out and say, give it to my charity. We've sort of distorted the whole system even more.

Okay, thank you.

REP. LAWLOR: Thanks.

DEBORAH FULLER: Thank you.

REP. LAWLOR: There are no further questions? If not, next is Gail Sturges and Sue Devine from the Department of Mental Health and Addiction Services.

GAIL STURGES: Good afternoon, Senator Coleman, Representative Lawlor and distinguished members of the Judiciary Committee.

I'm Gail Sturges, Director of Forensic Services for the Department of Mental Health and Addictions. And I'm here this afternoon to testify in support of H.B. 6535.

When a defendant in a criminal proceeding is found not confident to stand trial, the court orders such person committed to the Commissioner of DHMAS to receive psychiatric treatment for the purposes of restoration to competency.

Once restored, the criminal case against the defendant can proceed. With few exceptions, all such individuals are committed to the Whiting Forensic Division of Connecticut Valley Hospital for treatment of psychiatric disorders that interfere with their ability to understand the proceedings against them or to assist in their defense.

In most cases, psychiatric medication is essential for successful restoration to competency. Failure to provide adequate treatment, including medication in a timely manner, can substantially delay or even prevent further prosecution.

When those providing treatment determine that psychiatric medication is necessary for restoration to competency, but the defendant refuses to accept the medication voluntarily, a court order is sought in order to administer the medication on an involuntary basis.

In those instances, the court appoints a health care guardian to make an independent assessment of the proposed medication plan and to provide a report and testimony to the court regarding the health care interests of the defendant.

The role of health care guardian is an important but difficult one. Duties include obtaining and reviewing often extensive medical records, clinically assessing the defendant, meeting with the treatment providers, developing a report for the court, and providing testimony in often highly adversarial proceedings.

Because the court's ability to proceed with prosecution may hinge upon ensuring that the detainee receives medication, a decision that may be vehemently opposed by the defendant, the health

care guardian has sometimes been threatened with legal action by the defendant when he or she concurs with the treatment providers.

In one case, a health care guardian was sued unsuccessfully by the defendant.

Given the job requirements and the number of hours involved, this is neither attractive nor lucrative work. And there are currently only two individuals willing to fulfill the role of health care guardian for the courts.

The threat of being sued is a significant and legitimate concern. Providing health care guardians with limited immunity to carry out their duties for the court, will go a long way in the effort to retain and recruit health care guardians, as well as in preventing avoidable delays in criminal proceedings.

We understand others may have issues with the proposed language. We are willing to compromise on the language used.

Thank you for the opportunity to testify on behalf of this bill and I'm happy to answer any questions you may have at this time.

REP. LAWLOR: Well, thanks. And I guess one question would be, what's the difference between like acting in good faith and acting negligently? Or acting in bad faith and acting negligently?

GAIL STURGES: I don't know the answer to that question.

REP. LAWLOR: Because you can only be successfully sued if you do something wrong, or make a mistake, for example. And so if you are acting negligently, but also acting in good faith, even if you made a big mistake, but you were doing it in good faith, you'd still get the immunity? Is that the deal that you're suggesting?

GAIL STURGES: I have to confess, the language was proposed by the AG's Office.

REP. LAWLOR: Okay.

GAIL STURGES: So I can't answer the detailed questions. But what we were trying to accomplish was giving the health care guardians the same immunity that a state employee essentially would have performing that function. These are not state employees, they're court appointed private licensed clinicians who do this work. So that was the goal.

REP. LAWLOR: I get it. Okay. Other questions? Representative Farr.

REP. FARR: I guess I'm a little confused why we need this particular model, anyway. So, first of all, to call somebody a health care guardian implies sort of a neutrality that I'm not sure is really true in this particular case. In effect, the health care guardian is doing an evaluation for the court as to whether or not the use of medication would be appropriate in order to make this person capable of standing trial.

