

Legislative History for Connecticut Act

Act Number:	07-153	
Bill Number:	6390	
Senate Pages:	5257-5259, 5310-5312	6
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Committee:	Judiciary: 868-869, 871-874, 879-881, 984, 985-986, 1008-1035	40

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2007

VOL. 50
PART 16
5071-5415

005257

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slr

Senate

June 4, 2007

THE CHAIR:

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

SENATE ASSEMBLY:

Aye.

THE CHAIR:

No's, "nay". Ayes have it. Senate "A" is
amended and moved. Senator Hartley.

SEN. HARTLEY:

Thank you, Mr. President, and if there is no
objection, Sir, I would ask that this might be added
or start at the Consent Calendar, Sir.

THE CHAIR:

Hearing and seeing no objections, so ordered.

Mr. Clerk.

THE CLERK:

Calendar Page 3, Calendar 573, Files 156 and 794,
House Bill 6390, An Act Concerning Treatment Options

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for Defendants Found Not Competent To Stand Trial, as amended by House Amendment Schedule "A", Favorable Report in Committee on Judiciary and Public Health.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

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

THE CHAIR:

Acting on approval of the bill, Sir, will you remark further?

SEN. MCDONALD:

Thank you, Mr. President, I will. Mr. President, this bill would allow the Department of Mental Health and Addiction Services, with the permission of the court and agreement from the Prosecutor's Office, to treat some individuals with mental illness, when they

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are found not competent to stand trial, and would allow them to be treated in the community.

Mr. President, the purpose of this bill were to allow DMHAS, again, with the oversight of the court, to treat people who are found not competent to stand trial in the least restrictive means possible during the time that they are in the custody of the court.

THE CHAIR:

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

SEN. MCDONALD:

Mr. President, if there is no objection, might this item be placed on the Consent Calendar?

THE CHAIR:

Hearing and seeing no objections, so ordered.

Mr. Clerk.

THE CLERK:

Calendar Page 6, Calendar 650, Files 640 and 903, Substitute for House Bill 6897, An Act Concerning

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

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

Mr. President. Those items placed on the
second Consent Calendar begin on Calendar Page 1,
Calendar 112, Senate Bill 1321.

Calendar Page 3, Calendar 573, House Bill 6390.

Calendar Page 6, Calendar 650, Substitute for
House Bill 6897.

Calendar Page 10, Calendar 192, Substitute for
Senate Bill 1257.

Calendar Page 13, Calendar 356, Substitute for
Senate Bill 1182.

Calendar Page 14, Calendar 484 and Calendar Page HB 6992
18, Calendar 630, Substitute for House Bill 7240.

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

THE CHAIR:

Please call the roll again. The machine will be open.

THE CLERK:

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

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

THE CHAIR:

Senator DeFronzo. If all Senators have voted, the machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 2.

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

THE CHAIR:

Consent Calendar No. 2 passes. Senator Looney.

SEN. LOONEY:

Yes, thank you, Mr. President. Mr. President, I
would move for immediate transmittal to the House of
Representatives of all items acted upon in the Senate
today needing additional action in that Chamber.

THE CHAIR:

Hearing and seeing no objections, so ordered,
Sir.

SEN. LOONEY:

Yes, thank you, Mr. President. Also, Mr.
President, I would move for a suspension to refer all
items from today's Calendar to the Committees'
referenced and ask that that be done immediately and
they not be held.

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Members check the board to see that your vote has been properly cast.

The machine will be locked, and the Clerk will prepare the tally. Will the Clerk please announce the tally.

CLERK:

Senate Bill Number 389, as amended by Senate Amendment Schedule "A" and House Amendment Schedule "A".

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

DEPUTY SPEAKER KIRKLEY-BEY:

The Bill as amended passes. Will the Clerk please call Calendar Number 177.

CLERK:

On Page 22, Calendar Number 177, House Bill
Number 6390, AN ACT CONCERNING TREATMENT OPTIONS FOR

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DEFENDANTS FOUND NOT COMPETENT TO STAND TRIAL,
Favorable Report of the Committee on Public Health.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor, you have the floor, Sir.

REP. LAWLOR: (99th)

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

DEPUTY SPEAKER KIRKLEY-BEY:

The motion is on acceptance of the Joint
Committee's Favorable Report and passage of the Bill.
Will you reply further, Sir?

REP. LAWLOR: (99th)

Thank you, Madam Speaker. My hope is this will
be the last in a series of bills we do relating to
this status of not competent to stand trial.

In this particular case the Bill, if passed,
would affect a very, very small number of persons each
year. We're talking about persons charged with crimes
but not crimes involving any violence.

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We're talking about the point at which they've been found not competent to stand trial, and not restorable. In other words, they have a severe mental illness, which appears that there's no way to remedy that problem so that they'd be competent to stand trial, could assist their lawyer, that type of thing.

And in that particular case under the current law in effect, all persons in that category would be transferred to the custody of the Commissioner of the Department of Mental Health and Addiction Services.

However, in some cases, DMHAS tells us, some of these individuals would be more appropriately placed in community supervised residential treatment, or non-residential, as the case may be.

And this particular Bill would allow that option. However, the only way that option could be exercised would be with the agreement of the prosecutors and the judge.

So it's estimated that maybe a handful of cases per year involving relatively minor charges not involving violence of persons who got into trouble,

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were sent for a competency evaluation, determined that they couldn't be restored, that they could be kept instead where they would probably already be, which is in some type of supervised community-based setting.

So this would provide for that option. Madam Speaker, the Clerk has an Amendment, LCO Number 6473. I'd ask that the Clerk call and I be allowed to summarize.

DEPUTY SPEAKER KIRKLEY-BEY:

Will the Clerk please call LCO Number 6473 and the gentleman has asked, which will be designated House Amendment "A", and the gentleman has asked to summarize.

CLERK:

LCO Number 6473, House "A" offered by Representative Lawlor.

DEPUTY SPEAKER KIRKLEY-BEY:

Is there any objection with summarization? Seeing none, please proceed, Representative Lawlor.

REP. LAWLOR: (99th)

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Thank you, Madam Speaker. This Amendment would simply add into the proposal, some additional findings, which would have to be made in the report to the court in connection with someone who's been found not competent to stand trial, not restorable.

This would require that the report indicate that services are, in fact available, and are in fact appropriate.

If adopted, this would be part of the procedure required in this, and I just want to emphasize one additional time; that this would only happen with the agreement of the prosecutor and the judge. I urge adoption.

DEPUTY SPEAKER KIRKLEY-BEY:

The question before us is on adoption on House Amendment "A". Will you remark? Will you remark further on House Amendment "A"? Representative Powers of the 151st, you have the floor, Ma'am.

REP. POWERS: (151st)

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Thank you, Madam Speaker, good afternoon. A quick question, through you, to the proponent of the Amendment, please.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor, please prepare yourself. Representative Powers, please frame your question.

REP. POWERS: (151st)

Thank you, through you, the proposed Amendment has indicated that the judge and the prosecutor must okay this. What about the patient or the patient's family, or guardian? Through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Well I mentioned that just to add clarity to the Amendment, but the Amendment doesn't relate to that.

The Amendment simply requires some additional information to be included in the report to the court, and in this case that there in fact, are services available and they're appropriate.

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However, it is an important question, but we're talking about a defendant in a criminal case where the court is making a decision what will happen to someone who is in this category, not competent, not restorable.

So I'm sure the court would take into consideration any information, whether it's from the family or others, but at the end of the day the decision is up to the court and according to the requirements of the Bill, not the Amendment, the prosecutor would have to agree to this in order for the court to order it.

So although the family wouldn't necessarily, or anyone else wouldn't have to agree, just the prosecutor, but I'm sure the court would consider any information, including information regarding the family's point of view.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Powers, would you like to pose your question to the Bill as it is amended?

REP. POWERS: (151st)

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No, thank you, Madam Speaker. Just when Representative Lawlor mentioned the judge and the prosecutor, I thought other parts of the Bill had been changed by this Amendment. I was just double checking. I'm fine. Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you. Will you remark? Will you remark further on the Amendment that is before us? If not, let me try your minds. All those in favor please indicate by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER KIRKLEY-BEY:

Those opposed, Nay. The Ayes have it. The Amendment is adopted. Will you remark further on the Bill as amended? Representative DelGobbo of the 70th, you have the floor, Sir.

REP. DELGOBBO: (70th)

Thank you, Madam Speaker. If I might, a few questions to the proponent of the Bill as amended.

DEPUTY SPEAKER KIRKLEY-BEY:

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Representative Lawlor, prepare yourself for questioning. Representative DelGobbo, please frame your question.

REP. DELGOBBO: (70th)

Thank you, Madam Speaker. To the proponent of the Bill, the, I guess there were, you pointed out some of the circumstances or some of the criminal activity that would exclude an individual from this option, I'll say generically, but not being obviously anywhere near as familiar with the criminal statutes as you are, could you describe to me some of the types of criminal activity that could, that a person could have been charged with but then subsequently found incompetent that they then might be eligible for this treatment option or classification? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Yes, I'd be happy to, but first I want to emphasize. It's estimated we're

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talking about a handful, five or six, seven cases per year.

And typically what we're talking about are, it's not unusual in this, unfortunately this is the case in this day and age, that the people I think we're all accustomed to seeing, sort of the homeless people wandering around, seem like they might be mentally ill, might have a bunch of other issues.

They tend to be sort of a nuisance like to store owners or restaurant owners or just neighbors, whatever, the sort of, well, the disturbing looking person in the neighborhood.

It's not unusual they'd be arrested for trespassing or some type of breach of peace, disorderly conduct, you know, the person talking loudly in front of a restaurant or panhandling people coming in and out of restaurants, that type of thing.

Oftentimes, these people have severe mental illness, and in addition to that, some type of brain injury where they're just, they're so ill and so

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disabled that medication can't restore them to the plain.

We're talking about incompetent to stand trial that you can't even assist your lawyer in your own defense. You really can't answer questions. You don't really know why you're there or what's going on. That's the category we're talking about.

And there are some people in that category who aren't really dangerous, aren't violent, didn't commit a serious crime, are probably already during the evaluation part, in some type of community, you know, supervised setting for persons with mental illness, or they try to evaluate them.

All this Bill is trying to say is that in a case like that, the court would have an option usually to let the person stay where they are already receiving their services, as opposed to sending them to Whiting in these very, very expensive, very, very secure settings.

You know, at the end of the day, this certainly would save some money. We're talking about people who

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really don't pose a threat to anybody, don't have any history of violence, and I think the easiest way to explain it is, we all see these people.

We encounter them on the street sometime, and that's the kind of people we're talking about.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative DelGobbo.

REP. DELGOBBO: (70th)

Thank you, Madam Speaker. I appreciate the gentleman's answer. From the gentleman's initial discussion of the Bill, I understood, this Member understood, the kind of individual we were speaking about in terms of their potential mental disabilities or others, or the kind of homeless person, you know, to give sort of a euphemism to the characterization, but that part I understand.

What I was trying to get a clear understanding is, could I get a better understanding of the non-criminal charges, of the non-violent criminal charges

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that we may be discussing that that individual might be charged with, but still be eligible for this?

The gentleman gave one example, and that might be something as simple as trespass, but I'm sure there's a wide range of non-violent criminal activity that is potentially captured here, and I just would like a fuller characterization of what that non-violent criminal activity might be.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Well, I suppose I could go through a list of misdemeanors but I think typically we're talking about shoplifting, breach of peace, disorderly conduct, trespassing, maybe public urination, things like that that you can imagine people who are in this category would get in trouble for.

The police would see it, neighbors would see it, they'd be disturbed, the police would be called, and

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if you go into our criminal courts, unfortunately, you'll see a lot of that these days.

You'll see a lot of persons with mental illness ending up in court. Police and prosecutors and Corrections officials have to figure out what to do with these folks.

The point and the process we're talking about, however, is after they've been evaluated, to see if there's any way they can become competent to stand trial.

We're not, it's not guilty by reason of insanity. We're talking about people who can't even answer questions. They really don't know where they are.

If they're actually found not competent, and they can't be restored to competency, there's no meds that are going to get them where they can respond to questions and stuff, that category of people.

Some are very dangerous and very violent, and prosecutors and no one else would ever suggest they should be anywhere else but a very secure facility like Whiting Forensic.

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But there are others who are more like, you know, I mean, they're really no different than anybody else who has severe mental retardation or severe mental illness or maybe a traumatic brain injury, that type of thing.

