

Legislative History for Connecticut Act

2005

<b>Act Number:</b> 19	
<b>Bill Number:</b> 6577	
<b>Senate Pages:</b> Senate: 1500, 1661-1663	4
<b>House Pages:</b> House: 1739-1743	5
<b>Committee:</b> Judiciary : 2327-2334, 2768-2769	10

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

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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
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PART 5  
1282-1616

kmn  
Senate

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Thank you, Mr. President. Calendar 256, H.B.  
6863, I would move to place on the Consent Calendar.

THE CHAIR:

Without objection, the item is placed on the  
Consent Calendar.

SEN. LOONEY:

Calendar 259, Calendar 259, H.B. 6577, would move  
to the Consent Calendar.

THE CHAIR:

The item will be placed on the Consent Calendar.

SEN. LOONEY:

Calendar 260, PR.

Calendar 261, H.B. 6649. Mr. President, would  
move to place this item on the Foot of the Calendar.

THE CHAIR:

If there's no objection, so ordered.

SEN. LOONEY:

Thank you, Mr. President. Calendar Page 10,  
Calendar 263, H.B. 6629. Mr. President, would move  
this item to the Consent Calendar.

THE CHAIR:

The item will be placed on the Consent Calendar.

SEN. LOONEY:

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Without objection, so be it.

SEN. LOONEY:

Thank you, Mr. President. Also at this point would like to call for a vote on the First Consent Calendar.

THE CHAIR:

Will the Clerk please call those items on the First Consent Calendar.

THE CLERK:

Mr. President, those items placed on the First Consent Calendar begin on Calendar Page 1, Calendar 354, S.R. 23.

Calendar 355, S.R. 24.

Calendar Page 2, Calendar 124, S.B. 1069.

Calendar Page 3, Calendar 127, S.B. 1219.

Calendar 134, Substitute for S.B. 1181.

Calendar 157, H.B. 6647.

Calendar Page 8, Calendar 235, Substitute for S.B. 544.

Calendar Page 9, Calendar 254, H.B. 6618.

Calendar 255, H.B. 6807.

Calendar 256, H.B. 6863.

Calendar 259, Substitute for H.B. 6577.

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Calendar Page 10, Calendar 263, H.B. 6629.

Calendar Page 11, Calendar 303, S.B. 1121.

Calendar 304, S.B. 1196.

Calendar Page 16, Calendar 370, H.B. 6414.

Calendar Page 17, Calendar 374, Substitute for  
H.B. 6696.

Calendar 375, H.B. 6810.

Calendar Page 18, Calendar 379, H.B. 6945.

Calendar Page 22, Calendar 194, S.B. 1253.

And Calendar Page 25, Calendar 245, H.B. 6832.

And Calendar 248, H.B. 6833.

Mr. President, that completes those items  
previously placed on the First Consent Calendar.

THE CHAIR:

The Clerk will announce a vote on the First  
Consent Calendar.

THE CLERK:

The Senate is now voting by roll call 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.

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THE CHAIR:

The machine will be opened.

The machine will be closed. The Clerk please  
call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

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

THE CHAIR:

The Consent Calendar is adopted. The bills are  
passed.

THE CLERK:

Turning to the Calendar, Calendar Page 12,  
Calendar 323, File 406, S.B. 1047 An Act Concerning  
The Authorization Of Bonds Of The State For Capital  
Resurfacing And Related Reconstruction Projects.  
Favorable Report of the Committee on Finance, Revenue  
and Bonding.

THE CHAIR: (SENATOR COLEMAN OF THE 2<sup>ND</sup> IN THE CHAIR.)

Senator LeBeau.

SEN. LEBEAU:

H-932

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

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1507-1844

001739

pat  
House of Representatives

120  
April 11, 2005

Have all the Members voted? Have all the Members  
voted? Please check the board to make sure your vote  
is accurately cast.

Have all the Members voted? If so, the machine  
will be locked and the Clerk will take the tally. The  
Clerk will announce the tally.