And we're calling them a "health care guardian" and implying these more neutral, perhaps, than he really is. I wonder if it might be better to just reshape this in some way so that we don't make it as neutral implied - the guardian to be as neutral and really refer to somebody whose doing an evaluation or an examination of this person. Because it seems to me that that's not a lot different than having a psychological examination of a person. If the psychiatrist is paid by the court to do the evaluation, that psychiatrist isn't acting on behalf of the person, he's trying to do an independent evaluation.

And here it seems to me we're trying to get an independent evaluation and then we're calling them a "guardian" and I'm not sure that it's - I am just a little bit bothered by the way we've structured this and called it a guardian because then that's what it seems to me brings on the concept of lawsuits. I mean, the guardian is supposed to be, in theory, representing the person they're the guardian of and now that person disagrees and sues. But if the guardian were somebody who was just

doing an evaluation with an independent recommendation to the court, then maybe there wouldn't be as much problem with finding guardians. And maybe the individual wouldn't be as likely to sue.

Do you follow any of that?

GAIL STURGES: Well, I follow some of it. And part of it is confusing because the term "health care guardian" was taken from the decision that established the role and that's Connecticut vs. Garcia, a 1995 Connecticut Supreme Court decision and that's where the court named a health care guardian articulated the role which was somewhat between guardian - they're to make an independent assessment of the proposed treatment regime in light of what the health care interest of the individual is, not what the individual may want, or prefer for themselves.

So there can and often is, inherent conflict because you have a defendant/patient who is refusing psychiatric medication and a health care guardian may come in and agree that the medication plan is inappropriate and not likely to restore the person to competence, but there's often times, far more often times where a health care guardian comes in and reviews the health care interest as well as the proposed medication regime and says, you know what, I disagree with the defendant and I believe that the medication is appropriate and legitimate.

So it could be both.

REP. FARR: What's the Supreme Court case you're citing?

GAIL STURGES: Connecticut vs. Garcia.

REP. FARR: Okay. I'll take a look at that then.

GAIL STURGES: And that's what has put us in this kind of a bind.

REP. LAWLOR: Representative Powers.

REP. POWERS: Thank you, Mr. Chairman. I would just like

some information.

There's a case in New York that's generating a lot of interest in the New York news media about an individual or actually he was down in Washington, but it's generating a lot of discussion in New York. And the man is schizophrenic. He shot two policemen. And his lawyers are withholding his medication for schizophrenia from him in order to keep him from getting the death penalty.

Now, the office that you're talking about, which is kind of halfway between a practitioner and an advocate, it sounds like, what would they do in that kind of a situation in Connecticut? Would this person say the person in jail is suffering unnecessarily and should have the medication and then be competent to stand trial? Or how does this person work with the lawyers?

GAIL STURGES: I'm presuming that in this case the defense attorneys don't want him to take the medication because if he remains incompetent, he can't be executed or can't even be tried.

REP. POWERS: Right.

GAIL STURGES: And that's some of the issues with not being able to medicate someone for the purposes of restoration to competence. Sometimes it's because of lack of insight. The individual denies even having a mental illness they need treatment for.

Sometimes there may be strategy in delaying the case and unless a judge has the power through some legislation to order medication, then there's no way to forcibly medicate an individual.

So in Connecticut we have, what's the result of this Garcia decision, that sets out a procedure which there can be some balancing of the criminal justice needs to move forward with a case with the individual's right to not be forced medication unless the stakes are very, very high.

And so there's a whole process involved and to protect the health care interest of the individual,

the Supreme Court of Connecticut outlined a number of criteria that needed to be established to the court before our courts would order forcible medication on an individual.

So with this process, the circumstances that you just outlined, would be developed before a court hearing and the health care guardian's role will be to look solely at the proposed medication regime and how it might impinge on the individual's health.

REP. POWERS: Would the Connecticut system, if the guardian were to recommend to the judge, that the guardian's medical review said that this person should be getting medication, would that overrule the defense lawyer's position in Connecticut?

GAIL STURGES: Yes. The judge could, at that point, if the judge was satisfied that all the other Garcia criteria were met, the judge could then order the administration of psychiatric medication forcibly, if necessary in order to do that.