They just don't know what's going on and they're getting arrested because of these relatively minor transgressions, and then people just don't know what to do with them, and they end up at the end of the day in Whiting at the moment.

Now, as I said, we're talking about a very, very small number, it's estimated who might even be considered for such a placement, five, six, seven per year. That's all we're talking about.

And again, if it was ever going to happen, everyone would have to agree, the prosecutors, the judges, the defense attorney, everyone else. So I hope that answers the question, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative DelGobbo.

REP. DELGOBBO: (70th)

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Thank you, Madam Speaker. In part, and I appreciate the gentleman's answer. The gentleman does an extraordinary job at sort of expounding on the type of individual that we're speaking about in terms of they're not competent and we all may have seen, unfortunately, that reality face us in different moments in our lives.

The core part of my question is that, is to understand clearly that the non-violent criminal activity portion, that this person is incompetent, I understand, doesn't even understand what they're doing. It's not out of malice. It's not out of, it's just, it's their unfortunate situation.

But the consequence of this Bill is to offer that potential residential placement, you know, a non-traditional placement of the individual.

May only be a few, but for example, the Bill, when I look at the OLR summary, describes people who would be excluded from participating in this, a Class A and B felony, drunk driving, sexual contact with a child under 16, third degree assault.

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So we've got the felonies covered, and we'll just speak about, so it says you could be third degree sexual assault. If I could, through you, Madam Speaker, is there a lesser charge than third degree assault that's not a felony? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Well, assault third degree is in fact a misdemeanor itself, but it's a violent misdemeanor. Less than that, I guess, breach of peace, you know, two guys in a shoving match. Probably they're both guilty of breach of peace, you know.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative DelGobbo.

REP. DELGOBBO: (70th)

Thank you. But is there, in this case, again, I'm going by the OLR summary, there's a, obviously a

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category of offense, which is a misdemeanor, not a felony, called a third degree sexual assault.

Is there a category, which I will in layman's terms say lower than that? Is there a sexual assault offense, a fourth degree sexual assault offense, or something of that type?

Through you, Mr. Speaker. And if so, what would characterize that charge, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. There is, in fact, sexual assault fourth degree. It is in fact a misdemeanor. It is unlawful sexual contact as opposed to the felony sexual assaults, which involve intercourse.

Sexual contact is touching, and touching certain parts of another person for your own sexual gratification, so that in fact is called sexual assault fourth degree, and it is in fact a misdemeanor.

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DEPUTY SPEAKER KIRKLEY-BEY:

Representative DelGobbo.

REP. DELGOBBO: (70th)

Thank you, Madam Speaker. And again, so these, I guess where my concern comes from, and not from understanding explicitly the judicial process system, the criminal statutes, but, and I'm, I share a desire that this institution, this General Assembly has had for we'll call generically, you know, alternative incarceration type of methodologies, particularly those for individuals who are incompetent, who have certain mental disabilities.

Where I begin to have concern is the application in the real world. I, in my community, had a circumstance where individuals, and I'm not saying that this framework applied, but individuals who were deemed incompetent.

And therefore, and then through whatever process without belaboring it, became wards of the state, and were placed in state residential facilities,

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facilities located within communities, within neighborhoods.

And the individuals who resided in those facilities had initially been charged with various criminal activity, and you found neighbors very concerned that next door, across the street, down the road, were individuals living in these residential facilities, who, I guess legally did not, because they were not convicted because they were found incompetent, but who had been at least charged with a variety of criminal activity that could be a cause of concern.

And the definition here, I guess we're talking about appropriate residential facility, and the question has come about, are in fact the, is in fact the supervision, and are the precautions in these facilities sufficient to deal with these individuals at all times in a manner that provides some comfort to the communities and the neighborhoods where these individuals would be.

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And so here we have this proposition before us today, and without belaboring it, I share that concern of that type of circumstance and would ask perhaps if the gentleman could provide me some greater comfort of the circumstances under which an individual might be so categorized and placed potentially in a residential facility in this state so that our residents can feel comfortable with their new neighbors, I guess I'll put it. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Well, the category we're talking about I don't think would, we do have people who are incompetent to stand trial, once again, which basically means you couldn't even really communicate with them. It would be impossible to even have a conversation. I mean they're just totally in another world.

And that is sort of layman's definition of incompetent to stand trial, can't assist your

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attorney, can't, don't understand the charges against
you.

So the interesting thing about this group of
people, this category, is that they're already in a
facility and this Bill would allow them to stay there
at a certain point in the process.

So the way it works is this. You get arrested.
You get to court. It seems pretty clear that you just
do not understand what's going on, and you have a
severe mental illness, so they order a competency
evaluation.

More often than not, at that point, the people
who would be considered for this would then be put in,
they'd be in some type of supervised setting, like for
example, a nursing home. That's where they'd already
be, okay, and then the question now is, can you be
restored to competency.

So usually for a lot of persons with mental
illness, they're very mentally ill when they get
arrested, but they can be restored, so that can be
through therapy and through the miracle of modern

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pharmaceuticals oftentimes work, depending on the specific diagnosis.

So if it works, you're competent now. You go to court and your case is handled like anybody else's case.

Once in a while people are not competent, and can't be restored, because when you're found not competent you're sent somewhere to see if they can restore you, and it may turn out that because of let's say, a traumatic brain injury, there's just no medicine that's going to undo this, so that's the way it goes.

This Bill tries to solve the following problem. At that point in the process you may already, you're probably already in some type of nursing home, supervised type facility.

Under the current law if you're found not competent, not restorable, then the law requires you to be sent to Whiting, which is a maximum security prison, which is also a mental health facility, and the group we're talking about here are, you know, what

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they did is a relatively minor transgression of the law, like they're homeless, they got arrested for trespassing.

If they were competent, they wouldn't even be sent, they would never go to jail. They'd get some sort of probation or whatever. That's from that group.

And so the law requires that they now be sent indefinitely to Whiting, which is a very, very expensive, very, very secure, very, very elaborate place where mass murderers are kept.

And so the Department of Mental Health and Addiction Services in collaboration with the judges and prosecutors say, you know, we wish we had another option here, which we could take advantage of once in a while. It would be more effective. It would save money, and would not in any way jeopardize public safety.

So they're saying, if we had this option once in a while, we'd take advantage of it, and that's the type of person that would be the subject of it.

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But to answer the fundamental question here is, they're already in the setting and if this passed, a few of them would be able to stay there through this indefinite period of not competent, not restorable, and so it's really not putting them somewhere. It's allowing them to stay somewhere where they'd already be. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative DelGobbo.

REP. DELGOBBO: (70th)

Thank you, Madam Speaker. I thank the gentleman. To follow up on that last point, perhaps I didn't understand something.

The gentleman earlier mentioned that currently, under current law, had an individual of this status, if going through the current judicial process, would end up being remanded to Whiting.

And then the final comment in his answer was that this Bill wouldn't change where they would be placed. It simply would allow them to stay there. That seems

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to be sort of inconsistent, at least, maybe I'm not thinking it through.

As I understand the proposition before us, this would allow an opportunity for, an opportunity not a, you know, an absolute, but an opportunity for individuals who are found both incompetent and not going to be able to be restored to competency, an opportunity to be placed in a residential setting as an alternative to their being remanded to Whiting. Am I correct in that, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Madam Speaker, yes, technically that's true. But the placement is ordered by the, when you reach the point in the process where you've been found not competent, not restorable, which typically would be like two, three months after the arrest. So we're talking about, you're way down the road in this process.

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Typically the people we're talking about in this category would have already been in some type of community-supervised facility for some time as they're being evaluated. Now the final report has been issued saying they're not restorable.

So under the current law at that point automatically they'd be sent to Whiting, and this gives the judge an option, with the agreement of the prosecutor, to say instead, instead of normally you go to Whiting, this time we'll place him in a community-based setting, and typically the way it's been described to me, the order would be to allow them to stay where they already are.

So they'd be ordered placed there as an alternative to being sent to Whiting, and so they are going to be ordered to be placed somewhere, but we're talking about staying where you already are, if that makes any sense. I hope it does, but that's the way it works. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative DelGobbo.

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REP. DELGOBBO: (70th)

Thank you. Teaches me to have a debate with a gentleman that everyone in this Chamber knows this stuff better than just about anybody. I say that with great respect.

However, Madam Speaker, I guess where I come to here, and the framework that Representative Lawlor laid out for us does not seem unreasonable. However, I, today, am going to register a no vote on this, and I would suggest for the following reason.

This state, in its attempt to find these alternative frameworks, which are all perfectly reasonable, maybe not just reasonable to the individual, but maybe even cost-effective to the state.

My experience has been that there is concern once you get individuals outside of what we would consider the, you know, facilities like Whiting, once they're in these residential settings, those residential settings are not always uniformly consistent in their ability to supervise the individual with regard to

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whatever their past case history might have been in the criminal activity or to ensure that the facility itself meets the standards that the state has set for security, you know, locks on windows and doors, and ways to prevent, to help prevent these individuals from leaving the property or the premises.

I say that not as theory. I say that as the reality that I experienced in my own community. In many of these cases the state contracts with private contractors to have these residential facilities. The contract says that you're going to have X, Y and Z.

You're going to have X amount of coverage. You're going to have locks on the windows. You're going to have a certain standard of access and leaving the facility, or supervision if they're on the property, and for that reason, I think there's concern.

Now, frankly, what's being discussed here today, and the agency that's involved, is different than the experience that I had. It's a different agency, and maybe different circumstances.

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But I want to register, for what it's worth, sort of a cautionary note that if the state is going to continue to proceed down this path that it is also that state's responsibility, regardless of what agency [inaudible] whether it's DMHAS or DMR in the case that I was referring to, that it has an even greater responsibility to ensure the protection and safety of both the residents placed there, but also the residents in the neighborhoods where these placements take place. That's almost a tongue twister.

So, Madam Speaker, I think Representative Lawlor spoke well to tell us that this is a very narrow circumstance of a category of individual who might get these placements.

But I think I wanted to have on the record a public expression of concern depending on who's listening in the Executive Branch, that the state needs to ensure that residential placements of whatever agency does so, meets the standards that they themselves set in their contracts, and that we've balanced public safety of the residents, or the

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neighborhoods where these placements are with the need to treat the individuals who are placed there. Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative. Representative Giannaros of the 21st, you have the floor, Sir.

REP. GIANNAROS: (21st)

Thank you, Madam Speaker. I rise to express similar concerns to those of Representative DelGobbo. If the Chamber remembers, a few years back we had an incident in Farmington in which case the DMR was involved.

And at that time this particular agency that I just referenced, was planning to locate in a group home next to, practically next to an elementary school, a middle school and a daycare center within walking distance, all those three.

Four individuals who had a record, who had history, rather, of sexual violence of some sort or another, or perhaps pedophile behavior, one of them was actually close to being moved to that particular

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facility when one of the employees of DMR decided that it was too dangerous for the public interest and went against the internal policy, and passed on to local officials in Farmington, information to protect our children and prevent this from, this transfer of this individual to the group home.

And in this particular case, in fact, Representative Lawlor, I'd like to ask you a question relating to this.

In this particular case the individual in question was, had a record in the internal files, that he had behaved in a way that was, one would call abuse, pedophilic abuse, that he's a pedophile while he was actually in the institution and the child was visiting, and they still went on to the plan to place this individual right next to three schools, if I refer to the daycare center as a school, too.

Not only that, they were going to do four of them. Not only that, I was told by Ed Smith, who lost his job, and lost all the benefits the poor man had because he revealed what was about to happen.

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I was told that the same kind of scenario has taken place in many other places because now he was involved in a situation where he actually observed that, working for an entity that was receiving some of these individuals.

So I have really great concerns, and what I'd like to ask Representative Lawlor, we really have to protect the public, and especially our children from that potential abuse.

I'd like to ask Representative Lawlor, the proponent of the Bill, if under the current language that exists in this particular document, the Bill, would it prevent the Department of Mental Health Services from transferring somebody whose internal file indicates there is danger but has not been officially litigated?

DEPUTY SPEAKER KIRKLEY-BEY:

Will you please move that through the Chair, Representative. To the Chair.

REP. GIANNAROS: (21st)

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Oh, I'm sorry, Madam Speaker, yes, through you,
Madam Speaker, to Representative Lawlor. Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. The Bill doesn't give
DMHAS or DMR the authority to do anything. This gives
the court the authority to make a decision for
defendants in a criminal case who are not competent to
stand trial, not restorable.