CLERK:

House Bill Number 6807.

Total Number Voting	137
Necessary for Passage	69
Those voting Yea	137
Those voting Nay	0
Those absent and not voting	14

DEPUTY SPEAKER FRITZ:

The Bill is passed. Will the Clerk please call  
Calendar Number 90.

CLERK:

On Page 16, Calendar Number 90, Substitute for  
House Bill Number 6577, AN ACT CONCERNING PATIENTS AT  
THE WHITING FORENSIC DIVISION AND HEARINGS FOR CERTAIN  
CRIMINAL DEFENDANTS PLACED FOR TREATMENT PENDING CIVIL  
COMMITMENT PROCEEDINGS, Favorable Report of the  
Committee on Public Health.

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DEPUTY SPEAKER FRITZ:

Representative Michael Lawlor from the Town of  
East Haven.

REP. LAWLOR: (99<sup>th</sup>)

Thank you, Madam Speaker. Good afternoon. Madam  
Speaker, I move acceptance of the Joint Committee's  
Favorable Report and passage of the Bill.

DEPUTY SPEAKER FRITZ:

The question is on acceptance and passage. Will  
you proceed, Sir.

REP. LAWLOR: (99<sup>th</sup>)

Thank you, Madam Speaker. This Bill changes the  
current statutes in order to solve a problem, which I  
think no one ever intended.

No matter how you look at it, this would have to  
be considered a very technical problem, Madam Speaker,  
and let me try and explain it.

Currently, if there are offenders who are  
prisoners in the Department of Correction, the  
Department of Correction and the Department of Mental  
Health and Addiction Services have the option of  
transferring an inmate from Whiting Correctional

Facility to the Department of Corrections if they're just a normal inmate.

And obviously, that would happen only if there's a security issue for that patient/offender who's at Whiting.

However, Madam Speaker, because of a quirk in the existing law, if that offender commits a new crime, commits a new crime while already incarcerated, that power does not exist.

In other words, if there was a security concern about a patient at Whiting, they do not have the authority to transfer that patient back to the Department of Corrections because he now has new charges, having already been a prisoner/patient at Whiting.

So I think the common sense explanation, Madam Speaker is that, if there's a patient at Whiting who is in this very, rather unique circumstance and it's appropriate to have him or her supervised in the Department of Corrections as opposed to Whiting, this would allow them the discretion that they already have with all the other offenders under their jurisdiction, and I would urge passage of the Bill.

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DEPUTY SPEAKER FRITZ:

The question is on passage. Will you remark further on the Bill before us? Will you remark further on the Bill before us?

If not, will staff and guests please come to the Well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber, please.

DEPUTY SPEAKER FRITZ:

Have all the members voted? Have all the members voted? Please check the board to make sure your vote is accurately cast.

If so, the machine will be locked and the Clerk will take the tally. The Clerk will announce the tally.

CLERK:

House Bill Number 6577.

Total Number Voting	137
Necessary for Passage	69
Those voting Yea	137
Those Voting Nay	0

pat  
House of Representatives

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Those absent and not voting 14

DEPUTY SPEAKER FRITZ:

The Bill is passed.

DEPUTY SPEAKER GODFREY:

We'll proceed to today's Consent Calendar. Will the Clerk please call today's Consent Calendar, starting with Calendar Number 93.

CLERK:

On Page 1, Calendar Number 93, House Bill Number 6649, AN ACT CONCERNING THE AUTHORITY OF THE COMMISSIONER OF MENTAL HEALTH AND ADDICTION SERVICES, Favorable Report of the Committee on Public Health.

DEPUTY SPEAKER GODFREY:

The distinguished Deputy Majority Leader from East Hartford, Representative Christ, you have the floor, Sir.

REP. CHRIST: (11<sup>th</sup>)

Mr. Speaker. Mr. Speaker, we're about to take up today's Consent Calendar, which consists of seven items.