REP. POWERS: Okay. Thank you, Mr. Chairman.

REP. LAWLOR: Representative Farr.

REP. FARR: Sure. I guess the question that's come up is how is this different than if a psychiatrist whose appointed by the court to do an evaluation - is that psychiatrist going to be - what standards will the court appointed psychiatrist be held to if he's sued and is he indemnified by the State?

GAIL STURGES: I can't answer the question as far as whether - we have court - DHMAS has a number of court appointed evaluators who are state employees. So it's a non-issue there. Ordinarily, when we do competence to do trial evaluations, those are state employees who do them. So I'm not faced with that issue.

I'm not sure in the cases when there's an insanity defense, for example and the court appoints a psychiatrist what the liability issues are there because we don't do that.

REP. FARR: Okay. Thank you.

REP. LAWLOR: What are these - aren't there psychiatrists who are like at Yale or UConn -- well, UConn is a state thing, but what about the ones at Yale? Are they indemnified if they're court appointed doctors doing a competency examination? Aren't they indemnified by virtue of their appointment or not? I'm not sure.

GAIL STURGES: I'm not sure and I'm more familiar with psychiatrists doing the insanity defense which is a much more elaborate procedure and they get paid quite well for that. So, that's a private contract service as opposed to, in this case, the health care guardian's functioning for the State doing a state action, providing a service that we need to have done under statute.

REP. LAWLOR: How about court appointed Special Public Defenders? Are they indemnified or are they on the hook personally? They're indemnified? Okay. Just consulting.

But there may be some special kind of status that would be consistent with things we do in other cases so that they wouldn't technically be immune, they would just be protected as state employees generally are through the Claims Commissioner process, that type of thing.

So maybe there's a way that we can resolve this without going to that (inaudible)

GAIL STURGES: Certainly. Right.

REP. LAWLOR: Okay. Are there any other questions? Thank you very much.

GAIL STURGES: You're welcome.

REP. LAWLOR: Next, is Commissioner Armstrong.
SB1001 SB997 SB998 SB 999 SB1000

CMRS. JOHN ARMSTRONG: Good afternoon. Good afternoon, Chairman Lawlor, Chairman Coleman, all the members of the Judiciary Committee.

JOSEPH MENGACCI: Good afternoon, Senator, Representative Lawlor, members of the committee.

I'm Joseph Mengacci and I appear here before you today as President of the Connecticut Trial Lawyers Association and I'm here to speak in opposition to raised H.B 6535, AN ACT CONCERNING LIMITED LIABILITY FOR COURT APPOINTED HEALTH CARE GUARDIANS and in particular, with regard to the immunity provision of that particular proposed legislation.

The granting of immunity in any situation, to any individual or class of individuals is something that should never be given. It is clearly contrary to public policy and something that grants to a special class a very special privilege that the rest of society doesn't enjoy.

We're a society based upon responsibility for people being responsible for their conduct, and when their conduct rises to the level of negligence or professional negligence, as it would have to in this particular situation, no one should be granted immunity in that particular situation.

This particular bill before the committee, as I understand the legislation as it currently exists and the proposal to grant immunity, is a situation by which an individual who is declared incapable of determining whether he or she should be involuntarily medicated with a psychiatric drug, has appointed for that individual, a health care guardian who would be someone such as, in most instances, a psychiatrist, someone authorized to dispense those types of drugs and someone who would understand and have knowledge in that particular area.

So we're talking about giving immunity, in this bill, to someone whose being in a placed in a fiduciary capacity, representing an incompetent individual who cannot make his or her own health care decisions and saying that that person should be granted immunity from his or her decision with regard to whether or not that particular individual should be forced to have a psychiatric drug imposed

upon them, either against their will or, more specifically, because they are mentally incapable of making a determination as to whether or not they should or should not have that particular medication administered to them.

The Department cites one instance in which a health care guardian was sued unsuccessfully and that's the only data presented to this committee with regard to this matter. This certainly isn't a crisis. It certainly isn't a situation where immunity should be granted in this particular situation because one individual was sued, albeit unsuccessfully with regard to this situation.