And I should point out that DMR is excluded from
the Bill by its terms, so it wouldn't ever be a DMR
situation in any event, but it doesn't give DMHAS the
authority to do anything.

It gives, other than sends some information to
the court, but it's the criminal court that would
decide, and the criminal prosecutor involved would
have the authority to say no, as well, which would be
binding. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Giannaros.

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REP. GIANNAROS: (21st)

Thank you, Madam Speaker. Just for clarification purposes, does that mean, through you, Madam Speaker, that this individual or any individual in that particular circumstance, will their file from the Department be made available and open to the court so they can see what is in it?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. The answer is yes.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Giannaros.

REP. GIANNAROS: (21st)

Thank you, Madam Speaker. I appreciate Representative Lawlor's response, and I just want to caution all of us that there are reasons why certain individuals who are violent and can cause harm to society that must be segregated, perhaps not the old way, but somehow protect the interest of our children, and the public at large.

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So we have to be cautious about this, and I want to emphasize, emphasize at least for the record, that the court should not be that easy in making those types of transfers if there are questions. Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative. Representative Mikutel of the 45th, you have the floor, Sir.

REP. MIKUTEL: (45th)

Yes, thank you, Madam Speaker. Just a question to the proponent of the Bill.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor, please prepare yourself for questioning. Representative Mikutel, please frame your question.

REP. MIKUTEL: (45th)

Yes. Representative Lawlor, when the court places these people who are determined incompetent into these community treatment centers, I just want to make, is it in my mind, does this mean placement in a neighborhood, a residential home that has been, that

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is part of any other neighborhood, just a residential home, or is this a nursing home?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. In theory, I guess it could be any of those, but it's important to point out that as I've been told, we're talking about, this is where the person would already be prior to the determination of not competent, not restorable.

So it's more often that will be allowing them to stay where they were already were for whatever the period of time is. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Mikutel.

REP. MIKUTEL: (45th)

All right, so, thank you. Through you, Madam Speaker, so then this can be a residential, a residential home type setting in any neighborhood in anyone's town?

DEPUTY SPEAKER KIRKLEY-BEY:

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Representative Lawlor, sorry for the delay.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. In theory, yes, but it would have to be specifically approved by the judge in the criminal court proceeding and the prosecutor.

Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Okay, well that, thank you. Through you, Mr. Speaker, so then in theory means to me then it can be in reality placement in a residential home in anyone's neighborhood in any town.

And what, I guess then my next question is, do you know the degree of supervision that is carried out in those types of settings?

REP. LAWLOR: (99th)

Thank you, Madam Speaker, Mr. Speaker, through you, the answer to that question would be 24/7 coverage supervision, and 24/7.

SPEAKER AMANN:

Representative Mikutel.

REP. MIKUTEL: (45th)

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Thank you. Through you, Mr. Speaker, 24/7. Are you aware of any history of where the supervision has broken down that has led to some type of criminal behavior as a result of the lack of supervision?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Madam Speaker, the honest answer is yes, of course. There have been breakdowns in every system, you know.

I don't think any of these systems are perfect, but in this particular case the process one would have to go through to end up in this very, very small category would be very elaborate.

And I think the chances of, the offenders we're talking about are non-violent, minor offenders, vagrants, typically, with no history of any type of serious criminal behavior.

That's who we're really talking about, sort of the homeless panhandler types with no history, no suggestion of anything violent or anything like that.

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So I think the odds that you'd have someone in this category who's actually not competent, not restorable, I mean basically not able to communicate at all, you know. The odds of something happening are about as remote as you could get. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Mikutel.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, but just to confirm what you had said earlier. Did you say that individuals convicted of sexual assault in the fourth degree were part of this group?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Through you, no, I didn't say that. I was asked the question is there a degree of sexual assault less than sexual assault third degree. In fact there is. In fact, there are

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many other crimes, and so that's the question I answered.

I can't imagine it would be possible that anyone who was charged with that would ever end up in this category. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Mikutel.

REP. MIKUTEL: (46th)

Thank you, Madam Speaker. I guess my concern here is the direction where we have been going through the deinstitutionalization process where we have placed people in, back into the community.

I'm somewhat concerned about the lack of control at the municipal level. People who wake up one day and find out that we have a group home all of a sudden established in their community overnight, virtually, and they have absolutely no control or no say in the process.

I think this body may have to revisit that at some point, and that's just a concern I wanted to register. Thank you, Madam Speaker.

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DEPUTY SPEAKER KIRKLEY-BEY:

Will you remark further? Representative Dargan
of the 115th, you have the floor.

REP. DARGAN: (115th)

Thank you, Madam Speaker, a question to the
proponent of the Bill.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor, please prepare yourself.
Representative Dargan, frame your question.

REP. DARGAN: (115th)

Thank you, Madam Speaker. Through you to
Representative Lawlor, I know Representative Lawlor in
2004 the Legislature created a civil commitment for
incompetent people charged with non-violent crimes.

And the Bill before us here today, from listening
to debate, I assume somebody would not be eligible if
in fact that individual was charged with a Class A or
B felony except first degree larceny.

And there's a number of other issues, drunk
driving for a motor vehicle violation, in which a
person has been killed, second and third degree

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assault, sexual assault third degree, second degree
assault with motor vehicle.

So, Representative Lawlor, through you, just a
clarification, then. This Bill before us would deal
with non-violent offenders. Is that correct? Through
you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker, yes.

REP. DARGAN: (115th)

Thank you very much for the answer.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you. Representative Hamm, you have the
floor, Ma'am, of the 34th.

REP. HAMM: (34th)

Thank you, Madam Speaker. Through you, to the
distinguished Chair of the Judiciary Committee.

DEPUTY SPEAKER KIRKLEY-BEY:

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Once again, Mr. Lawlor, prepare yourself,
Representative Lawlor. Representative Hamm, please
frame your question.

REP. HAMM: (34th)

Representative Lawlor, I note that the OLR report
indicates the Class C felonies may in fact lead to
placement in community settings. I wondered if you
give us a sense of what kind of non-violent Class C
felonies we could be talking about.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Lawlor.

REP. LAWLOR: (99th)

I'm running a list through my head, Madam
Speaker. I suppose some type of larceny of government
property, for example, stealing something out of the
post office, [inaudible] theft of government property
is a Class C felony. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

You really searched. Representative Hamm.

REP. HAMM: (34th)

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Thank you. I couldn't think of any, either, but I thought the fact that it was a felony was important to probe a bit.

I rise with some hesitation, having supported this Bill in the Judiciary Committee when I was wearing my lawyer hat.

The Bill appears to certainly meet the balance test with the court involvement, the non-violent indication, and pursuing our policy of deinstitutionalization of the mentally ill, all of which I think appears to make it good policy.

The difficulty I have now, and the reason I'm not going to be able to support the Bill is because I'm the Legislator who represents Connecticut Valley Hospital and Whiting.

And it's just too wrong in my district at this point, to go back and explain, and try to explain what non-violent and violent crimes are, and what restorable and non-restorable is, and which mentally ill defendants should be placed in the neighbor's neighborhood, and which aren't.

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And so, with some reluctance, I think the right thing for my district at this time is for me to oppose this Bill. Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative Hamm. Will you remark? Will you remark further on the Bill as amended? Will you remark?

If not, staff and guests please come to the Well. Members take your seats. 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 KIRKLEY-BEY:

Will all Members please check the board to see that your vote has been properly cast. Will all Members please check the board to make sure your vote was properly cast.

The machine will be locked, and the Clerk will prepare the tally. Will the Clerk please announce the tally.

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CLERK:

House Bill Number 6390, as amended by House
Amendment Schedule "A".

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	121
Those voting Nay	23
Those absent and not voting	7

DEPUTY SPEAKER KIRKLEY-BEY:

The Bill as amended passes. The distinguished
Minority Leader; Majority Leader; Mr. Donovan, you
have the floor, Sir.

REP. DONOVAN: (84th)

Thank you, Madam Speaker. Madam Speaker, I move
for suspension of the rules for the immediate
consideration of Senate Bill Number 1134.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you. The question before us is on
suspension of the rules for immediate consideration of
Senate Bill Number 1134. Is there any objection to

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SEN. MCDONALD: Anything further from Members of the Committee? If not, thank you very much.

COMM. THERESA LANTZ: Thank you very much.

SEN. MCDONALD: Is Attorney General Blumenthal here? I still don't see him. Then we will move on to James McGaughey. Good afternoon.

JAMES MCGAUGHEY: Senator McDonald, Representative Lawlor, Members of the Committee, my name is Jim McGaughey. I'm the Executive Director of the Office of Protection & Advocacy for Persons with Disabilities.

HB6391
HB6987

I'm here to talk about three bills that are on your agenda today. I have submitted written testimony, so with your indulgence, I will not read it. I will just summarize.

The first bill is House Bill 6390, AN ACT CONCERNING TREATMENT OPTIONS FOR DEFENDANTS FOUND NOT COMPETENT TO STAND TRIAL.

Under current law, if an individual is not found competent to stand trial and not restorable within a certain specified period of time, the court may remand the person to the custody of the Commissioner of Mental Health and Addiction Services, who will then seek civil commitment for the individual, placing them in a psychiatric hospital.

This bill would create the option of a court ordering DMHAS to provide services in a less restrictive setting, meaning presumably a community treatment option.

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Our office supports the measure as drafted, but I would call attention to the fact that the language here is critical, because it is DMHAS that is being ordered by the court to provide services. It is not the individual who is being ordered to accept them.

And I think that we support the bill as drafted, but we do not want to see an interpretation or a change in language that would turn it into sort of a back door approach to outpatient civil commitment, which some of you may be aware is a very controversial issue and very much opposed in the advocacy community.

The second bill is House Bill 6391, AN ACT CONCERNING INVOLUNTARY ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR PURPOSES OF COMPETENCY TO STAND TRIAL. Our office opposes this bill as currently before you as drafted.

However, I understand that there has been some attempt to develop compromised language in a working has actually apparently succeeded in doing that. I don't know if you have that language before you yet, but I have reviewed it.

It seems to meet our objections so if in fact you accept amendments and substitute language that has been worked out with the Department of Mental Health and Addictions Services and the advocates that have been working with them, then I think that would be acceptable to us as well.

advocates and others with whom you have been talking on Raised House Bill 6391 in crafting a compromise.

It's generally good to involve some Legislators in that process too. I haven't seen the language that you are talking about, so nothing's done until the House and Senate has voted on it, and generally we need to participate in that process.

JAMES MCGAUGHEY: Absolutely, Senator. I didn't see it myself until just after lunchtime today. So we weren't involved in that, but--

SEN. MCDONALD: Are there any other questions?
Senator Meyer.

SEN. MEYER: Mr. McGaughey, hi. Just wanted to chat with you about your comments on House Bill 6390, which provides for treatment options for defendants not found competent to stand trial.

You said at one point in your testimony, we recognize that there are some individuals who may not be competent to stand trial, but for whom civil commitment to a psychiatric hospital is an unnecessary and unhelpful step.

Could you elaborate a little on that, because one of the things we obviously want to be very careful about is if we find someone not competent to stand trial, that that person, if a danger to himself or herself or the community, then, you know, we're going to get in trouble.

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JAMES MCGAUGHEY: Right. I think that there are a lot of reasons that folks with psychiatric disabilities wind up charged with crimes.

In some cases, there are some individuals who would not have gotten in trouble with the law in the first place if they were engaged in some kind of community-based outpatient treatment.

It is sometimes difficult to get into those treatment programs. There are lengthy waiting lists in some cases at the local mental health authorities.

And so it is those individuals who would willingly participate in an outpatient treatment program or receive other kinds of support services who I think we have in mind here.

They may not, however, be able at that particular moment in time to participate with their defense council and, you know, advising them and participating in the preparation of their defense, etc., which is the standard for being found competent to stand trial.

So it's just, the question arises, why is it necessary to send somebody to a psychiatric hospital, when in fact they may not be a danger to themselves or others or gravely disabled? But they may need treatment nonetheless, and they may be quite willing to accept it.

They were just unable to hook up with it and they got into trouble with the law. And so

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it's that group of people that I think this bill is designed to meet their needs.

SEN. MEYER: Okay. I would, and maybe your office is one place where you could get this, I would be inclined to want to have some public protection by having in any amendments we make here some standards or guidelines for those kind of individuals who have been found not competent to stand trial, but who are not a danger to the community, some psychiatric oversight and standards so that the public and that individual, himself or herself, is not hurt.

