

Legislative History for Connecticut Act

Act Number: PA 04-160
Bill Number: 291
Senate Pages: 1951-1955, 2079-2080, 2086-2087 9
House Pages: 4280-4285 6
Committee: Judiciary: 1171-1172, 1179-1182, 1183-1190,
1204-1207, 1228-1229, 1231-1235 25

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2004

VOL. 47
PART 7
1872-2165

prh

80

Senate

April 28, 2004

Aye.

THE PRESIDENT:

Opposed, Nay?

The Ayes have it. The amendment is adopted.

Will you remark further on the bill as amended?

Senator Murphy.

SEN. MURPHY:

Thank you, Madam President. If there's no objection, I would move this item to the Consent Calendar.

THE PRESIDENT:

Without objection, so ordered.

THE CLERK:

Calendar No. 325, File No. 429, Substitute for SB 291, AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL. Favorable report of the Committees on Judiciary and Public Health. The Clerk is in possession of amendments.

THE PRESIDENT:

Senator McDonald.

SEN. McDONALD:

Thank you, Madam President. Madam President, I move acceptance of the joint committees' favorable report and passage of the bill.

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THE PRESIDENT:

The question is on passage. Will you remark?

SEN. McDONALD:

Madam President, this bill comes to us from the Department of Mental Health and Addiction Services and is intended to address the situations under which individuals could be involuntarily medicated for up to 120 days to restore competency for the purposes of standing trial.

The procedures and standards differ, depending on whether or not an individual is unable to give voluntary informed consent because of his or her illness and situations where such an individual is able but unwilling to do so.

Madam President, I believe the Clerk is in possession of LCO No. 3780. I would ask that it be called and I be permitted leave to summarize.

THE CLERK:

LCO 3780, which will be designated Senate Amendment Schedule "A". It is offered by Senator McDonald of the 27th District.

THE PRESIDENT:

Senator McDonald.

SEN. McDONALD:

Thank you, Madam President. I move adoption of the

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amendment.

THE PRESIDENT:

The question is on adoption. Will you remark?

SEN. McDONALD:

Madam President, the amendment, 3780, is a technical amendment, making some very technical changes, as they are known to do.

THE PRESIDENT:

The question is on adoption of Senate Amendment "A". Will you remark?

Senator Kissel.

SEN. KISSEL:

Thank you very much, Madam President. Just a question to the proponent. Could the proponent, for the record, explain what the technical changes are?

Through you, Madam President.

THE PRESIDENT:

Sen. McDonald, would you care to explain?

SEN. McDONALD:

Thank you, Madam President. I accept the gracious offer of my ranking member to permit me to explain. The amendment strikes Line 161 to 164, which deal with the situations under which conservators who have been appointed and their obligation to report to the Probate Court, and on Lines 250 to 256, it deletes language

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relating to special limited conservators who have been appointed for patients and the treatment of those special limited conservators and how they are terminated. And, finally, Madam President, the amendment substitutes language in Line 61, inserting the fact that the termination of a patient's placement in the custody of the Commissioner takes place when then special limited conservatorship is automatically terminated.

THE PRESIDENT:

Sen. Kissel.

SEN. KISSEL:

Thank you very much, Madam President.

THE PRESIDENT:

Thank you.

Will you remark further on the amendment? Will you remark further? If not, I will try your minds.

All those in favor indicate by saying Aye?

VOICES:

Aye.

THE PRESIDENT:

I just want to make sure you're awake.

All those opposed, Nay?

The Ayes have it. The amendment is adopted.

Will you remark further on the bill as amended?

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Senator McDonald.

SEN. McDONALD:

Madam President, at this time, I would yield -- I would yield to Senator Looney.

THE PRESIDENT:

Senator Looney, do you accept the yield?

SEN. LOONEY:

Yes, I do, Madam President. Thank you very much.

And, thank you, Senator McDonald.

Madam President, we would like to pass this bill temporarily because the major amendment that will be offered next we believe has only been very recently circulated. And I wanted to give the members a little bit more time on that at the request of several members. So I would ask that the bill be Passed Temporarily.

THE PRESIDENT:

This item will be Passed Temporarily.

THE CLERK:

Calendar Page 26 --

THE PRESIDENT:

Senator Looney?

SEN. LOONEY:

Yes, Madam President. I believe that the next item on Calendar Page 26, Calendar 356, SB 602, I would ask that that item also be Passed Temporarily. We are

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THE PRESIDENT:

Thank you, sir.

Will you remark further on the bill as amended?

Will you remark further?

Senator Prague.

SEN. PRAGUE:

Madam President, if there's no objection -- I'd like to thank my colleagues who have supported this very important legislation. I'd like to put it on the Consent Calendar.

THE PRESIDENT:

The motion is to refer this item to the Consent Calendar.

Without objection, so ordered.

THE CLERK:

Calendar Page 25, Calendar No. 325, File No. 429, Substitute for SB 291, AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL. (As amended by Senate Amendment Schedule "A".) Favorable report of the Committees on Judiciary and Public Health.

When the bill was last before us, the Senate adopted LCO 3780 as Senate Amendment Schedule "A".

THE PRESIDENT:

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Senator McDonald.

SEN. McDONALD:

Thank you, Madam President. Madam President, I move passage of the bill as amended by the Senate previously.

THE PRESIDENT:

Thank you, sir.

The question is on passage as amended. Will you remark further? Will you remark further?

Senator McDonald.

SEN. McDONALD:

Madam President, if there's no objection, might this item be placed on the Consent Calendar?

THE PRESIDENT:

Without objection, so ordered.

THE CLERK:

Calendar Page 26, Calendar No. 398, File No. 545, Substitute for SB 27, AN ACT CONCERNING EFFICIENCIES OF THE DEPARTMENT OF MOTOR VEHICLES. Favorable report of the Committees on Transportation, Finance, Revenue and Bonding and Appropriations.