The other portion of this whole procedure is such that as I read this statute the court appoints this particular individual and the court considers the information submitted in a report of that individual, along with all other information presented to the court. So that this particular report of this health care guardian is only one of the factors that the court considers in determining whether to ultimately order a defendant to involuntarily receive psychiatric drugs.

So I just don't see that there's any strong public policy or reason why an individual who gets hired, is paid a fee for his or her professional services, and then is granted immunity. This would set a very bad precedent with regard to other court appointed situations, as well as to say that a psychiatrist in this particular situation enjoys immunity, whereas, a psychiatrist in private practice wouldn't if he or she had to make a determination whether a patient should of should not have psychiatric drugs.

So we're opposed to this particular bill and the immunity provisions.

Thank you and I'll be happy to answer any questions that anyone on the committee may have.

SEN. COLEMAN: Thank you, Mr. Mengacci. Representative Farr.

REP. FARR: I guess you heard some of the questions we raised before about if the individual were examined for purposes of whether he was competent to stand trial and had an evaluation by a court appointed psychiatrist to determine whether or not he was competent to stand trial.

Right now if that - with that psychiatrist be subject to the same exposure as this individual as the guardian would be?

JOSEPH MENGACCI: It's my understanding they would.

REP. FARR: But if they were a state employee, then they would be - they would not be immune, they would simply be - we would defend them and compensate them for any loss. Is that correct?

JOSEPH MENGACCI: Well, they would certainly enjoy the sovereign immunity. The compensatory system, as we just saw with the last young man, is not, by far, the fairest system on the books, but it's been there for a while which makes my point as to why we shouldn't be giving or the Legislature shouldn't be giving any more immunities than we already have on the books.

And in that particular situation, as you pointed out, Representative Farr, you could go to the Claims Commission and go that route and we know what happens in that situation. So that I don't think that putting these people in that position solves the problem either.

REP. FARR: If they were contracted -- if the psychiatrist were not a state employee, but a contract, had a contract with the State, would you then have to file -- you could then file a direct claim. You could then sue the psychiatrist individually, right? Today.

JOSEPH MENGACCI: If the psychiatrist was not considered an employee or an agent of the State, then they would not enjoy the sovereign immunity and they could be sued directly, yes.

REP. FARR: So psychiatrists that do are contracted to

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do evaluations of somebody's competency, do not get the immunity that this statute has?

JOSEPH MENGACCI: They do not, no.

REP. FARR: Okay, thank you.

SEN. COLEMAN: Other questions? Seeing none, thank you very much for your testimony.

JOSEPH MENGACCI: Thank you, so much.

SEN. COLEMAN: Next to be heard is Beverly Brakeman.

BEVERLY BRAKEMAN: Good afternoon, Senator Coleman, Representative Lawlor, and members of the Judiciary Committee.

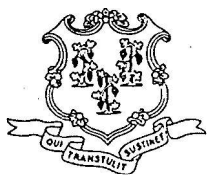
HB6540

I'm here just briefly to testify on two bills today. The first one is raised S.B. 1002, AN ACT CONCERNING HINDERING PROSECUTION.

My name is Beverly Brakeman. I'm with the Connecticut Sexual Assault Crisis Service. We're here to raise some concerns with the language in this bill. While rendering criminal assistance generally connotes an active assistance in the commission of a crime, we are concerned about other interpretations of this language that might impact upon non-offending parents of children who have been sexually abused. And we did submit this same testimony last year when Chief State's Attorney Bailey was here. People weren't sure, but we also did submit this same testimony opposing this bill.

Examples that may - people who maybe impacted negatively by this would be a non-offending parent whose partner has sexually abuse their child and is subsequently charged with hindering the prosecution because they were aware of the abuse, but couldn't tell anyone because they would fear for their own safety, which is something that happens all the time.