I have represented, as a lawyer, people with severe schizophrenia, who really have not been competent to stand trial, but who are clearly a danger.

One of them walked out of a place and under a command that was in his mind, jumped off a bridge onto a busy highway. And while he survived that accident, he was left permanently injured. So it could be a hard distinction that I think needs some crafting out.

JAMES MCGAUGHEY: That may well be, Senator Meyer. I guess the concern that I would have is that we don't cross the line into forcing someone into outpatient treatment who is really unwilling to accept it.

The standards for civil commitment now, which are that you are a danger to yourself or others or that you are gravely disabled, winds you up in a hospital.

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Now after you've been in the hospital for some period of time, often a very short period of time, DMHAS can furlough you or can, there's conditional releases, etc., so that you're still operating essentially under that commitment order, even though you're not actually living in the hospital.

But we are opposed to, and I think the entire advocacy community is opposed to any kind of backdoor approach to establish outpatient civil commitment.

And that's a big concern that we have. With any legislation like this is that we don't wind up ordering people to stay home and take their medication or else the police will come and make them take it. That's the kind of scenario we want to avoid.

But in terms of setting up some reasonable safeguards or guidance to a court to determine under what circumstances this would be a reasonable option, I think that would be a fair approach.

SEN. MCDONALD: Any other questions? If not, thank you very much.

JAMES MCGAUGHEY: Thank you.

SEN. MCDONALD: Next is Jeanne Milstein. Good afternoon, Ms. Milstein.

JEANNE MILSTEIN: Good afternoon, Senator McDonald and Members of the Judiciary Committee. My

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SEN. MCDONALD: Thank you. Are there any questions?
If not, thank you very much.

JEANNE MILSTEIN: Thank you.

SEN. MCDONALD: Next is Dr. Michael Norko. Good
afternoon.

DR. MICHAEL NORKO: Good afternoon, Senator
McDonald, Representative Lawlor, distinguished
Members of the Judiciary Committee. My name is
Dr. Michael Norko. I'm the Director of the
Whiting Forensic Division of Connecticut Valley
Hospital.

I'm here today to speak in support of House
Bill 6390, AN ACT CONCERNING TREATMENT OPTIONS
FOR DEFENDANTS FOUND NOT COMPETENT TO STAND
TRIAL, as well as House Bill 6391, AN ACT
CONCERNING INVOLUNTARY ADMINISTRATION OF
PSYCHIATRIC MEDICATION FOR PURPOSES OF
COMPETENCY TO STAND TRIAL.

Both of these bills are related to one
particular statute, Statute 5456D, related to
competency to stand trial. So I'd like to just
summarize that statute and highlight a few
particulars, rather than read through my
written testimony for both of these bills.

When defendants are found not competent to
stand trial by reason of the psychiatric
disability, the court may order them into
treatment in a DMHAS facility, if the court
finds that the person is likely to be restored
to competence to stand trial on that basis.

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So they come into treatment in DMHAS. We provide treatment. And if the person is restored, we report to the court.

There are times, however, when in several places along the judicial process, the court may hear testimony that the person cannot be restored to competence to stand trial.

House Bill 6390 deals with that issue. At the moment, when a court hears from the testifiers that the person's disabilities are such that they can't be corrected, and therefore the person is not likely to be restored, the court has two options, either to simply discharge the person or to order that the Commissioner of DMHAS apply for civil commitment for that individual.

Most of the time that works out appropriately, but there are many cases, there are several a year at least, in which we get such an order and we understand that the person is not an appropriate candidate for civil commitment.

We don't think that they meet the criteria and so we're forced by statute to submit an application to probate court we don't actually believe in and that we actually might believe is a false application.

What this bill is intended to do is to give to the court the option of allowing, after hearing testimony, the Commissioner to allow for treatment in a less restrictive setting, rather than apply for civil commitment.

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It doesn't take away from the courts' discretion to order that the Commissioner apply for civil commitment, but if the court feels that it's heard enough, that the person does not meet criteria and that the person can be managed in a least-restrictive alternative, it can order the Commissioner to do that.

The one thing that I want to add to my written testimony is that a concern has been raised that there might be misinterpretation that the court could expect our Office of Court Evaluation testifiers to come into court prepared with some sort of a treatment plan for the individual and community.

That's not what this was intended to do. If there is no treatment plan for an individual and community, it's likely that we would not be able to testify that the person could be handled in a less restricted alternative.

So this is not meant as a way to force these evaluators who only meet very briefly with the defendant to evaluate whether they are competent to stand trial, to actually have to prepare a treatment plan for them.

The second bill, House Bill 6391, deals with the issue of what happens when a defendant who is not competent to stand trial is not willing to accept treatment once they've become hospitalized for the purposes of restoring their competence.

We have two mechanisms for doing that in Connecticut. One was created by the

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I submitted my testimony, and if you could read that and give me the least bit of respect, that would be great.

REP. LAWLOR: Thanks, Mr. Ciriello.

MARK CIRIELLO: Thank you, Representative.

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

MARK CIRIELLO: Okay. Thank you.

REP. LAWLOR: Next is Susan Aranoff.

SUSAN ARANOFF: Good afternoon, Senator McDonald, Representative Lawlor, and the remaining distinguished Members of the Judiciary Committee. You guys have my appreciation for staying this long, and because of the late hour, I will be fairly brief.

HB 6390
HB 6391

I have submitted written testimony on three of the bills that were on today's agenda. House Bill 6987, AN ACT CONCERNING RIGHTS OF INMATES WITH MENTAL ILLNESS TO RECEIVE TREATMENT.

And, oh, I should say before I get too far into this. I am a staff attorney for Connecticut Legal Rights Project, which is a nonprofit agency that provides legal services to indigent adults who have or you are perceived as having psychiatric disabilities and who receive or are eligible to receive services from DMHAS.

And I provide legal services to individual clients. I also supervise four paralegal

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advocates and work on a lot of policy and systemic issues. My testimony is informed by ten years of expertise in the area of patient rights.

So the three bills that we are submitting testimony on today, House Bill 6987, the one about prisoners getting mental health services, we support that.

And I do just want to second something that someone testified about, which was the lack of alternatives for incarceration for folks with psychiatric disabilities. Anything you guys can do to move that along, that would really help.

The other bill that I'm just touch very briefly on is House Bill 6390, AN ACT CONCERNING TREATMENT OPTIONS FOR DEFENDANTS FOUND NOT COMPETENT TO STAND TRIAL. Dr. Noriko testified on that in great length earlier.

Again, our agency supports that and, in effect, we commend the Department for proposing it. They might have proposed it because of the cost of inpatient treatment, but we think it goes a long way to satisfy the requirements of the Olmstead case.

United State Supreme Court Olmstead decision basically said that folks should, the states have an obligation to treat folks in the least restrictive, most integrative settings possible.

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JUDICIARY COMMITTEE

February 5, 2007

So if the person, you know, is clinically suitable to receive treatment in the community, they should. And so again, the Department might have its own reasons for doing that.

But it just a long way to, in the direction of their recovery initiative, which, you know, they are leaders leading the country in that direction. So that's another giant step.

The bill that I want to spend the remainder of my time on, House Bill 6391, AN ACT CONCERNING INVOLUNTARY ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR PURPOSES OF COMPETENCY TO STAND TRIAL. You've also heard a lot of testimony on that one today.

And when Dr. Norko testified, he indicated that he had been meeting with some members of the advocacy community and that together we had kind of come up with compromised language.

My apologies to Members of the Committee for not including any Legislators in that process, but in the future, we will know to do that.

And Dr. Norko did meet with us and negotiate in good faith, and the language that we came up with, while we would never support a bill that expands the state's power to involuntarily medicate people, we wouldn't oppose it in its modified form.

If I could just indulge the Committee for a couple more minutes on that. We strongly believe that the bill as drafted would violate the U.S. Constitution.

**Testimony of Susan Aranoff, J.D. Staff Attorney
Connecticut Legal Rights Project, Inc.
Before the Judiciary Committee
February 5, 2007**

Good afternoon, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. I am Susan Aranoff, Staff Attorney at Connecticut Legal Rights Project and I am here today to speak on H.B. 6390, An Act Concerning Treatment Options for Defendants Found Not Competent to Stand Trial.

Connecticut Legal Rights Project, Inc. is a non-profit legal services agency that provides individual and systemic legal services to indigent adults who have, or are perceived as having, psychiatric disabilities and who receive, or are eligible to receive, services from the Department of Mental Health and Addiction Services.

Connecticut Legal Rights Project maintains offices at all DMHAS operated in-patient and out-patient facilities in the state. Our offices are staffed by attorneys and paralegal advocates. I provide legal services to individual clients and I supervise four paralegals. My testimony today is informed by my expertise in the area of patients' rights, in general, and my direct experiences in Connecticut.

Connecticut Legal Rights Project, Inc. SUPPORTS H.B. 6390, An Act Concerning Treatment Options for Defendants Found Not Competent to Stand Trial.

Under existing law, The Department of Mental Health and Addiction Services must apply for the civil commitment of individuals who they believe can be safely and successfully treated in a less restrictive environments. The existing statute gives no opportunity for the court or the Commissioner's staff to exercise discretion on this matter; in short they are forced to apply for commitment.

The changes included in this bill would allow the court to receive expert advice as to whether a defendant does or does not meet criteria for civil commitment, and would give the court the authority to either order the Commissioner to apply for civil commitment or order the Commissioner to provide services to the defendant in a less restrictive setting.

This bill will allow DMHAS to provide services in the community to appropriate individuals. Accordingly, this bill will allow Connecticut to comport with the United States Supreme Court's landmark decision in *L.C. v. Olmstead*. In *Olmstead*, the Supreme Court held that the unnecessary confinement of persons with disabilities in institutions violates the Americans' with Disabilities Act, and constitutes impermissible discrimination in the form of segregation. Thus, states have a duty to provide the level of services deemed clinically necessary in the most integrated and least restrictive settings possible. Further, H.B. 6390 will allow DMHAS to make progress in its transformation of to a recovery oriented system of care. DMHAS is la national leader in this approach. CLRP commends DMHAS for proposing H.B. 6390.

Thank you for the opportunity to address the committee with regard to H.B. 6390.
I would be happy to answer any questions you may have at this time.



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 Michael Norko, M.D., Director
Whiting Forensic Division, Connecticut Valley Hospital
Before the Judiciary Committee
February 5, 2007

Good afternoon, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. I am Dr. Michael Norko, Director of the Whiting Forensic Division of Connecticut Valley Hospital, and I am here today to speak in support of H.B. 6390, An Act Concerning Treatment Options for Defendants Found Not Competent to Stand Trial.

When defendants are found not competent to stand trial—which means that they are unable to aid and assist in their defense, due to a psychiatric disorder—they may be sent to a DMHAS facility for treatment for the purpose of restoring competency, if the court determines that there is a substantial probability that such treatment will lead to restoration of competency.

At various stages of the proceedings related to competency determination, the court may enter a determination that the defendant is not competent and that there is not a substantial probability that the defendant can be restored to competency within the time period permitted by law. These determinations are made under subsection (m) of CGS § 54-56d.

Under the existing statute, when a court determines that a defendant is not restorable, based on testimony from the court clinic evaluation team or the DMHAS treatment team working

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with the individual, the court enters an order that the Commissioner of DMHAS shall apply for civil commitment of that individual in a psychiatric hospital. Under many circumstances, such an application is clinically appropriate and warranted. However, there are situations in which defendants are being managed appropriately in the community or are simply not appropriate candidates for civil commitment.

The existing statute gives no opportunity for the court or the Commissioner's staff to exercise discretion on this matter; thus, we are forced to apply for civil commitment for individuals for whom we legitimately believe there is no cause for such an application, usually because we believe that the individual can be managed in a less restrictive environment.

The changes included in this bill would allow the court to receive expert advice as to whether a defendant does or does not meet criteria for civil commitment, and would give the court the authority to either order the Commissioner to apply for civil commitment or order the Commissioner to provide services to the defendant in a less restrictive setting.

This bill thus creates a mechanism for the court to receive information about the appropriateness of civil commitment, and to reach a decision as to whether to order the Commissioner to seek civil commitment or to provide services without using civil commitment provisions. This bill will allow us to avoid burdening the probate court with civil commitment applications that are not warranted, and will give us a way to provide services in the community to appropriate individuals, in keeping with the recovery-oriented and client-centered focus of the DMHAS mission.