Calendar Number 93, House Bill Number 6649, AN ACT CONCERNING THE AUTHORITY OF THE COMMISSIONER OF MENTAL HEALTH AND ADDICTION SERVICES.

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The matter could go back before the court and the AR could be denied and the person would have to face not only their old charges and the criminal penalties but any new ones that might come up.

SEN. MCDONALD: Thank you. And thank you for your testimony.

CHIEF STATE'S ATTY. CHRISTOPHER MORANO: Thank you.

SEN. MCDONALD: Now we have just a couple of minutes more during this portion of the public hearing and I think we have time for Commissioner Thomas Kirk. Good afternoon.

COMM. THOMAS KIRK: Good afternoon. Senator McDonald, distinguished Members of the Judiciary Committee, I'm Thomas Kirk, the Commissioner of the Department of Mental Health and Addiction Services.

I'm here today to speak in support of Raised House Bill 6577 AN ACT CONCERNING PATIENTS AT THE WHITING FORENSIC DIVISION. For your information, Whiting Forensic Division is a maximum security psychiatric component of Connecticut Valley Hospital which DHMAS operates.

This bill would insure the safety of patients and staff, as well as the integrity of the treatment involved at Whiting, and preventing the transfer to Whiting of certain violent and dangerous offenders who cannot be safely accommodated in a hospital setting.

Although Whiting is a maximum security psychiatric facility, it is first and foremost a health care institution. Unlike the Department of Corrections facilities, Whiting is regulated by health care and we're accredited by health care organizations such as the Joint Commission to Accreditation [inaudible] organizations.

Unlike inmates from DOC's maximum security facilities, patients at Whiting are afforded the rights provided under the patients' rights statutes, so this involves personal clothing, possessions, access to records, receiving visitors, confidential phone and mail communication.

At Whiting, the use of seclusion and a restraint can only be used when a patient poses an imminent physical danger to self or to others and it has to be ordered by a physician. It cannot be used for the management in the long term risk of dangers, for disciplinary reasons, or for the safety of the institution.

In contrast to DOC, we would immediately use force and apply restraints when the inmate's behavior constitutes the need, threats self, others, or property.

Additionally, the treatment environment of Whiting requires that patients be encouraged and allowed to fully participate in the treatment milieu which includes freedom of movement within the treatment [inaudible] as

well as participating in off [inaudible] activities.

This is clearly a degree of personal freedom, not afforded inmates of a security, under maximum security prisons. Because Whiting is a health care facility and maximum security conditions there are not comparable to maximum security conditions at a DOC facility, nor should they be.

Whiting provides treatment in a more secure environment than any other state psychiatric facility, historically, and has and will continue to provide treatment to criminal defendants committed by the Superior Court and many of whom would be too dangerous to treat in a typical or less restrictive hospital setting.

However, in the limited maximum security conditions are inadequate to provide treatment to a dangerous criminal defendant without jeopardizing the safety of other patients or staff, without seriously compromising the treatment program if [inaudible] the Commissioner of DMHAS should not be required to play such a personal role.

Under this bill, if Whiting is unable to safely accommodate such a person, then that individual shall remain in the custody of the Commissioner of Corrections for appropriate care and supervision.

There's one other clean up piece that I would also add testimony and that's additional change

to proposed legislation with the minor revision in subsection k of 54-56d.

[Inaudible] substantive changes made to the statute a couple of years ago. It would provide that the Superior Court hold a hearing within ten days of receiving a progress report from the [inaudible] indicating the defendant was not [inaudible] committed.

Without that clarification, the Court, that the Court scheduled a hearing, we have individuals who may remain in limbo with [inaudible] committed for restoration, so I suggest to you a modification [inaudible].

To my left is Richard Bennett. Richard is the Director of the Whiting Forensic Security Division and will assist in questions as you see fit.

SEN. MCDONALD: Thank you. Senator Handley.

SEN. HANDLEY: Good afternoon.