Or a non-offending parent whom after an arrest is made, tells law enforcement that they had suspected the abuse, but had never asked the child or the



STATE OF CONNECTICUT
DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
A Healthcare Service Agency

JOHN G. ROWLAND
GOVERNOR

THOMAS A. KIRK, JR., PH.D.
COMMISSIONER

Testimony by Gail Sturges, Director of Forensic Services
Before the Judiciary Committee
January 29, 2001
H.B. 6535

Good afternoon, Sen. Coleman, Rep. Lawlor, and distinguished members of the Judiciary Committee. I am Gail Sturges, Director of Forensic Services for the Department of Mental Health and Addiction Services, and I am here this afternoon to testify in support of **H.B. 6535, An Act Concerning Limited Liability for Court-Appointed Health Care Guardians.** This legislation was put forth by DMHAS because of a problem we have encountered in the appointment of health care guardians in specific situations, which impacts the department's ability to free up expensive inpatient bed space because it limits movement of people through the system.

When a defendant in a criminal proceeding is found not competent to stand trial, the court orders such person committed to the Commissioner of DMHAS to receive psychiatric treatment for the purpose of restoration to competency. Once restored, the criminal case against the defendant can proceed. With few exceptions, all such individuals are committed to the Whiting Forensic Division of Connecticut Valley Hospital for treatment of psychiatric disorders that interfere with their ability to understand the proceedings against them or to assist in their defense.

In most cases, psychiatric medication is essential for successful restoration to competency. Failure to provide adequate treatment, including medication, in a timely manner

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can substantially delay or even prevent further prosecution. When those providing treatment determine that psychiatric medication is necessary for restoration to competency, but the defendant refuses to accept the medication voluntarily, a court order is sought in order to administer the medication on an involuntary basis. In those instances, the court appoints a health care guardian to make an independent assessment of the proposed medication plan and to provide a report and testimony to the court regarding the health care interests of the defendant.

The role of health care guardian is an important, but difficult, one. Duties include obtaining and reviewing often-extensive medical records, clinically assessing the defendant, meeting with the treatment providers, developing a report for the court, and providing testimony in often highly adversarial proceedings. Because the court's ability to proceed with prosecution may hinge upon ensuring that the detainee receives medication – a decision that may be vehemently opposed by the defendant – the health care guardian has sometimes been threatened with legal action by the defendant when he or she concurs with the treatment providers. In one case, a health care guardian was sued unsuccessfully by the defendant.

Given the job requirements and the number of hours involved, this is neither attractive nor lucrative work, and there are currently only two individuals willing to fulfill the role of health care guardian for the courts. The threat of being sued is a significant and legitimate concern. Providing health care guardians with limited immunity to carry out their duties for the court will go a long way in the effort to retain and recruit health care guardians, as well as in preventing avoidable delays in criminal proceedings.

Thank you for the opportunity to testify on behalf of this bill. I would be happy to answer any questions you may have at this time.

Judiciary Committee
Public Hearing on 1-29-01

OPPOSITION TO R.B. 6535 –
AN ACT CONCERNING LIMITED LIABILITY FOR COURT APPOINTED HEALTH CARE GUARDIANS

The Connecticut Trial Lawyers Association (CTLA) respectfully urges you to oppose R.B. 6535:

- In lines 65 – 68 of this bill, health care providers are granted total immunity if they are negligent in a decision concerning the administration of psychiatric medication to a defendant whose competency to stand trial is at issue.

- The decision whether or not to administer psychiatric medication is obviously a very serious matter, and this decision could have life-long implications. Under this bill, a citizen who is seriously harmed by a health care provider's negligent treatment decision is left with no remedy for his or her injuries.

- R.B. 6535 relieves a court-appointed health care provider for any negligent conduct relating to the decision to administer psychiatric medication, as well as the determination as to the risks and benefits of such medication and any adverse side effects of such medication.

- If a health care provider is negligent or careless in the performance of his or her duties, then the health care provider should be held accountable, and should not be immune from responsibility as is provided for in this bill.

Please OPPOSE R.B. 6535.