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Thank you for the opportunity to address the committee today in support of H.B. 6390. I would be happy to answer any questions you may have at this time.

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STATE OF CONNECTICUT

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

JAMES D. McGAUGHEY
Executive Director

Phone: 1/860-297-4307
Confidential Fax: 1/860-297-4305

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Judiciary Committee

HB 6987

Presented by: James D. McGaughey
Executive Director
February 5, 2007

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

Raised Bill No. 6390, AAC Treatment Options for Defendants Found Not Competent to Stand Trial would allow criminal courts the option of ordering DMHAS to provide community placement and mental health treatment of certain defendants who have been found to be not competent to stand trial, and non-restorable pursuant to the provisions of Section 54-56d of the General Statutes. Under current law, the court can order DMHAS to pursue civil commitment to a hospital for these individuals. DMHAS can then decide, usually after some period of hospitalization, whether the individual is a good candidate for furlough and conditional release to a community program. Our Office does not oppose the general concept of this bill because we recognize that there are some individuals who may not be competent to stand trial but for whom civil commitment to a psychiatric hospital is an unnecessary and unhelpful step. The bill affords the court the option of ordering DMHAS "to provide services to the defendant in a less restrictive setting." However, please note that the language about who is getting ordered to do what is critically important. We would oppose any attempt to change or interpret this language such that an individual who does not meet the criteria for civil commitment to a hospital could be ordered to accept outpatient treatment if that individual is unwilling to do so.

Raised Bill No. 6391, AAC Involuntary Administration of Psychiatric Medication for Purposes of Competency to Stand Trial would allow a court to order involuntary administration of medication in situations where an individual is determined to have been restored to competency pursuant to Section 54-56d, but then refuses to consent to continue to receive psychotropic medication. Our Office opposes this measure. While we recognize that there may be some individuals who will evade prosecution by refusing to consent to continued medication, forcing a competent person to take powerful, and in many cases potentially risky drugs that can significantly alter thought processes, moods and emotions constitutes a major intrusion by the state on fundamental personal rights. Although it is not often reported in the news media, many of the psychotropic drugs used to treat major mental illnesses are associated with significant side effects and risks to physical health. Different individuals respond differently to these medications. While the drugs may control symptoms in many cases, and many people find them useful, they also can deaden emotions, impede thought processes, cause considerable changes to body metabolism, and sometimes can even cause serious damage to organ systems. With some of these drugs, the potential for harmful effects on health increases over time. It has been our Office's experience that many people who refuse to consent take

Phone: 1/860-297-4300, 1/800-842-7303; TTY: 1/860-297-4380; FAX: 1/860-566-8714

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medication have had prior bad experiences with particular drugs, or articulate other sound reasons for not wanting to take them. Because the decision about whether the benefits of taking these drugs outweigh the risks is a highly personal one with implications for a person's ability to think and feel emotions as well as for one's physical health, the law should not impose these drugs to anyone who is competent to make informed decisions on their own.

Raised Bill No. 6987, AAC the Rights of Inmates with Mental Illness would address a number of the issues our staff has noted during the course of investigating complaints and advocating for prisoners with mental illness. In fact, the provisions of the bill run parallel to some of the terms of a settlement agreement our Office and DOC entered into several years ago to resolve litigation we had initiated over the treatment of inmates with mental illness in maximum security and designated mental health housing units. The bill would extend the reach of those provisions of that settlement agreement beyond those particular units. Specifically it requires that inmates be afforded an opportunity to privately communicate with a mental health professional (as opposed to having to discuss one's mental health status through a cell door where neighbors and custodial staff can listen in). It would also require: face-to-face assessments prior to initiating medication; reviews of proposed disciplinary sanctions involving inmates with mental illness to ensure that discipline is not being initiated simply in response to a behavior that is a manifestation of the inmate's mental illness; and, where possible, an opportunity for a mental health professional to intervene prior to using force against an inmate with a known mental illness.

Our Office fully supports this bill. However, I cannot help but note that there is some risk that if it becomes law, we may create the impression that our prison system will become a safe and acceptable place to send people with mental illness. In truth, prisons are, and will always be unsatisfactory places to house people with psychiatric disabilities. Nonetheless, it is estimated that between 12 to 16 % of DOC inmates have mental illnesses serious enough to require treatment. In fact, as is true across the country, the number of inmates in Connecticut prisons with significant mental illnesses now far exceeds the number of people being served in state psychiatric hospitals. Incarceration has an enormous impact on the lives of those individuals, and they, in turn, significantly impact the resources of the law enforcement, judicial and correctional systems. So, while we want to protect the civil rights of inmates who have or who may develop mental illnesses, we do not want to encourage the practice of incarcerating even more people with mental illness by creating the inevitably false impression that we are making our prisons into good treatment and programming environments. Above all, we cannot lose sight of the reality that many (though admittedly not all) of the people with mental illness who are now being charged and convicted of offenses would never have gotten into trouble in the first place if relevant community-based services were more readily available.

On a more technical note, I am given to believe that one of the provisions of the bill may not be fully consistent with language in a consent decree the State entered into a number of years ago regarding mental health services at the York institution. Our Office was not involved in that case, but I believe you will be hearing some suggested language from a representative of the ACLU.

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

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HB 6987

STATE OF CONNECTICUT OFFICE OF : Civil Action No. 3:03CV1352 (RNC)
PROTECTION AND ADVOCACY :
FOR PERSONS WITH DISABILITIES; :
JAMES MCGAUGHEY, Executive :
Director, Office of Protection and :
Advocacy for Persons with Disabilities, :
 :
Plaintiffs, :
 :
v. :
 :
WAYNE CHOINSKI, Warden, :
Northern Correctional Institution, :
in his official capacity; :
GIOVANNY GOMEZ, Warden, :
Garner Correctional Institution, :
in his official capacity; and :
THERESA C. LANTZ, Commissioner, :
Connecticut Department of Correction, :
in her official capacity; : MARCH 8, 2004
 :
Defendants. :

SETTLEMENT AGREEMENT

A. GENERAL PROVISIONS

1. This settlement agreement is entered into by the parties to resolve all of the claims made in this action, wherein the plaintiffs, Office of Protection and Advocacy for Persons with Disabilities ("OPA") and James McGaughey, bring a number of claims relating to the conditions of confinement of inmates housed at the Northern Correctional Institution and Garner Correctional Institution.

2. In entering this agreement, the parties agree and represent that this agreement is fair, reasonable and adequate to protect the interests of all parties and, with respect to the population served by the plaintiffs, that in the opinion of OPA, entering into this agreement is in the best interests of prisoners and detainees with mental illness, who may develop mental illness, or who are at risk of developing mental illness, who are confined

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at Northern CI and Garner CI. The parties further agree and represent that the terms and conditions of this agreement do not constitute "prospective relief" within the meaning of 18 U.S.C. § 3626.

3. This settlement agreement is not to be construed as a Consent Judgment or as an adjudication on the merits of this litigation. The defendants deny the allegations in this lawsuit and do not admit liability. By entering into this settlement agreement, the defendants do not concede that their past policies and practices violate any state or federal laws, deprive any inmates of their state or federal constitutional rights, or were otherwise inadequate. Moreover, the parties acknowledge that the policies and procedures outlined herein do not define clearly established constitutional rights of inmates or create any private right of action against the State of Connecticut, its agents, employees and/or representatives.

4. By entering into this agreement, the defendants do not waive, and are not authorized to waive, the sovereign immunity of the State of Connecticut or the State's immunity from suit guaranteed by the Eleventh Amendment.

5. This settlement agreement is binding upon the plaintiffs, the plaintiffs' successors in office, employees and agents, the defendants named in this lawsuit, and on the defendants' successors in office, employees and agents.

6. Except where otherwise provided, the Defendants shall be obligated to perform their obligations under this settlement agreement upon the date of the filing of the Court's Order of Dismissal of this matter. The date of the filing of the Court's Order of Dismissal shall hereafter be referred to as the "effective date" of the agreement.

7. The parties shall request that the Court, in its Order of Dismissal, incorporate the terms of this Agreement, thereby making "the parties' obligation to comply with the terms of the Settlement Agreement ... part of the order" consistent with the holding in Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 381 (1994). The parties agree that, after the Court issues such an order, it shall have jurisdiction and authority to enforce this Agreement only as set forth in paragraph A.13, and subject to the termination provisions in paragraph B. 17. See Id.; Scelsa v. City University of New York, 76 F. 3d 37, 40 (2d Cir. 1996).

8. Prior to the filing of any motion challenging the adequacy of the defendants' compliance with the terms and conditions of this agreement, the plaintiffs shall first notify the Commissioner of the Department of Correction, defendants' counsel and the appropriate consultants described in paragraph B.17 in writing, detailing the nature of the breach and the proposed remedy, with specific reference to the enumerated paragraphs in this agreement that are alleged to have been breached. The consultants shall meet and confer as soon as possible regarding the claim of noncompliance and shall convey their recommended resolution of the claim to the parties within 30 days of receipt of the claim. If the consultants are unable to agree upon a recommended resolution, they shall select, by mutual agreement and within 15 days, a neutral expert to arbitrate the claim as set

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forth in paragraph B.17 and shall convey the resulting recommended resolution of the claim to the parties within 30 days of said neutral expert's receipt of the claim. If the parties do not agree with the consultants' recommended resolution, they shall meet and confer within 10 days of the date of the consultants' recommendation.

9. In the event the defendants do not comply with or are unable to comply with the consultant's recommended resolution within 10 days of the parties' meeting and conference described in paragraph A.8., the parties shall contact the appropriate magistrate judge and meet with the court in an effort to resolve any dispute with respect to the defendants' compliance with this agreement. No motion or other proceeding seeking enforcement of this agreement shall be filed or otherwise initiated until the parties have exhausted their discussions with the magistrate judge.

10. The plaintiffs may bring an action to enforce this agreement solely upon a pattern of noncompliance. Individual, isolated instances of noncompliance shall not be sufficient grounds for an enforcement action.

11. If, after exhausting the mandatory, informal resolution process outlined above in paragraphs A.8. and A.9., the plaintiffs file a motion seeking an order to enforce any portion of this agreement, the plaintiffs' request for relief must be limited to specific performance. No money damages may be sought. The plaintiffs shall not seek an order of contempt unless and until (1) the plaintiffs have sought to enforce this agreement by filing an appropriate motion with the court and (2) the court has issued a clear and unambiguous order of specific performance to the defendants. Before an order of contempt is issued, the court shall find by clear and convincing evidence that the defendants did not diligently attempt in a reasonable manner to substantially comply with the court's clear and unambiguous order.

12. Plaintiffs' entitlement to attorneys' fees for monitoring and enforcement of this agreement shall be limited to the three year effective term of this agreement, and shall be limited to the hourly rates permitted under the Prison Litigation Reform Act. In no event shall plaintiffs' entitlement to attorneys' fees for monitoring and enforcement exceed \$20,000 in any calendar year for attorney's fees and \$5,000 a year for plaintiff's monitoring and enforcement expenses.

13. After the Court adopts this settlement agreement, the Court's jurisdiction over the matters set forth in this litigation shall be limited, and specifically, the Court shall retain jurisdiction solely to ensure that the defendants have fulfilled the obligations undertaken in this settlement agreement. If the plaintiffs have reasonable cause to believe that the defendants have failed to substantially perform any obligation undertaken in this settlement agreement, they may follow the procedures for seeking enforcement as set forth in paragraphs A.8. - A.11. herein. At any hearing regarding the issue of the defendants' compliance with the terms of this agreement, plaintiffs shall have the burden of proving that the defendants have a pattern of failing to substantially comply with one or more of the terms of this agreement. If, after hearing, the Court finds that the defendants have failed to substantially comply, the sole remedy shall be an order

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directing specific performance of the agreement herein. The Court shall apply Connecticut state contract law in deciding any motion seeking specific performance. For purposes of this agreement, "substantially comply" and "substantial compliance" mean that the defendants are in compliance with the terms of this agreement in all material respects.

14. Only the plaintiffs named in this agreement or James McGaughey's successors in office shall have standing to file a motion seeking enforcement of any of the terms and conditions of this agreement. This agreement does not confer, and is not intended to confer, any rights upon any other party. The parties to this agreement expressly acknowledge that there shall be no third party beneficiaries to this agreement. Further, any consultants appointed by the parties to audit compliance with this agreement shall have no authority to initiate any proceedings with the court. Only the parties are authorized to initiate proceedings with the court.