COMM. THOMAS KIRK: Good afternoon.

SEN. HANDLEY: Can't tell whether it's day or night in this room. How does a person arrive at Whiting? Are you, hearing you say they are committed by the Court. Are they committed because of their mental, the mental-

COMM. THOMAS KIRK: Status?

SEN. HANDLEY: --status, or are they committed because they have committed a crime and have also been determined to have a mental problem?

I'm curious to know, or if there a number of ways to get to Whiting.

COMM. THOMAS KIRK: Senator Handley, they're committed based on their mental status in conjunction with a crime. I will turn to Mr. Bennett to do it more clearly than I am.

RICHARD BENNETT: At the Forensic Division, we have, committees are sent to us by court order. There is a small number of exceptions. In fact, at the present time, we have 33 civil patients that have been sent to us through a process without the court, through internal, through the penal system.

SEN. HANDLEY: So all of the, all of the folks with the exception of those 33 have gone through the criminal court system, or other court system? I'm just curious.

RICHARD BENNETT: This would be through the criminal court.

SEN. HANDLEY: All through the criminal courts. Okay. Thank you.

SEN. MCDONALD: Are there any other questions? Representative Farr.

REP. FARR: I'm sorry, could you just clarify, the language in the bill is simply adding another

section, as I understand it. 54-56d to the statute. What does 54-56d cover?

RICHARD BENNETT: 54-56d is the section of the law that addresses the competency of an individual to stand trial. It's a competency question where the individuals are sent to Whiting to assist them and evaluate them at a level of competency and report to the court.

REP. FARR: Okay. It's the evaluation of competency to stand trial.

So all this bill is saying is right now, somebody doesn't get transferred to Whiting, they're too dangerous, and this would simply add that language to that exclusion as well. Is that correct?

RICHARD BENNETT: I want to make sure that we're not combining the two pieces of law described here. The last section is strictly a housekeeping, if you will, of existing law. And the primary essence of the testimony today addresses those individuals who are serving time in the Department of Corrections and have committed a crime within Corrections, typically assault, and then acted in such a way as when brought to court on that crime, the question of competency has been raised.

REP. FARR: Under 54-56d.

RICHARD BENNETT: Corrects it. Right.

REP. FARR: So as I understand right now the policy is, if someone is in Corrections and is

mentally incompetent, if it's not an evaluation, if they're otherwise incompetent, if you cannot, if there is a safety risk they're not transferred to Whiting.

RICHARD BENNETT: At the present time they are. With this adjustment they would not be. If it's the determination of the Department of Corrections and the Whiting Division that the actions of such an individual raise themselves to a risk level, that would be appropriate environment.

REP. FARR: Okay. I'm just trying to understand that the drafting of the Legislature, the bill before us and what you're testifying. You want to prevent certain individuals from being sent to Whiting because they're a high risk individual.

RICHARD BENNETT: That's correct.

REP. FARR: And the only ones that are being sent there now that you're having a problem with are those who are being evaluated under 54-56d? Is that correct?

COMM. THOMAS KIRK: Who are already in the Department of Corrections. Those are subsequent offenses. The kind of talked about here [Inaudible] only in the Department of Correction, assaults an officer, goes back to the Court, the judge makes the recommendation to move the person back to Whiting for further competency issues. We just go through repetitive patterns.

In support of our consumers that we have inmates who would prefer to stay in Whiting because of the greater latitude and that these are the kinds of things that would be in a perfect position of bringing people back in and it's not the appropriate place for that.

REP. FARR: Okay. And the last question, if they need a psychiatric evaluation and they were in the Corrections facility already and you determine they're too dangerous, you now have the ability to do that evaluation in the Corrections where they're located without having them sent to Whiting?

RICHARD BENNETT: Yes, Sir.

REP. FARR: And I assume you've discussed this with Corrections and they have no problem with this?

RICHARD BENNETT: Yes, Sir.

REP. FARR: Thank you.