THE PRESIDENT:

Senator Ciotto.

SEN. CIOTTO:

Thank you very much, Madam President. There was an

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Calendar Page 11, Calendar 447, HB 5200;

Calendar Page 12, Calendar 473, Substitute for HB
5242;

Calendar Page 14, Calendar 482, Substitute for HB
5477;

Calendar Page 20, Calendar No. 179, Substitute for
SB 336;

Calendar Page 25, Calendar No. 325, Substitute for
SB 291; and

Calendar Page 26, Calendar No. 398, Substitute for
SB 27.

Madam President, that completes those items placed
on the second Consent Calendar.

THE PRESIDENT:

Thank you, sir. Would you once again announce a
Roll Call vote?

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 voting by Roll Call on the
Consent Calendar. Will all Senators please return to
the Chamber?

THE PRESIDENT:

If all members have voted, the machine will be
locked.

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Clerk, please announce the tally.

THE CLERK:

The motion is on adoption of Consent Calendar No. 2,

Total number voting, 35;

Necessary for adoption, 18;

Those voting Yea, 35;

Those voting Nay, 0;

Absent, not voting, 1.

THE PRESIDENT:

The bill is -- the Consent Calendar is adopted.

Senator Looney.

SEN. LOONEY:

Thank you, Madam President. Madam President, I would move for suspension of the rules for immediate transmittal to the House of Representatives of those items on the two Consent Calendars voted today that require additional action by the House of Representatives.

THE PRESIDENT:

Without objection, so ordered.

Senator Looney.

SEN. LOONEY:

Thank you, Madam President. Madam President, I would also move for suspension for immediate transmittal

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HOUSE

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2004

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House of Representatives

Monday, May 3, 2004

roll call members to the Chamber please.

DEP. SPEAKER HYSLOP:

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

CLERK:

S.B. 566 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	145
Those voting Nay	2
Those absent and not voting	4

DEP. SPEAKER HYSLOP:

The bill passes as amended in concurrence with the Senate. Clerk please call Calendar 515.

CLERK:

On page fifteen Calendar 515, substitute for S.B. 291, AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL. Favorable report of the Committee on Public Health.

DEP. SPEAKER HYSLOP:

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Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. I move acceptance of the Joint Committees favorable report and passage of the bill.

DEP. SPEAKER HYSLOP:

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

REP. LAWLOR: (99th)

Thank you Mr. Speaker. This bill establishes a procedure for oversight of situations where persons not competent to stand trial may be administered medication without their consent. Mr. Speaker, in the past and currently the State has used procedures which were called into question through an appeal to the State Supreme Court.

This bill seeks to implement in effect the recommendations of the court of how to make our current procedure Constitutional. In effect Mr. Speaker, this allows under the relatively unusual circumstances that this bill deals with for the appointment of a conservator who would intervene and advocate on behalf of the best interests of the person involved. Mr. Speaker the Senate adopted Senate amendment "A."

The Clerk has LCO 3780, I ask that the Clerk call

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and I be allowed to summarize.

DEP. SPEAKER HYSLOP:

Clerk please call LCO 3780, designated Senate amendment "A" and the Representative has asked leave to summarize.

CLERK:

LCO 3780 Senate "A" offered by Senator McDonald and Representative Lawlor.

DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. The amendment eliminates requirements that were contained in the original bill that DMHAS notified probate courts of patients under special limited conservatorships are released from its custody and specifies that conservatorships involving people unable to give informed consent automatically end when such patients are released. I urge adoption.

DEP. SPEAKER HYSLOP:

The question is on adoption of Senate amendment "A." Will you remark on Senate amendment "A?" Will you remark on Senate amendment "A?" If not we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

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DEP. SPEAKER HYSLOP:

Those opposed? The ayes have it, Senate "A" is adopted. Will you remark further on the bill as amended?
Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. I think it's fair to say this particular initiative is supported by all of the parties and interests both in the criminal justice system and in the mental health and public health system and in the community which advocates on behalf of persons who have severe mental illness cases like this. I think it's an appropriate resolution to a very complicated problem. Mr. Speaker I urge passage.

DEP. SPEAKER HYSLOP:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Thank you Mr. Speaker. Through you a question to the proponent of the bill as amended.

DEP. SPEAKER HYSLOP:

Proceed.

REP. KIRKLEY-BEY: (5th)

Is the conservator that's chosen a relative of the individual or is it a court appointed person that may not have any relationship with that individual whatsoever?

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DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. The conservator would not be a relative. It would be a licensed clinical social worker. Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Through you Mr. Speaker. Then that individual as I take it by the answer given me by Representative Lawlor capable of discerning what this individual's needs are, and that way my concern. If it wasn't a family member was it someone capable of discerning the mental needs of that patient. I feel comfortable with that question, thank you.

DEP. SPEAKER HYSLOP:

Will you remark further on the bill as amended?
Will you remark further on the bill as amended? If not staff and guests to the well of the House 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.

House of Representatives

Monday, May 3, 2004

DEP. SPEAKER HYSLOP:

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

CLERK:

S.B. 291 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	146
Those voting Nay	0
Those absent and not voting	5

DEP. SPEAKER HYSLOP:

The bill passes in concurrence with the Senate.

Clerk please call Calendar 505.

CLERK:

On page thirteen, Calendar 505, substitute for S.B. 129, AN ACT CONCERNING REGIONAL PROBATE COURT SERVICES FOR CHILDREN'S MATTERS. Favorable report of the Committee on Human Services.

DEP. SPEAKER HYSLOP:

Representative Stone of the 9th.

REP. STONE: (9th)

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 4
1063-1409

2004

gmh

JUDICIARY COMMITTEE

February 27, 2004

1:00 P.M.