15. This agreement in no way waives or otherwise affects, limits or modifies the obligations of inmates to comply with the exhaustion requirements of the Prison Litigation Reform Act, the administrative directives of the Department of Correction or any current or future state or federal law governing the rights and obligations of incarcerated persons.

16. Nothing in this agreement shall require or permit the defendants to violate the laws of the State of Connecticut or the United States of America, nor violate any terms or conditions of any collective bargaining agreements to which the State of Connecticut is or becomes a party. "Laws of the State of Connecticut or the United States of America" are state and federal constitutional provisions, statutes, judicial decisions, Rules of Court and regulations of administrative agencies.

17. The defendants agree that at the present time they are not aware of any conflict between this Agreement and the Laws of the State of Connecticut or any presently existing collective bargaining agreements to which the State is a party. The Commissioner and other policy-making officials of the Department of Correction further agree that they will not seek any new Laws or the execution of new collective bargaining agreements, or any changes or amendments to existing Laws or collective bargaining agreements, that would undermine the obligations undertaken in this Agreement. Nothing in this section shall affect the Department of Correction's ability to defend litigation brought against it, to pursue all litigation options and to exhaust all appeal rights. If, in the future, there arises a conflict between the defendants' obligations under this Agreement and any Laws of the State of Connecticut or collective bargaining agreement, the defendants may follow the laws of the State of Connecticut or collective bargaining agreement, and they shall promptly notify counsel for the plaintiffs of the perceived conflict. In the event that the defendants, due to such a claimed conflict, cease compliance with any provision of this Agreement, the plaintiffs may seek to enforce this Agreement or may seek reformation of the Agreement to address such cessation of compliance. Compliance with any law or collective bargaining provision that is determined by the court to conflict with defendants' obligations under this Agreement

shall be a complete defense to a claim of noncompliance with this Agreement. Prior to instituting any such enforcement or reformation action, the plaintiffs shall notify the defendants, and the parties shall meet with the Court. The provisions of A.8. – A.11. do not apply in these circumstances. The defendants shall continue in full compliance with all provisions of this Agreement that are not affected by the purportedly conflicting Law or collective bargaining agreement.

18. Nothing in this agreement shall be construed to limit, in any way, the authority of the Commissioner of the CDOC to transfer inmates to other state or federal jurisdictions and/or to a private prison.

B. SPECIFIC PROVISIONS

1. Definitions

“CDOC” means the Connecticut Department of Correction, UConn Correctional Managed Health Care, and their employees, contractors, and agents.

“Congregate programming” means programming in which the prisoner interacts with other prisoners.

“Consultants” means the consultants provided for in paragraph B.17.

“DMHAS” means the Connecticut Department of Mental Health and Addiction Services.

“Designated housing unit for the mentally ill” means the IPM, IMHU, F Block, G Block, and H Block at Garner Correctional Institution, the observation cells at NCI, as well as any housing unit that may hereafter be established at GCI or NCI where prisoners are housed due to mental illness or impairment.

“Doctoral-level clinician” means a licensed psychiatrist, or a licensed psychologist with a Ph.D., Psy.D., or Ed.D. degree.

“Exigent circumstances” means circumstances under which the doing of an act otherwise required by this Agreement would create an unacceptable risk to the safety of any person. Whenever an act otherwise required by this Agreement is excused on account of “exigent circumstances,” defendants shall attempt to resolve the “exigent circumstances” as soon as possible, and the act shall be performed as soon as possible after the “exigent circumstances” cease to exist.

“GCI” means Garner Correctional Institution.

“IMHU” means the Intensive Mental Health Unit at Garner Correctional Institution.

“IPM” means the Inpatient Mental Health unit at Garner Correctional Institution.

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"NCI" means Northern Correctional Institution.

"Observation" means that an inmate has been removed from a housing unit at NCI and admitted to an observation cell in the NCI medical unit because of mental health concerns.

"Prisoner housed in a designated housing unit for the mentally ill" does not include a prisoner whom a doctoral-level clinician has certified in writing is housed in such a unit for reasons unrelated to that prisoner's mental health.

"Programming" means therapeutic, educational, recreational, work, or other activities.

"Qualified Mental Health Professional" and "Practitioner" mean psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for the mental health needs of patients. (Taken from NCCHC Standard J-E-05 Re: Mental Health Screening and Evaluation).

"Serious assault" means intentionally striking, attacking or attempting to strike or attack a Department of Correction employee, another inmate or any other person, with or without the use of an object or substance (Taken from DOC Code of Penal Discipline, A.D. 9.5.12 C & D).

"Seriously mentally ill" has the meaning set forth in Appendix A hereto.

2. Scope of Agreement

Except as specified in paragraph B.4. below, this Agreement applies only to prisoners housed at GCI and NCI.

3. Removal of the Seriously Mentally Ill from NCI

Persons who are subject to the DMHAS evaluation process set forth in Appendix B hereto and meet the definition of "Seriously Mentally Ill", as defined in Appendix A hereto, shall be removed from NCI within ten business days of receipt of DMHAS' report, absent exigent circumstances. If the removal of a prisoner is delayed because of "exigent circumstances," defendants shall attempt to resolve the "exigent circumstances" as soon as possible, and the prisoner shall be removed as soon as possible after the "exigent circumstances" cease to exist.

4. Exclusion of the Seriously Mentally Ill from NCI's Administrative Segregation Program

Any prisoner being considered for transfer to NCI for placement in the administrative segregation program shall be evaluated by a licensed doctoral-level clinician, or by a qualified mental health professional if a licensed doctoral-level clinician is not available,

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to determine whether the prisoner is seriously mentally ill. Absent exigent circumstances or the unavailability of a qualified mental health professional, the evaluation will take place prior to the transfer of the inmate to NCI's administrative segregation program. In the event there was no pre-transfer evaluation, or if the prisoner was not evaluated by a licensed doctoral-level clinician prior to transfer, then an evaluation by a licensed doctoral-level clinician shall be completed by the end of the third business day after the inmate's transfer to NCI's administrative segregation program. The evaluation shall include, at a minimum, review of the prisoner's medical and mental health files, and custody data, and a face-to-face interview with the prisoner, conducted in a private, confidential setting. For any prisoner being considered for transfer to NCI's administrative segregation program or transferred to NCI's administrative segregation program under this paragraph, defendants shall make a good faith effort to obtain records from any pre-incarceration psychiatric hospitalization, and any such records, if obtained, shall be reviewed by the doctoral-level clinician as part of the evaluation. If the prisoner is found to be seriously mentally ill, he shall not be transferred to or kept at NCI's administrative segregation program, except as set forth below:

1. Absent exigent circumstances, no seriously mentally ill prisoner shall be transferred to the administrative segregation program at NCI without prior notice to plaintiffs. If defendants wish to transfer a seriously mentally ill prisoner to the administrative segregation program at NCI, they shall give plaintiffs at least ten days' advance notice of the proposed transfer, unless exigent circumstances make such notice impracticable.
2. No seriously mentally ill prisoner shall be housed in the administrative segregation program at NCI unless defendants have produced a report to plaintiffs that
 - a. provides documentation of the prisoner's dangerousness;
 - b. describes all potential alternative placements, both in Connecticut and outside the state, that defendants have considered for the prisoner, and explains why none of them is workable; and
 - c. identifies the additional services that will be provided to the prisoner if he is transferred to NCI, to help him with his serious mental illness and to mitigate the effect the conditions at NCI have on that illness.

If a prisoner housed at NCI in the administrative segregation program is found to be seriously mentally ill, that prisoner shall be removed from NCI within 10 days of that finding unless exigent circumstances warrant otherwise. If the removal of a prisoner is delayed because of "exigent circumstances," defendants shall attempt to resolve the "exigent circumstances" as soon as possible, and the prisoner shall be removed as soon as possible after the "exigent circumstances" cease to exist.

A prisoner who has been deemed unsuitable for transfer to NCI and placement in the administrative segregation program because he is seriously mentally ill, or has been removed from NCI's administrative segregation program because he is seriously mentally

ill, shall not thereafter be transferred to NCI and placed in the administrative segregation program unless (a) the dangerousness exception set forth in point 2. above applies or (b) unless more than four months have passed since the prisoner was found to be seriously mentally ill; a UCONN doctoral-level clinician has determined, after appropriate evaluation, that the prisoner is not currently seriously mentally ill and is not likely to become seriously mentally ill if transferred to NCI; and these findings are confirmed by an independent evaluation performed by a doctoral-level clinician from DMHAS selected by the parties. In the event the UCONN doctoral level clinician and the DMHAS doctoral level clinician disagree, the Commissioner of the DOC ("Commissioner") may transfer the prisoner to NCI and place him in the administrative segregation program if the Commissioner explains in writing why he/she disagrees with the conclusion of the independent DMHAS evaluation and agrees with the finding by the UCONN clinician that the inmate is not seriously mentally ill and is not likely to become seriously mentally ill if transferred to NCI and placed in the administrative segregation program. Conversely, if the Commissioner agrees with the evaluation done by the DMHAS clinician, the prisoner shall not be transferred to NCI and placed in the administrative segregation program. A copy of the written explanation will be sent to plaintiffs and to the consultants. A prisoner who is subject to this review process may be transferred to NCI and placed in the administrative segregation program pending the outcome of the review process; provided that in such cases, the initial determination shall take place within five days of that transfer, the independent evaluation shall take place within 10 days of the initial determination, and the Commissioner's review shall take place within five days of the independent evaluation. If the result of the review process is to transfer the prisoner back out of NCI's administrative segregation program, that transfer shall take place within five days of the completion of the review process. Defendants shall promptly notify plaintiffs and the consultants whenever a prisoner who has previously been found to be seriously mentally ill is transferred to NCI and placed in the administrative segregation program.

4.a. Periodic Evaluations

Prisoners housed at NCI and in the administrative segregation program shall be evaluated not less than every 90 days by a doctoral-level clinician to determine whether their mental health is being adversely affected by confinement at NCI's administrative segregation program. This evaluation shall include, at a minimum, review of the prisoner's medical, mental health, and custody files, and a face-to-face interview with the prisoner, conducted in a private, confidential setting.

5. Mental Health Staffing

CDOC shall employ at least 1 FTE psychiatrist, or the equivalent of 1 FTE psychiatrist, for each 150 prisoners who are prescribed psychotropic medications at GCI and NCI. Prisoners prescribed psychotropic medication by a M.D. for a reason other than for treating a mental health condition, shall not be included in this "150 prisoners" figure for staffing purposes provided however, that such prescriptions shall be subject to audit by the consultants as described below. For purposes of this section and section B.5.A.,

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psychotropic medication to treat dyssomnia, or sleep disorders shall be considered to be prescribed for treating a mental health condition. By "equivalent" in the first sentence is meant that some of the hours of psychiatric time can be replaced by hours of an APRN's time; but at least 60% of the required psychiatrist time must be filled by a psychiatrist; and when APRN hours are substituted for psychiatrist hours, there must be 1.2 hours of an APRN's time for every substituted hour of a psychiatrist's time. Thus, for example, if the equivalent of 1 FTE psychiatrist is required in an institution where 150 prisoners are prescribed psychotropic medications, this requirement can be met by having a psychiatrist 60% of full time and having an APRN 1.2 X 40% time, in other words, (if full-time is considered to be 40 hours per week), 24 hours of a psychiatrist's time and 1.2 X 16 or 19.2 hours of an APRN's time. In terms of other staffing levels, the CDOC will comply with the National Commission on Correctional Health Care 2003 Standard #M-C-07, to wit:

"A written staffing plan assures that a sufficient number of health staff of varying types is available to provide adequate and timely evaluation and treatment consistent with contemporary standards of care."

"Compliance Indicators: (1) All aspects of the standard are addressed by written policy and defined procedures. (2) The responsible health authority approves the staffing plan. (3) The adequacy and effectiveness of the staffing plan are assessed by the facility's ability to meet the health needs of the inmate population."

In accordance with the NCCHC 2003 standard #P-A-06, "A continuous quality improvement (CQI) program in all facilities monitors and improves upon health care delivered in the facility," a quality assurance/peer review mechanism will be developed to monitor the adequacy and effectiveness of the staffing plan, and changes to that plan will be made accordingly.