SEN. MCDONALD: Thank you. Are there any other questions? Thank you very much. That brings us to the completing of the first hour of the public hearing, and as was reflected in the Bulletin, the balance of the individuals who have signed up under this section of the public hearing will have an opportunity to speak at the end of the public hearing for members of the general public.

The first person on the next list is Joyce Wojtas. Sorry. Followed by Kristen Reinhart

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2486-2774

2005



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

M. JODI RELL  
GOVERNOR

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

**Testimony of Thomas A. Kirk, Ph.D., Commissioner  
Department of Mental Health and Addiction Services  
Before the Judiciary Committee  
February 28, 2005**

Good afternoon, Sen. McDonald, Rep. Lawlor, and distinguished members of the Judiciary Committee. I am Dr. Thomas Kirk, Commissioner of Mental Health and Addiction Services. I am here today to speak in support of Raised Bill 6577, An Act Concerning Patients at the Whiting Forensic Division.

This bill would ensure the safety of patients and staff, as well as the integrity of the treatment environment at the Whiting Forensic Division of Connecticut Valley Hospital, by preventing the transfer to Whiting of certain violent and dangerous offenders who cannot be safely accommodated in a hospital setting. Although Whiting is a maximum-security psychiatric facility, it is first and foremost a health care institution. Unlike Department of Correction facilities, Whiting is regulated by health care law and accredited by national health care organizations, such as the Joint Commission for Accreditation of Health Care Organizations (JACHO) and the Center for Medicare Services (CMS). Unlike inmates within DOC maximum security facilities, patients at Whiting are afforded the rights provided under the *Patients' Rights* statute (§17a-540 et seq.), including the following: the right to personal clothing and possessions, to access records, to receive visitors unless *medically harmful*, and to confidential phone and mail communication. At Whiting seclusion and restraint can only be used when a patient poses an imminent physical danger to self or others, and it is ordered by a physician. It cannot be used for management of long-term risk of dangerousness, for disciplinary purposes, or for the safety of the institution. In contrast, DOC staff may immediately use force and/or apply restraints when an inmate's behavior constitutes an immediate threat to self, others, *property or to the safety and security of the institution*. Additionally, the treatment program at Whiting requires that patients be encouraged and allowed to fully participate in the treatment milieu, which includes freedom of movement within the treatment unit, as well as participation in off-unit activities. This is clearly a degree of personal freedom not afforded inmates of a maximum-security prison.

Because Whiting is a health care facility, the maximum-security conditions there are not comparable to maximum-security conditions at a DOC facility, nor should they be. Whiting provides treatment in a more secure environment than any other state psychiatric facility, and historically has provided, and will continue to provide, treatment to criminal defendants committed by the superior court, many of whom would be too dangerous to treat in a less restrictive hospital

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setting. However, when the limited maximum-security conditions at Whiting are inadequate to provide treatment to a dangerous criminal defendant without jeopardizing the safety of other patients or staff or without seriously compromising the treatment program, the Commissioner of DMHAS should not be required to place such person in Whiting. Under this bill, if Whiting is unable to safely accommodate such a person, then that individual shall remain in the custody of the Commissioner of Correction for appropriate care and supervision.

I would like to take this opportunity to ask for an additional change to this proposed legislation. We are looking to make a minor revision to sub-section (k) of 54-56d that is necessitated by changes made to that statute two years ago. It would provide that the superior court hold a hearing within 10 days of receiving a progress report from the treater, indicating that a defendant was not civilly committed. Without clarification that the court must schedule a hearing, an individual will remain in legal limbo, neither civilly committed nor committed for restoration. Our recommendation is that you add to the end of the last sentence in 54-56d (k)... *"(D) the defendant has been placed for treatment pending civil commitment proceedings pursuant to subdivision (2) of subsection (h) of this section, and the application for civil commitment of the defendant is denied or not pursued."*

Thank you for the opportunity to address the committee on this important bill. I would be happy to answer any questions you may have at this time.