PRESIDING CHAIRMAN: Senator McDonald

MEMBERS PRESENT:

SENATORS: Murphy, Kissel, Cappiello,
Daily, Roraback

REPRESENTATIVES: Lawlor, Stone, Farr, Abrams,
Bernhard, Cafero, Cocco,
Dillon, Godfrey, Graziani,
Hamm, Hamzy, Hovey, Hyslop,
Klarides, Labriola, McMahon,
Olson, O'Neill, Powers, Rowe,
Serra, Spallone, Winkler

SENATOR MCDONALD: The public hearing will please come to order and please bear with my cold.

We have a number of items on our agenda and not an extraordinary number of people who have signed up. So that's good news.

The first department head or chief elected official is Judge Lawlor. I should mention that there are, obviously, a number of other committee meetings going on this afternoon, including one that I'm supposed to be at, but please, welcome.

JUDGE JAMES LAWLOR: Thank you, Senator. Senator McDonald and Representatives, I appreciate this opportunity to be here and to comment today. I intend to address S.B. 291 concerning the administration of medication for the treatment of psychiatric disabilities and I'd also like to comment briefly on S.B. 294, AN ACT CONCERNING LIVING WILLS.

S.B. 291 arises out of the hearing Sell vs. United States which addressed the question of whether administration of psychiatric medication on an involuntary basis is permissible to restore a criminal defendant to competence to stand trial.

It's a major, major issue that's being addressed by DMHAS. It's a big puzzle and we have only one small piece of it, we, the Probate Administration system. We have worked with DMHAS and with the other

organizations in developing the language. We are satisfied with the role that we will take and prepared to serve. Basically, what we will be is the adjudicatory body determining whether or not the medication ought to be administered. We expect that there will be twenty or so cases per year, but they'll probably appear before the Middletown Probate Court. We have the resources and the capacity to handle that. So we support the bill and we advocate the favorable consideration by this committee.

It's my understanding that an amendment will be offered this afternoon by the rights organization which will suggest -- which will propose that other conservator proceedings involving the same patient, other proceedings which may have been instituted elsewhere should be effected by the outcome or at least the termination of proceedings against this patient in this case.

That's to say that if a patient were determined to be incompetent in Waterbury and medication ordered for that patient and then thereafter that same patient is in Connecticut Valley Hospital and a new proceeding started there, you would then have two proceedings in process. In Middletown, for the limited purpose of determining whether or not he should proceed to trial and so forth in a criminal complaint.

The termination of what is being offered is the termination of the proceeding in Middletown should also terminate the proceeding in Waterbury. I believe that the Judge in Waterbury who had the original jurisdiction should be the one who should make the final determination and vacate in that order. I think it's consistent that the one who enters it should vacate it because when the Judge does that, he looks to the reasons. He asks, what were the reasons for creating the conservatorship and issuing the original order and look to see whether or not those reasons still exist.

With respect to the living will, it's my understanding that the language that's being offered proposes to expand on the -- to provide

SB 294

DEBORAH FULLER: I guess that could be an example if everybody -- in that case, it's a little more complicated because it's five people and nobody has -- none of them live there.

But let's say there were five children and one of them lived in the house with the parents. The parents died, left the house to the five kids. The one who was living there would prefer to just pay off the others. I mean, they could work -- that could be worked out --

REP. MCMAHON: I suppose it was just one other.

DEBORAH FULLER: -- a settlement anyway, but it wouldn't allow --

REP. MCMAHON: But would this law be applicable to that particular case?

DEBORAH FULLER: Yes. Yes, it could be. Only if one of them -- no, probably not, actually, as I rethink it because they would all have equal interest and the way this is written, it's written that one of them has a minimal interest. So this is more tailored to somebody who has a much smaller interest.

REP. MCMAHON: Alright, thank you.

SEN. MCDONALD: Thank you. Are there any other questions? Thank you very much.

DEBORAH FULLER: You're welcome. Thanks for the opportunity to testify.

SEN. MCDONALD: Next is Gail Sturges.

GAIL STURGES: Good afternoon, Senator McDonald and distinguished members of the Judiciary Committee. I'm Gail Sturges, Director of Forensic Services for the Department of Mental Health and Addiction Services.

On behalf of the Department, I'm testifying in support of S.B. 291, AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION FOR TREATMENT OF PSYCHIATRIC DISABILITIES FOR PERSONS FOUND NOT

SB 292

COMPETENT TO STAND TRIAL and S.B. 292, AN ACT
CONCERNING THE STATUS OF PATIENTS AT THE WHITING
FORENSIC DIVISION.

Raised S.B. 291 was developed by a committee that included DMHAS, the Attorney General's Office, judicial branch, Chief State's Attorney, Public Defender's Office, OPM, and Yale University Law and Psychiatry Program.

In response to a U.S. Supreme Court decision in June of 2003, *Sell vs. the United States*, which addressed the question of whether administration of psychiatric medication on an involuntary basis is permissible to restore a criminal defendant to competence to stand trial.

In this decision, the U.S. Supreme Court found that before a court can determine whether such involuntary medication is necessary to restore legal competence, the court should first determine whether the medication should be authorized on alternative grounds. In other words, is the medication appropriate and necessary for treatment of the defendant's psychiatric condition?

The Supreme Court further indicated that such alternative grounds for involuntary administration of medication is usually a civil matter and noted that all states have civil procedures to address this issue. However, Connecticut's current statute that establishes the civil procedures for administration of involuntary medication has been interpreted by the Connecticut Supreme Court in a 1995 *State vs. Garcia* decision, to specifically exclude defendants who are committed to an inpatient psychiatric hospital for treatments to restore them to competency to stand trial.

The Connecticut Supreme Court found that the Superior Court, having jurisdiction of the criminal case, had exclusive jurisdiction on the issue of involuntary medications of an incompetent defendant and established criteria for the Superior Court to apply in making that determination.

Unlike the civil standard, which is based on the

appropriateness and medical necessity of the involuntary medication for the patient's treatment, this Garcia standard does not address what medication is needed for treatment, but rather balances the defendant's liberty interest against medication with the State's interest in adjudication.

The Connecticut Supreme Court has recently recognized that its decision in Garcia has been superceded by the recent U.S. Supreme Court decision to the extent that they differ.

S.B. 291 would apply Connecticut's well established civil procedures to the issue of involuntary medication when the purpose of that medication is treatment. The Superior Criminal Court will retain jurisdiction over the issue of involuntary medication when it is recommended for restoration to competence to stand trial and there is no alternative basis for the medication.

This will shift jurisdiction on the involuntary medication issue in most cases involving incompetent defendants to the Probate Court where it is exclusively a medical question. This bill would also provide for special limited conservators to be appointed by the Probate Court when appropriate to specifically address the need for medication for incompetent defendants committed under 54-46d.

Such conservators would require special qualifications not required of other conservators and would have the same immunity of other state actors. The rationale is that even when treatment is the basis for finding alternative grounds for involuntary medication, which justifies the probate jurisdiction, the Superior Court also retains an interest in the medication question since it may restore the defendant to competence or impact his or her participation in the trial. Thus, the need for all parties to have confidence in the ability of the conservator to provide a professionally informed decision regarding medication.

The need for immunity is based on increased threat

of litigation against the special limited conservators, given that medication ordered for treatment purposes may indirectly impact criminal proceedings.

I urge that this bill, if passed, become effective on passage. We currently have a patient at Connecticut Valley Hospital who has a serious medical condition for which he needs medication, but due to his untreated psychosis, he's unable to provide consent to this necessary medication. The Probate Court found that it lacks jurisdiction to order the medication under current Connecticut law and the Superior Court in the criminal case, is not likely to address this purely medical question under the Garcia standard.

I'm also testifying in support of S.B. 292, AN ACT CONCERNING THE STATUS OF PATIENTS AT WHITING FORENSIC DIVISION. Dr. Michael Norko, the Medical Director, has submitted expanded written testimony on this bill, but essentially this bill would require the court to hold a hearing upon receipt of a court ordered report from Whiting Forensic Division of Connecticut Valley Hospital. The current statute does not explicitly require the hearing. Consequently, there have been some cases where Whiting, having completed their evaluation, has recommended that the defendant be returned to the Department of Correction, but because no hearing was mandated, the defendant inappropriately remained at Whiting for several months, reducing the availability of access to Whiting beds for other court cases.

This bill will have a minimal impact on judicial because it involves no more than two cases per year, but those cases currently have a significant negative impact on DMHAS's resources.

Thank you for the opportunity to testify on these two bills and I'd be happy to answer any questions.

SEN. MCDONALD: Thank you. Are there any questions?
Senator Murphy.

SEN. MURPHY: Thank you. Good afternoon.

GAIL STURGES: Good afternoon.

SEN. MURPHY: I guess I'm trying to understand some of the rationale in your testimony on S.B. 291. The patient that you're referring to at CVH, the Probate Court has refused jurisdiction over that patient because they also have a pending criminal case or simply -- is that the reason, that there's an overlap, and in the case of an overlap, they're refusing?

GAIL STURGES: The Probate Court is interpreting current Connecticut law as giving sole and exclusive jurisdiction on any medication issue to the criminal court. So they refuse to address the issue of medication in this individual's case.

SEN. MURPHY: Whether or not that person has a case pending before the --

GAIL STURGES: No. Because this person is committed under a specific criminal statute for restoration to his competence.

SEN. MURPHY: And just help me understand what a situation would be when it's addressed under the Supreme Court case in which a patient would necessitate medication in order to stand for trial, but that would not be also construed as alternative grounds, as you state, whereby it would also be addressing a psychiatric case?

GAIL STURGES: I'm sorry, I didn't follow the question.

SEN. MURPHY: There's a distinction you've made between medication necessary to restore competency for trial and medications dispensed on alternative grounds having to do with the person's underlying psychiatric issues. What's an instance of a case in which a person needs medication to stand for trial, but does not qualify as having alternative grounds?

GAIL STURGES: Okay, I understand the question. There are very few cases that I think would, under this bill, end up being a medication issue for the criminal court because most of the issues, the request for medication have to do with the

treatment of the underlying psychiatric disorder, which renders the individual incompetent to stand trial. So this would essentially move the cases out of the Superior Court.

There is the possibility and there have been some cases nationally where the threshold for ordering medication civilly is that the person has to be unable to give consent. If they're able to consent, but they refuse, then the threshold is they have to be imminently dangerous.

So there's this gap of people who may need the medication, but competently refuse to take it. In which case, they may remain incompetent -- competent to refuse medication and incompetent to participate in a legal proceeding. A very small group of people, but it is possible and there are cases.

SEN. MURPHY: So for the majority of cases, this now moves the current standard from one which balances interest of liberty versus state interest in prosecution to now a fairly uniformly medical test as to whether or not the medication is necessary to treat the illness. And whether or not that has a -- I guess the question is, once you move it out of the context of a criminal balancing test, you may -- there maybe treatment that is medically necessary, but that may not actually restore that person to competency. Correct?

GAIL STURGES: That's correct and sometimes the medication, for example, the case at CVH, his need for treatment is for a serious heart condition. That doesn't have bearing on the competency to stand trial. I don't know if that answers your question.

SEN. MURPHY: Okay, thank you.

SEN. MCDONALD: Representative Hamm.

REP. HAMM: Thank you, Mr. Chairman. The question I had was relating to the special conservator. The committee that worked on developing the bill that's before us, what is the contemplation on how that

training will be provided and how these conservators are going to be chosen? There must have been some rather lengthy discussion about that since I suspect it has such a fiscal impact.

GAIL STURGES: The Office of Probate Court Administration would probably participate with DMHAS in the training of the conservators, but what we're looking for specifically here are individuals who have professional licenses such as licensed clinical social workers, nurses, psychiatrists or psychologists, people who are familiar with psychiatric disorders and the typically effect of medication. So their training is already provided on those issues by virtue of their license. The additional training would be needed to understand the significance of their role under the statute.

REP. HAMM: If I could do a follow-up, Mr. Chairman. Following up on Senator Murphy's question, the other concern I had, am I understanding that in addition to requiring involuntary medication for treatment purposes, you're talking about more than just a psychiatric disorder and, in fact, talking about the ability to consent for any medical condition? You mentioned the heart issue, which caused me to wonder how broad an authority we're granting.

GAIL STURGES: Well, this is an authority that already exists with the Probate Court. The Probate Court already has procedures under 17a-543 that outlines the procedures providing medication when a client is unable or a patient is unable to provide informed consent. And so that would effect whether it's psychiatric or medical or any type of medication the person may need and it doesn't just pertain to people in a psychiatric facility -- at Connecticut Valley Hospital. It pertains to people who are unable to give informed consent on the medication issue.

REP. HAMM: Let me ask you this. Who makes the determination? Is it case-by-case as far as what is informed consent because I suspect that it's possible -- what I'm trying to avoid is that patients who have medical conditions, who don't

choose to have the treatment, believe they're informed, believe their consent is, in fact, informed. And may disagree with their medical determination if Whiting or wherever else, as to whether or not they are able to do that.

How would that be handled? Would it require a hearing?

GAIL STURGES: Under the current law there's a full hearing in the Probate Court and that's a longstanding law in which they have legal -- the client has legal representation and the right to notice, the right to be present, the right to cross-examine.

REP. HAMM: No, I'm aware of that. I just wanted to make sure this doesn't extend it in any way.

GAIL STURGES: This does not extend currently --

REP. HAMM: The question of informed consent.

GAIL STURGES: No, it doesn't. All this bill does is shift jurisdiction for this small group of people who are currently excluded by virtue of being criminal defendants from the ordinary Connecticut process for determining whether or not to give medications on an involuntary basis. It does not change the standards for that decision. It doesn't change the procedures in the Probate Court for making those decisions. It just changes jurisdiction from the criminal court to the Probate Court that handles this for virtually every other patient.

REP. HAMM: I understand. Thank you.

SEN. MCDONALD: Representative Farr.

REP. FARR: Good afternoon.

GAIL STURGES: Hi.

REP. FARR: Right now, if you're not held at Whiting for criminal charges, you're civilly committed, anybody whose civilly committed can be subject to

involuntary -- to a determination that they have to be medicated. Is that correct?

GAIL STURGES: That's correct.

REP. FARR: And is the standard in this the same standard in a new language for somebody who has been committed because of a criminal offense?

GAIL STURGES: It's exactly the same standard.

REP. FARR: And is the process the same?

GAIL STURGES: The process is the same with the exception of having a special limited conservator.

REP. FARR: Why was it necessary to do that? Why did we make -- why did you make a change in the process?

In other words, everybody else out there doesn't get a special limited conservator. Why was it necessary to do it for this group of people?

GAIL STURGES: It's been our experience -- there's a similar role under the criminal statute, the Garcia decision laid out a similar role of a health care guardian which would have the same function. We had great difficulty recruiting and retaining anyone in that role for two reasons. One, is that it's labor intensive and it doesn't pay well enough. Number two, that they've been sued -- because these are active criminal cases, they've been sued in those cases. So we felt that we needed to address the issue of re-numeration and their time in a fair way for the intensity of these particular cases understanding that while we're using the usual civil procedure, there is this also co-existing criminal case out there and that there's every expectation that some attorney, some defense attorneys may want to fight that issue now that gets fought in the criminal case, the issue of medication. They want to move that fight to the Probate Court in some cases.

So these people are going -- we're going to require higher credentials. They're more likely to be subject to a lawsuit and they're more likely to be

dragged into criminal proceedings even though that's not what they signed on for.

REP. FARR: So that's why you created this special --

GAIL STURGES: That's specifically why we created that role.

REP. FARR: Okay. And when the action is in Probate Court for the medication, that individual, because he has a criminal charge pending, is still under the jurisdiction of the criminal court.

GAIL STURGES: Yes.

REP. FARR: And their custody has been ordered -- they're, in effect, the reason they're being held at Whiting is because of an order from the criminal court. Is that correct?

GAIL STURGES: That's correct.

REP. FARR: And so whether or not this order of medication is entered, the criminal court is still going to have jurisdiction over that person?

GAIL STURGES: Yes.

REP. FARR: And then once the medication is done, if there's a determination the person is going to be -- is now competent, is that determination made by the Probate Court or does he go back to the Superior Court?

GAIL STURGES: That's a criminal proceeding. That would be under 54-56d which is the criminal statute. So it would be up to the Superior Court to determine whether competence to stand trial has been restored according to their own standards. This doesn't change those standards at all.

REP. FARR: And under Garcia, we had this bizarre situation, as I understand what the guidelines were before, we couldn't force medication on someone without weighing the impacts of the seriousness of the charge. So, in effect, if the court said you committed a murder, we could medicate you so we

could try you, but if you committed a breach of the peace, we couldn't medicate you. Is that essentially what it was?

GAIL STURGES: Yeah, essentially what the Garcia weighing standard is. So it was really not focused on what is this individual's medical need for treatment, although that may have peripherally been involved. The real issue was is it important enough -- is the charge enough, important for us to proceed with forcing medication on them? And if not, if they didn't think it was important enough, they wouldn't order the medication. So a person could kind of exist in a limbo without treatment.

REP. FARR: And we still have the same statute we passed, I think last year, that said that we could choose to just discharge them and go the civil route altogether.

GAIL STURGES: That's correct.

REP. FARR: Okay, thank you.

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

GAIL STURGES: You're welcome.

SEN. MCDONALD: Next is James McGaughey, followed by Senator Prague.

JAMES MCGAUGHEY: Good afternoon, Senator McDonald, members of the committee. I'm Jim McGaughey, Executive Director of the Office of Protection and Advocacy for Persons with Disabilities.

SB 294

And I thank you for this opportunity to come before you today and share our office's views on two of the bills on your agenda. I have submitted written testimony, which I won't read because in part, Judge Lawlor and Gail Sturges have covered a good deal of the background information on raised S.B. 291, AN ACT CONCERNING THE ADMINISTRATION OF MEDICATIONS FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL.

I would just add that our office is not the advocacy group that Judge Lawlor referred to as coming up with some substitute language on a few of the provisions with respect to the temporary limited conservator's authority, but we are aware of that suggestion and do think that it makes some sense.

We have no quarrel with either the intent or the general provisions of this bill. I think that the clarifications that are going to be offered or suggested by an advocacy group that works a lot with patients at Connecticut Valley Hospital focus on ensuring consistency between these two parallel mechanisms, the one being established for the 54-56d individuals and the ones that are sort of available for the general inpatient population at DMHAS hospitals.

The changes are minor, but they reinforce important principles such as ensuring that conservators are not employees of the hospitals treating the persons there being conserved and I think including those minor clarifications would avoid future confusion as to what the basic policy of the State is with respect to the authority and identify of conservators and orders for involuntary medication for persons who are hospitalized generally.

The concern is not -- the concern the advocates have is not about the criminal defendants. It's about the affect that this proposal may have on other people and it could be relatively easily cured.

The other bill I wanted to testify on is raised S.B. 294, AN ACT CONCERNING LIVING WILLS. This bill would significantly expand the level of detail addressed in the statutorily suggested form for living wills calling on someone making a living will to choose between various types and degrees of medical intervention he or she wishes to have under different circumstances.

Prior to executing a living will, and follow the statutory form, a person would need to discuss the implications of these decisions with a physician

life to end. That court did say that a state is able to make the requirement of those statements be made in a clear and convincing way and that's exactly what we did when we enacted our current living will statute back in 1990 immediately after the Cruzan case came down.

I have no problems with our current statutes. So I will end there.

Thank you. Do you have any questions?

SEN. MCDONALD: Thank you. Are there any questions? Thank you for your time.

GREG BARRINGER: Thank you.

SEN. MCDONALD: Next is Tom Behrendt. Good afternoon, sir.

THOMAS BEHRENDT: Good afternoon. Senator McDonald, Representatives, Senators on the committee, my name is Thomas Behrendt. I'm the Legal Director of the Connecticut Legal Rights Project and I'm here to comment on S.B. 291, AN ACT CONCERNING ADMINISTRATION OF MEDICATION FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL.

Although we support the purpose of the legislation, the implementation of Sell vs. United States, the bill contains new language that would have the unintended consequence of creating confusion and procedural inequity for a large class of individuals.

The Sell decision addressed one small component of hospitalized individuals. In the Supreme Court, they've suggested that states employ existing procedures already in place for all other psychiatric patients when they seek authorization to treat criminal defendants in the custody of DMHAS who are not competent. Connecticut Legal Rights Project represents all these individuals, the cohort of individuals that are committed to the Commissioner under 54-56d of the General Statutes, as well as all other patients of DMHAS facilities

and non-DMHAS facilities.

In Connecticut, a work group was convened last summer to study the impact of Sell on this small group of individuals committed under 54-46d. The group's efforts resulted in the bill under consideration. Although we appreciate the work of the group's members and see only relatively minor issues with the substance of the bill, we are very concerned with the negative implications for the broader group of our clients.

While we recognize that the State has concerns about implementing Sell, we were unaware of the work group and prior to the filing of the legislation, we didn't have an opportunity to articulate the concerns of our clients. We do support the State's efforts to move forward with this legislation. As soon as we became aware of the bill, we intervened, worked with the other stakeholders, and proposed language to assure that the rights of the broader group of individuals aren't compromised. The language we request would have minimal impact on the state agencies, but would have significant implications for our clients.

The current revision to the bill we propose is an outgrowth of discussions with the Office of the Public Defender and with DMHAS and we believe it addresses their concerns as well as ours. Our concerns are shared by other organizations including Greater Hartford Legal Aid, Connecticut Civil Liberties Union, Advocacy Unlimited, and the Office of Protection and Advocacy. The committee heard from Jim McGaughey earlier this afternoon.

In keeping with Sell, if the procedure is to be used in connection with the treatment of criminal pretrial defendants are not wholly identical for those for civil patients, they should, at the very least, be parallel and that's where our concerns stem from. Our concern with the current language of the bill is that it would give rise to a double standard with the narrow group that is the focus of the bill getting protections, explicit protections not shared by the broader group of individuals.

The legislation establishes procedures for the narrow group of individuals that must be followed when they're discharged from the hospital from the custody of the Commissioner of Mental Health, while no explicit procedures are established for other hospitalized persons. This omission undercuts existing rights of the broader class of people.

What we've proposed is simple language that would address the omission and we urge you to include it to assure the rights of all patients. I apologize for being out of the room when my name was called, but I was discussing the bill with Judge Lawlor and my hope is that we're not too far apart and that it shouldn't be a complicated matter for us to agree on language which is really a minor fix.

But we feel that without a simple clarification, the bill, while addressing the needs of individuals committed pursuant to 54-56d, would create confusion, a double standard that would undercut existing rights of the broader class of the clients we represent and it could lead to inferences and statutory construction that would work against the non-forensic class of patients.

We have also suggested a minor clarification in Section 1 of the bill, the definitional section, which would specify that an employee of a facility providing treatment to a defendant committed under 54-56d may not serve as the special limited conservator.

I urge the committee to consider and act favorably on our simple revision to the legislation. I'm very pleased to work with the committee and with Judge Lawlor and the other members of the work group that worked so hard on this legislation to try and work out the minor issues that we have.

SEN. MCDONALD: Thank you. Are there any questions?
Representative Farr.

REP. FARR: Do you have written language for what you want to change?

THOMAS BEHRENDT: I do and unfortunately I apologize,

we've been negotiating with other folks up until this morning. I will give something in writing to the clerk.

REP. FARR: Either the Clerk or to LCO so at least we have the language.

THOMAS BEHRENDT: And I will get that to you this afternoon.

REP. FARR: Thank you.

SEN. MCDONALD: Thank you. Are there any other questions? Thanks very much.

THOMAS BEHRENDT: Thank you.

SEN. MCDONALD: Next is Carolyn Brady. Good afternoon.

CAROLYN BRADY: Good afternoon. Senator McDonald, Representative Lawlor, members of the Judiciary Committee, my name is Carrie Brady and I'm the Vice President of Patient Care and Regulatory Services at the Connecticut Hospital Association.

CHA appreciates the opportunity to testify today on behalf of Connecticut's not for profit hospitals in opposition to S.B. 294, AN ACT CONCERNING LIVING WILLS. CHA has serious concerns about the impact that this bill will have. The bill, while presumably intended to promote patient decision-making, we think is likely to impair a patient's ability to make important end of life decisions. We think that the proposal in the bill is unnecessarily complicated, intimidating, and complex for patients who will be executing these advanced directives.

We are extremely concerned that enacting this bill could dramatically reduce the number of patients who actually complete living wills because now instead of being signed by the patient and two witnesses, the living will would not have to be signed by the physician and by any surrogate decision-maker who was named.

The requirements have the physician sign the living

SB 294

STATE OF CONNECTICUT

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

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
 Before the Committee on the Judiciary
 February 27, 2004

Presented by: James D. McGaughey
 Executive Director

Good afternoon and thank you for the opportunity to share our Office's views on several of the bills on your agenda today.

R.B. No. 291; AAC THE ADMINISTRATION OF MEDICATION FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS FOUND NOT COMPETENT TO STAND TRIAL.

This bill follows in the wake of the U.S. Supreme Court's ruling in Sell v. U.S. last summer. In that case, the Court clarified the types of findings and circumstances that warrant overriding a criminal defendant's liberty interest in refusing anti-psychotic medication. While Sell involved the 5th Amendment due process rights of a federal defendant, the same general Constitutional principles apply in state criminal procedure.

Borrowing from established features of Connecticut law with respect to involuntary medication and substitute decision makers, this bill establishes two new mechanisms to authorize administration of psychiatric medication to criminal defendants who have been placed in the custody of the Commissioner of Mental Health and Addiction Services pursuant to Section 54-56d of the General Statutes. For 54-56d patients who are determined to be incapable of giving informed consent for medication, DMHAS could initiate a petition in probate court for appointment of a "special limited conservator". The bill defines a "special limited conservator" as a health care provider with training in the treatment of persons with psychiatric disabilities and who would have specific authority to consent to the administration of medication to the 54-56d patient. However, if the 54-56d patient is determined to be capable, but refuses to consent to receiving medication, the bill authorizes DMHAS to petition the probate court for authorization to involuntarily administer medication. In either case, the bill would establish time limits for the administration of medication, and identifies factors and findings that must be considered by the conservator or the probate court.

Our Office has no quarrel with the intent or general provisions of this bill. I understand that some additional clarifying language has been worked out between DMHAS, the Public Defender's Office and advocates who are directly involved in representing DMHAS inpatients. The clarifications focus on ensuring consistency between parallel provisions of the proposed mechanisms for medicating 54-56d patients and those in the existing statutory scheme for involuntary medication administration to inpatients who are hospitalized. These changes are minor, but they reinforce important principles such as ensuring that conservators

Testimony of Jim McGaughey
Page 2 of 3
February 27, 2004

are not employees of the hospitals treating the person being conserve. Including these minor clarifications could avoid future confusion, and our Office would support including them as this bill goes forward.

R.B. No. 294; AAC LIVING WILLS.

This bill would significantly expand the level of detail addressed in the statutorily suggested form for living wills, calling on someone making a living will to choose between various types and degrees of medical intervention he or she wishes to have under different circumstances. Prior to executing a living will that followed the statutory form, a person would need to discuss the implications of these decisions with a physician, and the formalities for execution would also change, as the physician with whom this discussion was held, and any other party named as health care agent, conservator, alternate, or attorney-in-fact would also need to sign the document, attesting that they, too, have discussed its provisions with the testator.

At first blush, the range and specificity of resuscitative options to choose from reads like an overwhelming and a somewhat de-humanizing menu. But in the high-tech world of today's health care institutions, there are a lot of treatment options, and vaguely worded living wills often give insufficient guidance as to what the person knew and thought about all of those options and contingencies when the document was signed. So some greater amount of detail in the statutory form is probably a good thing.

However, as a disability rights advocate, I am concerned about including certain provisions. For instance, suggesting that the mere prospect of placing someone who has a chronic and progressive condition into a nursing home might be sufficient cause to justify withholding CPR or mechanical ventilation is somewhat alarming. Many people live with disabling conditions that can be described as "chronic and progressive". Some live in nursing facilities, but many also live in their own homes or with others. Where you live is more a function of your relationships and the resources available to you than a question of the extent of your need for care. People who have lived with their disabilities for a long time – especially those who grew up with disabilities – will tell you that their doctors were often very pessimistic regarding both their prospects for longevity and their quality of life, and that physicians are also often uninformed about various types of care and support options available to people with disabilities. Establishing a contingency in a living will that is based on presumptions about the inevitability of institutionalization, and that equates a need for extensive care with poor quality of life serves more to perpetuate stereotypes than to respect legitimate personal choices.

While an individual is free to choose what to put in his or her living will, most living wills are drafted based on the statutory form. Including references to nursing home placement, or to



001231

STATE OF CONNECTICUT
OFFICE OF THE
PROBATE COURT ADMINISTRATOR

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To: Members of the Judiciary Committee

From: James J. Lawlor, Probate Court Administrator

**Re: S.B. 291 AAC The Administration of Medication for the
Treatment of Psychiatric Disabilities to Persons Found Not
Competent to Stand Trial**

Date: February 27, 2004

Thank you for the opportunity to testify before you today in support of Senate Bill 291.

The proposal before you is a result of the U.S. Supreme Court decision of *Sell v. United States* 539 U.S. _____ (2003).

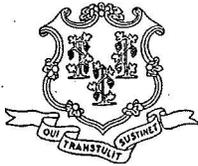
This proposal is the result of months work by persons representing the Department of Mental Health and Addiction Services, the Superior and Probate Courts, the State's Attorney, the Attorney General's Office, Yale University Law & Psychiatry, the Public Defender's Office and the Office of Policy and Management.

I will leave the specifics of this proposal to others from the drafting committee who are testifying before you today.

I would note however, that our probate courts are prepared to handle applications to authorize psychiatric medication for the treatment of non-consenting defendants placed in the custody of the Commissioner of Mental Health and Addiction Services. The majority, if not all, of these hearings will be held at Battell Hall at CVH. Judge Marino has handled thousands of matters involving medication issues and civil commitments in his 17 years as the probate Judge in Middletown. He has developed an expertise in this area that is

unsurpassed. We are confident that these matters will be handled professionally and expeditiously.

We would ask you favorable consideration of this bill.



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

001233

JOHN G. ROWLAND
GOVERNOR

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

Testimony of Gail Sturges, Esq.
Director of Forensic Services
Department of Mental Health & Addiction Services
Before the Judiciary Committee
February 27, 2004

Good afternoon, Sen. McDonald, Rep. Lawlor and distinguished members of the Judiciary Committee. I am Gail Sturges, Esq., Director of Forensic Services for the Department of Mental Health and Addiction Services. On behalf of the department, I am testifying in support of S.B. 291 (Raised), An Act Concerning the Administration of Medication for the Treatment of Psychiatric Disabilities to Persons Found Not Competent to Stand Trial, and S.B. 292 (Raised), An Act Concerning the Status of Patients of the Whiting Forensic Division.

Raised Bill 291 was developed by a committee that included DMHAS, Office of the Attorney General, the Judicial Branch, Office of the Chief State's Attorney, Office of the Public Defenders, Office of Policy and Management, and the Yale University Law and Psychiatry program in response to a U.S. Supreme Court decision in June 2003 (*Sell v. U.S.*), which addressed the question of whether administration of psychiatric medication on an involuntary basis is permissible to restore a criminal defendant to competence to stand trial. In this decision the U.S. Supreme Court found that, before a court can determine whether such involuntary medication is necessary to restore legal competence, the court should first determine whether such

medication should be authorized on alternative grounds; in other words, is the medication appropriate and necessary for treatment of the defendant's psychiatric condition? The Supreme Court further indicated that such alternative grounds for involuntary administration of medications is usually a civil matter and notes that all of the states have civil procedures to address this issue.

However, Connecticut's current statute that establishes the civil procedures for administration of involuntary medication (CGS §17a-543), has been interpreted by the Connecticut Supreme Court (in the 1995 *State v. Garcia* decision), to specifically exclude defendants who are committed to an inpatient psychiatric hospital for treatment to restore them to competence to stand trial. The Connecticut Supreme Court found that the superior court having jurisdiction of the criminal case had exclusive jurisdiction on the issue of involuntary medication of an incompetent defendant, and established criteria for the superior court to apply in making that determination. Unlike the civil standard, which is based on the appropriateness and medical necessity of the involuntary medication for the patient's treatment, the *Garcia* standard does not address whether the medication is needed for treatment, but rather balances the defendant's liberty interest against the state's interest in adjudication. The Connecticut Supreme Court has recently recognized that its decision in *Garcia* has been superceded by the recent U.S. Supreme Court decision to the extent that they differ.

RB 291 would apply Connecticut's well-established civil procedures to the issue of involuntary medication when the purpose of that medication is treatment. The superior court will retain jurisdiction over the issue of involuntary medication when it is recommended for restoration of competence to stand trial, and there is no alternative basis for the medication. This would shift

jurisdiction on the involuntary medication issue in most cases involving incompetent defendants to the probate court, where it is exclusively a medical question. This bill would also provide for *special limited conservators* to be appointed by the probate court, when appropriate, to specifically address the need for medication for incompetent defendants committed under 54-56d. Such conservators would require special qualifications not required of other conservators and would have the same immunity of other state actors. The rationale is that even when treatment is the basis for finding alternative grounds for involuntary medication, which justifies probate jurisdiction of the issue, the superior court also retains an interest in the medication question since it may restore the defendant to competence or impact his or her participation in the trial, thus the need for all parties to have confidence in the ability of the conservator to provide a professionally informed decision regarding medication. The need for immunity is based on increased threat of litigation against special limited conservators, given that medication ordered for treatment purposes may indirectly impact criminal proceedings.

I would urge that this bill, if passed, become effective upon passage. We currently have a patient at Connecticut Valley Hospital who has a serious medical condition for which he needs medication but, due to his untreated psychosis, he is unable to consent to the necessary medication. The probate court found that it lacks jurisdiction to order the medication under current law, and the superior court is not likely to address this purely medical question under the *Garcia* standard.

I am also testifying in support of **R.B. 292, An Act Concerning the Status of Patients in the Whiting Forensic Division**. Dr. Michael Norko has submitted expanded written testimony