The usual and customary practice will be to provide the staffing required to implement this agreement. However, short-term deviations shall be permitted in instances of absence beyond the power of the defendants to correct by means of providing overtime assignment or by any other means reasonably available to defendants. Defendants shall give written notice of any such deviations to plaintiffs and to the consultants.

5a. Psychoactive Medication

University of Connecticut Health Center, Correctional Managed Health Care, Policy and Procedures Number G 51.05 (Revised 12/20/01, 6/18/03) will be followed, with these additions and changes:

No prisoner shall have a prescription for psychotropic medication initiated, changed or discontinued without a prior, private, face-to-face interview with a psychiatrist, or APRN under a psychiatrist's supervision, unless exigent circumstances exist or an inmate refuses to participate in a private face-to-face interview. In cases where a prisoner is admitted to NCI or GCI already receiving prescribed psychotropic medications, the medications can

be prescribed prior to a visit with a psychiatrist or APRN, but with an order by a psychiatrist or APRN, pending a face-to-face visit within three days. Any prisoner who is prescribed psychotropic medication shall be evaluated in a private face-to-face interview with a psychiatrist or APRN at least every two months, or more often if clinically indicated. If the prisoner refuses to exit his cell to meet with the psychiatrist or APRN in an office for the purpose of an initial assessment for medications or a follow-up evaluation, the clinician will go to see the prisoner at his cell, assess the clinical situation, devise and institute an appropriate intervention for the individual prisoner under the circumstances, and record the encounter and the intervention in the medical chart within 96 hours of the refusal. In the case of routine changes or prisoner-initiated discontinuation of prescribed medications, the prescribing psychiatrist or APRN will attempt to schedule a meeting with the prisoner within 7 days of the refusal, to discuss the prisoner's condition and medications, or, if he refuses to come to the office, will visit the prisoner at his cell within 96 hours of the refusal, and will devise and carry out an appropriate treatment plan and record it in the prisoner's chart.

The foregoing paragraph does not apply to psychotropic medications prescribed by an M.D. for a reason other than for treating a mental health condition. The consultants shall address such prescriptions in the audit instrument described in Section B.17. and shall review the issuance of such prescriptions as part of their audits.

According to Policy #G 51.05, "The CMHC psychiatrist, or CMHC APRN with psychiatric certification, shall sign telephone orders within 72 hours of the order." At NCI and GCI, if a telephone order is given, the psychiatrist or APRN will try to see the prisoner within 24 hours if practical, but in any event shall see the prisoner within 72 hours. The meeting will occur in a private, confidential setting unless exigent circumstances or the prisoner's refusal make this impracticable.

6. Confidentiality of Mental Health Services

Prisoners shall have the opportunity to request mental health services 7 days a week through a confidential written request system. These requests shall be collected 7 days a week, and shall be triaged by mental health staff within 24 hours of collection. These requests, and any responses to them, shall be filed in the prisoner's mental health file. Except in emergencies or in instances where an inmate refuses to come out of his cell for a private interview, mental health evaluation and/or treatment shall not be provided at cell-front, but shall be delivered in a setting that provides audio privacy from other prisoners and from non-health care staff. If the prisoner refuses to exit his cell, a licensed doctoral level clinician or APRN will go to see the prisoner at his cell within 96 hours of the refusal, assess the clinical situation, devise and institute an appropriate intervention for the individual prisoner under the circumstances, and record the encounter and the intervention in the prisoner's health record.

Whenever CDOC policy or this agreement require that a prisoner be "evaluated," "seen," "examined," "interviewed," "assessed," or "screened" (or any other similar term) for mental health purposes (including the 30 and 90 day mental health reviews required by A.D. 9.4, "Restrictive Status," para. 14.D.), a "cell front" interview shall not satisfy this

requirement. Rather, the prisoner shall be interviewed in a setting that provides audio privacy from other prisoners and from non-health care staff. This provision shall not apply in instances where an inmate refuses to come out of his cell for a private interview. If the prisoner refuses to exit his cell, a licensed doctoral level clinician or APRN will go to see the prisoner at his cell within 96 hours of the refusal, assess the clinical situation, devise and institute an appropriate intervention for the individual prisoner under the circumstances, and record the encounter and the intervention in the prisoner's health record.

7. Use of Force on the Mentally Ill

Prior to a planned use of force on a prisoner housed in a designated housing unit for the mentally ill, clinical intervention shall be attempted by a qualified mental health provider, acting in consultation, if possible, with a doctoral-level clinician. The provider shall attempt to verbally counsel the prisoner and attempt to persuade him to cease the behavior that has led to the planned use of force. The provider shall document this process in the prisoner's health record.

If the clinical intervention described in the previous paragraph does not, in the opinion of the shift supervisor, resolve the situation requiring use of force, the shift supervisor shall issue a verbal warning to the prisoner, and shall provide the prisoner with a reasonable amount of time to cease the offending behavior before initiating the use of force. The shift supervisor shall document this warning in an incident report.

Prior to a planned use of chemical agents on a prisoner housed in a designated housing unit for the mentally ill, and absent exigent circumstances, the prisoner's health record shall be consulted by a qualified member of health services staff to determine whether the use of chemical agents on the prisoner is medically contraindicated. The substance of this consultation shall be documented on a medical incident report or the prisoner's health record.

Nothing in this section shall preclude a shift supervisor from authorizing use of force in an emergency to prevent significant injury to the inmate in question, or another person, or damage to property that raises safety concerns.

8. Discipline

Before a Class A disciplinary report as defined in A.D. 9.5 is delivered to a prisoner housed in a designated housing unit for the mentally ill, a qualified mental health professional shall be consulted and asked to express an opinion as to (1) Whether the behavior for which the disciplinary report is given is a result of the prisoner's mental illness, and (2) Whether disciplining the prisoner would aggravate his mental illness. This consultation shall be documented in an incident report, a disciplinary investigator's report or the inmate's health record. If the practitioner answers in the affirmative to either of Questions (1) or (2) above, the disciplinary report shall not be delivered to the prisoner and shall be dismissed, unless the Warden directs in writing otherwise. In any

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case in which a prisoner is given a disciplinary report despite the practitioner's affirmative answer to Questions (1) and/or (2), the form on which the practitioner's opinion is noted shall be given to the hearing officer prior to the disciplinary hearing and/or the imposition of any sanction.

In no event shall a prisoner receive disciplinary sanctions for verbally reporting to appropriate CDOC staff feelings or intentions regarding self-harm or suicide.

9. Observation

Any prisoner at NCI who remains on Observation for more than 72 hours shall be transferred on an emergency basis to GCI. Prisoners in Observation shall be treated in compliance with NCCHC standards governing use of restraints and seclusion.

10. Restraint Policy

No prisoner shall be required to wear restraints during recreation, except that:

1. Upon transfer to Phase I of the administrative segregation program at NCI, a prisoner who has committed a serious assault or other serious incident that significantly impacts the operation of a housing unit or facility within the past 90 days may be required to wear restraints during recreation for not more than a 7 day period, unless a facility classification review demonstrates in writing a legitimate reason for continuing restraints.
2. A prisoner who, while housed at NCI, commits a major misconduct involving serious assault or other serious incident that significantly impacts the operation of a housing unit or facility may be required to wear restraints during recreation for not more than a 21 day period, unless a facility classification review demonstrates in writing a legitimate reason for continuing restraints.
3. Use of restraints during recreation for prisoners housed in a designated housing unit for the mentally ill shall be governed by paragraph B. 16 and not by this section.
4. A monthly report shall be generated and given to plaintiffs and the consultants listing every prisoner who has been required to wear restraints during recreation for 21 or more days and for each such prisoner, the dates he has been required to wear restraints during recreation.

No prisoner shall be required to wear hand or wrist restraints during non-contact visiting, except that:

1. Upon transfer to Phase I of the administrative segregation program at NCI, a prisoner who has committed a major misconduct involving serious assault or other serious incident that significantly impacts the operation of a housing unit or

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facility within the past 90 days may be required to wear hand or wrist restraints during non-contact visiting for not more than a 7 day period, unless a facility classification review demonstrates in writing a legitimate reason for continuing restraints.

2. A prisoner who, while housed at NCI, commits a major misconduct involving serious assault or other serious incident that significantly impacts the operation of a housing unit or facility may be required to wear hand or wrist restraints during non-contact visiting for not more than a 21 day period, unless a facility classification review demonstrates in writing a legitimate reason for continuing restraints.
3. A monthly report shall be generated and given to plaintiffs and the consultants listing each prisoner who has been required to wear hand or wrist restraints during visiting for 21 or more days and for each such prisoner, the dates he has been required to wear restraints during visiting.

A prisoner for whom a major misconduct has been dismissed, or of which the prisoner has been found not guilty, shall not be deemed to have "committed" that misconduct for purposes of this section.

For prisoners housed in a designated housing unit for the mentally ill, four point restraints shall be applied and maintained only in accordance with A.D. 6.5, Use of Force (revised 2/28/03) section 9 on use of therapeutic restraints, a copy of which is attached as Appendix C.

11. Programming in Phase 1

Programming will be available to all prisoners in all three phases of the NCI administrative segregation program. Prisoners may have the opportunity to complete assignments while in their cells, but not all programming will be conducted exclusively in-cell. Programming will be available in English and Spanish. Sign language interpreter services shall be made available to deaf or hard of hearing prisoners, and any written material shall be made available in either Braille or large print format to any prisoner who is blind or has a visual impairment. Prisoners who are unable to read or write or otherwise unable to complete written assignments because of learning disabilities or other disabilities that preclude them from being able to concentrate (such as ADD or ADHD) shall be excused from all written assignments.

The prisoner's demonstrated willingness to participate in the programming will be a factor that may be considered by the classification committee in deciding whether the prisoner will progress to the next phase of the NCI administrative segregation program; but specific answers given or not given in the course of that participation shall not be a factor that may be considered by the classification committee unless they demonstrate an unwillingness to participate or are threatening.

12. Length of Phase 1

The minimum duration of NCI's administrative segregation Phase 1 shall be 120 days. After 180 days on Phase 1, a prisoner shall be promoted to Phase 2 unless a facility classification review demonstrates in writing a legitimate reason for the inmate to remain in Phase I.

If a prisoner remains on Phase 1 for more than 120 days, he shall be evaluated by a doctoral-level clinician to determine whether his progress through the phase system is being impaired by mental illness. This evaluation shall include, at a minimum, review of the prisoner's medical, mental health, and custody data, and a face-to-face interview with the prisoner, conducted in a private, confidential setting. The practitioner shall document this evaluation, and the practitioner's findings, in the inmate's health record. If the practitioner finds that the prisoner's progress through the phase system is being impaired by mental illness, the practitioner shall report this finding to the classification committee, which shall consider promotion of the prisoner to Phase 2, or other accommodation for the prisoner's mental illness. If the prisoner is not promoted to Phase 2, the evaluations required by this paragraph shall thereafter occur every 30 days while the prisoner remains in Phase 1.

A monthly report shall be generated and given to plaintiffs and the consultants listing every prisoner who has remained in Phase I for more than 120 days and for each such prisoner, the length of his stay at Phase I and the reason(s) for his continued stay in Phase I.

13. Conditions of Confinement

Defendants shall install, and maintain in good working order, calendar clocks that are in or visible from all cells at GCI and NCI's administrative segregation program.

Prisoners in Phases 1, 2, and 3 of the NCI administrative segregation program shall be allowed to purchase commissary-approved audio devices at their own expense.

Prisoners in Phase 1 of NCI's administrative segregation program shall be allowed at least five hours out-of-cell outdoor recreation time per week.

After thirty days, prisoners in Phase 2 of NCI's administrative segregation program shall be allowed at least seven and one-half hours out-of-cell time per week, of which at least five hours shall be outdoor recreation time, and at least two and one-half hours shall be congregate programming.

Prisoners in Phase 3 of NCI's administrative segregation program shall be allowed at least fourteen hours out-of-cell time per week, of which at least five hours shall be outdoor recreation time, and at least two and one-half hours shall be congregate programming.

14. Family

Visiting, commissary or telephone calls may be reduced or eliminated as a penalty for misconduct by a prisoner. However, an inmate found guilty of a disciplinary report shall not lose both visiting and telephone privileges at the same time. Although there is no limit on the amount of time for which an inmate can lose visiting or telephone privileges if he continues amassing disciplinary reports, the maximum amount of time that may be served at any one time is 45 consecutive days. By way of example, if an inmate amasses several disciplinary reports and loses 135 days of visiting privileges and 135 of telephone privileges, the sanctions shall be served as follows: 45 days loss of phone privileges, with no loss of visiting privileges during this 45 day period. Then the phone privileges are temporarily restored for 45 days, while the inmate is on loss of visiting for 45 days, then visiting privileges are restored temporarily for 45 days, while the inmate is on loss of phone privileges for 45 days. The sanctions shall be served in this staggered manner until an inmate has served day for day each penalty imposed. In no event shall mail, legal visiting or legal telephone calls be reduced, eliminated, or otherwise affected as a sanction for misconduct, except that mail may be restricted for mail related misconduct.

15. Staff Training

All security staff at NCI and GCI shall receive at least eight hours of training per year on mental health issues. This training shall cover, at a minimum, the following topics:

- prevention of suicide and self-harm
- recognizing signs of mental illness
- communication skills for interacting with prisoners with mental illness
- alternatives to discipline and use of force when dealing with prisoners with mental illness.

This training shall include both live instruction and distribution of written materials, and shall be provided by instructors at an ACA accredited training academy.

16. Garner Correctional Institution

In the IPM and IMHU units and other designated housing units for the mentally ill at GCI, there will be 3 hours a day, 5 days a week of out-of-cell therapeutic, educational, rehabilitative and recreational programs offered to all prisoners who are capable of safely participating. These programs will include but are not limited to individual and group psychotherapy, milieu therapy, case management, social work intervention, a variety of psychiatric rehabilitation programs, substance abuse programs, recreational activities and supervised free time out of cell. Prisoners who are capable of safely doing so will participate in out-of-cell therapeutic, educational, rehabilitative and recreational activities at least 3 hours per day, 5 days a week. The aim is to progress every prisoner to participate in at least 5 hours per day of out-of-cell programming as soon as possible or when clinically indicated. If, because of a prisoner's assaultiveness, recent disciplinary reports, mental status, or other exigent circumstances, this much out-of-cell activity is

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deemed inappropriate by mental health and correctional staff, or if limits on the manner of out-of-cell activity, including the use of restraints during recreation, is deemed necessary by correctional staff, then an individualized treatment plan will be devised and put into effect with one of its aims being the rapid preparation of the prisoner for participation in the therapeutic milieu and the therapeutic programs that are available on the unit for at least 5 hours per day, 5 days a week, and the end of any limits on the manner of out-of-cell activities, including the use of restraints during recreation.

Each inmate in the GCI treatment program will have an individualized treatment plan developed by the inmate's treatment team. The inmate's programming will be provided in accordance with the individualized treatment plan.

Defendants shall provide a monthly report prepared by the supervising psychologist to the plaintiffs, to the consultants, to the Facility Warden, Health Services Administrator, and to the CMHC Director of Mental Health Services, listing all prisoners whose out-of-cell activities have been restricted to less than 5 hours per day or whose manner of out-of-cell activities has been limited, including wearing of restraints during recreation, for more than seven consecutive days under the provisions of the previous paragraph and describing the rationale for the restrictions.

Upon admission to GCI, an inmate housed in a designated housing unit for the mentally ill may spend up to his first seven days in a "diagnostic and evaluation" program that may limit his out-of-cell time to the extent found appropriate by mental health and custody staff.

Where disciplinary problems arise, they will be managed according to this agreement, and in every instance possible, by having mental health staff collaborate with correctional staff in devising an intervention strategy that both maintains security and the smooth operation of the institution and promotes the aims of prisoners' mental health treatment.

17. Enforcement and Compliance Assessment

This agreement shall remain in effect only for a period of three years from the effective date. The agreement, and all rights and obligations arising thereunder, shall terminate and shall no longer be enforceable three years from the effective date. Upon termination, without the need for any further order of any state or federal court, all jurisdiction of any court, as well as the right of the plaintiffs to seek specific performance of this agreement, shall end, and no court shall have the power or jurisdiction to enforce this agreement. The parties agree that nothing in this agreement may be construed to authorize the court to extend this agreement beyond the termination date referred to in this paragraph, and the plaintiffs expressly agree that they will not seek, and are barred from seeking, an extension of this agreement. As of the third anniversary of the effective date of the agreement, all rights and obligations shall terminate and any pending action for relief would be moot. In the event any motions or proceedings are pending on the third anniversary of the effective date of this agreement, the court shall be bound to dismiss any such motions or proceedings as the court's jurisdiction shall terminate with the exception of any attorneys' fees motions not yet acted upon by the Court.

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The parties agree not to unilaterally seek to modify, extend, add to, terminate, or otherwise challenge this agreement, under the Prison Legal Reform Act or otherwise, for the duration of the three-year enforcement period. The parties further agree that this agreement may be modified or terminated at any time by mutual, written agreement.

To assess the defendants' compliance with this agreement, the plaintiffs shall appoint a mental health consultant and a custody consultant and the defendants shall appoint a mental health consultant and a custody consultant, for a total of two consultants each, and a grand total of four consultants. The consultants shall be given continued access to GCI and NCI to monitor compliance with this agreement. As part of their assessment function the consultants shall have full access to the two facilities and all documents not covered by the attorney-client or work product privileges in the defendants' possession or control that pertain to NCI or GCI, except documents maintained by CDOC that relate to facility security operations, including but not limited to blueprints, chapter seven of the administrative directives, chapter seven of the unit directives, post orders, emergency plans, internal photographs, staff home phone numbers or home addresses, personnel files, or similar documents. The consultants shall also be permitted to conduct private, confidential interviews, on a voluntary basis, as to matters listed on the audit instrument, with both (1) GCI and NCI inmates and (2) any CDOC staff whose responsibilities pertain to NCI or GCI. CDOC will encourage CDOC staff members to talk to the consultants. However, it is understood by all parties that if a particular inmate has pending litigation against the CDOC or its employees, the CDOC staff members may be advised to contact their attorney first, before discussing said inmate with the consultants.

The parties will submit to the court the issue of ordering the disclosure of prisoner health records to the consultants. The parties and their consultants stipulate that any health records ordered to be disclosed by the Court shall be used solely to evaluate compliance with this agreement and all copies of health records shall be destroyed upon termination of this agreement.

The Court shall not, sua sponte or otherwise, expand or alter the provisions of this agreement. The court may, however, act on a motion to reform this agreement as set forth in Paragraph A.17.

The consultants shall not disclose to any inmate information which they obtained under this agreement without prior notification to the parties and their attorneys. Defendants shall have the right to object to the consultants' disclosure of information which, if disclosed to an inmate, could jeopardize the safety and security of staff, other inmates or the general public.

Each mental health consultant shall be a qualified mental health professional, and each party shall submit the name and credentials to the opposing party prior to the date this agreement becomes effective.

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The consultants' sole function shall be to review compliance with this agreement. The consultants shall not review or become involved in matters which are not directly provided for in this agreement and they shall perform this function in accordance with their respective audit instruments. The consultants have no authority to add to or to alter the provisions of this agreement.

Prior to the effective date of this agreement, the mental health consultants shall meet with appropriate CDOC personnel and develop an audit instrument for the purpose of evaluating compliance with the mental health sections of this Agreement and the custody consultants shall meet with appropriate CDOC personnel and develop an audit instrument for the purpose of evaluating compliance with the custody sections of this Agreement. The audit instruments shall be developed solely to assess whether CDOC is in compliance with the express terms and conditions of this agreement, and may not be modified by the consultants during the three years this agreement is in effect except if, by mutual agreement of the two consultants who developed the audit instrument, they find it reasonably necessary in order to perform their duties. Once approved by the parties, the audit instruments shall form the basis of all consultant evaluations, and at no time may either consultant assess any aspect of CDOC operations that is not specifically identified in the audit instruments.

The audits shall be completed according to the following schedule, with reports submitted to counsel for the plaintiffs and the defendants:

- Six months after the effective date of the agreement
- One year after the effective date of the agreement
- Eighteen months after the effective date of the agreement
- Twenty-four months after the effective date of the agreement
- Thirty months after the effective date of the agreement

All consultants' reports shall remain confidential, and shall not be disclosed publicly by the consultants during the effective term of this agreement, except for the purpose of pursuing or defending any action to enforce this agreement, and except if disclosure is ordered by a court of competent jurisdiction. If either party to this agreement is made aware of a request for the entry of such a court order, that party shall notify the other parties to the agreement.

The consultants shall work collaboratively and in an effort to reach consensus on their audit items. In the event the consultants are unable to agree on the audit instrument or on whether the defendants are in compliance with one or more terms of this agreement, then the consultants shall select, by mutual agreement, a neutral expert to arbitrate these issues. The neutral expert shall be entitled to the same level of access to facilities, records, staff and inmates as the consultants.

It is expressly understood and agreed that any consultants appointed by the parties, and anyone selected to arbitrate disputes among the parties' consultants, are not court monitors or special masters, and that the consultants will not submit their reports or have

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any communications with the Court without the express agreement of all parties. No consultant shall engage in any ex parte communications with any court having jurisdiction to enforce the terms of this agreement.

Upon submission of an appropriate invoice for services and expenses, CDOC shall reimburse each of the plaintiffs' consultants in an amount not to exceed a grand total of \$40,000 per year for each of the three years this agreement is in effect (a year shall be each 12 month period following the effective date of this agreement). In the event that a neutral expert is required to arbitrate disputes between the consultants as set forth in this paragraph and as set forth in paragraph A.8., CDOC shall reimburse each such neutral expert in an amount not to exceed \$15,000.00 per year.

18. Attorneys' Fees and Costs

The defendants shall pay to the plaintiffs the sum of \$177,850.00 for attorneys' fees and \$13,131.16 for costs incurred in this case to date. Any future awards of attorneys' fees shall be calculated in accordance with the hourly rates established pursuant to the Prison Litigation Reform Act and limited to \$20,000 a year as set forth in Paragraph A12 above for attorney's fees and \$5,000 a year for plaintiff's monitoring and enforcement expenses.

19. Approval of Legislature Required

Prior to submission of this agreement to the Court for approval, the parties acknowledge that the defendants' authority to enter into this Settlement Agreement is contingent upon the General Assembly's approval of this agreement pursuant to Conn. Gen. Stat. § 3-125a. The defendants have not obtained the General Assembly's approval at the time they and their attorneys signed this agreement, and will not have the General Assembly's approval until such time as the General Assembly has approved this agreement by resolution, or the thirty day period for the General Assembly to consider this agreement has elapsed, as described in Conn. Gen. Stat. § 3-125a.

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PLAINTIFFS,
Office of Protection & Advocacy

James M. McGaughey
Executive Director

Nancy Alisberg
Office of Protection & Advocacy
Federal Bar No. ct21321
60-B Weston Street
Hartford, CT 06120
Tel. (860) 297-4300 Fax (860) 566-8714
E-Mail: nancy.alisberg@po.state.ct.us

Ben A. Solnit
Tyler, Cooper & Alcorn, LLP
Federal Bar No. ct00292
205 Church Street
New Haven, CT 06509-1910
Tel. (203) 784-8200 Fax. (203) 777-1181
E-Mail: solnit@tylercooper.com

David C. Fathi
Federal Bar No. ct22477
ACLU National Prison Project
7731 15th Street, NW, Suite 620
Washington, DC 20005
Tel. (202) 393-4930 Fax. (202) 393-4931
E-Mail: dfathi@nnp-aclu.org

Erin Boggs
Federal Bar No. ct22989
Interim Legal Director
Connecticut Civil Liberties Union Foundation
32 Grand Street
Hartford, CT 06106
Tel. (860) 247-9823 x211 Fax (860) 728-0287
E-Mail: eboggs@cclu.org

DEFENDANTS,
Wayne Choinski, et al.

Theresa C. Lantz
Commissioner of Correction

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY: _____
Terrence M. O'Neill
Assistant Attorney General
Federal Bar No. ct10835
110 Sherman Street
Hartford, CT 06105
Tel. (860) 808-5450 Fax (860) 808-5591
E-Mail: terrence.oneill@po.state.ct.us

Ann E. Lynch
Assistant Attorney General
Federal Bar No. ct08326
110 Sherman Street
Hartford, CT 06105
Tel. (860) 808-5450 Fax (860) 808-5591
E-Mail: ann.lynch@po.state.ct.us

Steven R. Strom
Assistant Attorney General
Federal Bar No. 01211
110 Sherman Street
Hartford, CT 06105
Tel. (860) 808-5450 Fax (860) 808-5591
E-Mail: steven.strom@po.state.ct.us

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CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to the following this 8th
day of March 2004: