

**Act Number:** 09-079  
**Bill Number:** 6341  
**Senate Pages:** 2349, 2585-2588 4  
**House Pages:** 2830-2837 8  
**Committee:** Judiciary: 6082-6088 7

**Page Total:** 19

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**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2009**

**VOL. 52  
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Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar page 14,  
Calendar 611, House Bill 6341. Mr. President, move to  
place that item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Continuing on Calendar  
page 14. Calendar 612, House Bill 6286, Mr.  
President, mark that "passed temporarily."

Also, Calendar page 14, Calendar 620, House Bill  
5664 is marked "go."

Calendar page 15, Calendar 622, House Bill 6496,  
marked "go."

Continuing Calendar page 15, Calendar 623, House  
Bill 6588 is marked "passed temporarily".

Calendar page 16, Calendar 627, House Bill 6567  
is marked "go."

Continuing Calendar page 16, Calendar 628, House  
Bill 5809. Mr. President, move to place that item on  
the Consent Calendar.

THE CHAIR:

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that it be placed on the Consent Calendar.

THE CHAIR:

Without objection, so ordered. Mr. Clerk, would you please return to the call of the Calendar. Mr. Majority Leader.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, if the Clerk might call the first Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

The roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber? An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber? Mr. President, those items placed on the first Consent Calendar begin on Calendar page 5. Calendar Number 392, House Bill 6433.

Calendar 397, Substitute for House Bill 5915.

Calendar 405, House Bill 5536.

Calendar page 6, Calendar 406, House Bill 5873.

Calendar 457, substitute for House Bill 6264.

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Calendar page 12. Calendar Number 599,  
substitute for House Bill 6463.

Calendar page 13, Calendar 608, House Bill 6640.

Calendar page 14, Calendar 611, substitute for  
House Bill 6341.

Calendar 612, substitute for House Bill 6286.

Calendar 620, substitute for House Bill 5664.

Calendar page 15, Calendar 622, substitute for  
House Bill 6496.

Calendar page 16, Calendar 628, House Bill 5809.

Calendar 630, substitute for House Bill 5519.

Calendar page 23, Calendar Number 284, substitute  
for Senate Bill 290.

Calendar page 24, Calendar 103, Senate Bill 754.

Calendar 120, Senate Bill 818.

Calendar 136, Senate Bill 789.

Calendar page 26, Calendar 179, substitute for  
Senate Bill 951.

Calendar page 27, Calendar 207, substitute for  
Senate Bill 950.

Calendar page 29, Calendar 252, substitute for  
Senate Bill 1068.

Calendar page 34, Calendar Number 420, Senate

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Bill 325.

And Calendar page 40, Calendar Number 541, House  
Bill 6076.

Mr. President, that completes the items placed on  
the first Consent Calendar.

THE CHAIR:

On the first Consent Calendar, the machine is  
open.

THE CLERK:

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

THE CHAIR:

Have all the Senators voted? Seeing that all  
Senators have voted, the machine will be closed.  
Clerk, please announce the tally.

THE CLERK:

Motions on adoption to the Consent Calendar,  
number 1.

Total Number Voting	36
Those voting Yea	36

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Those voting Nay 0

Those absent and not voting 0

THE CHAIR:

The Consent Calendar is adopted. Mr. Majority  
Leader.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, a few  
more items to be marked "go." First, Calendar page  
29, Calendar 249, House Bill 6185. Calendar page 35,  
Calendar 424, Senate Bill 1045. Calendar page 36,  
Calendar 429, Senate Bill 940. Thank you, Mr.  
President.

THE CHAIR:

Thank you, sir. Mr. Clerk.

THE CLERK:

Turning to Calendar page 29, Calendar Number 249,  
Files number 49 and 285, House Bill 6185, AN ACT  
CONCERNING PENALTIES FOR VIOLATIONS OF CERTAIN  
PERSONNEL FILE STATUTES as amended by House Amendment,  
Schedule "A". Favorably Reported, Committee on Labor  
and Judiciary.

THE CHAIR:

Senator Prague.

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**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
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locked. The Clerk will please take a tally. Will the Clerk please announce the tally.

THE CLERK:

House bill 6114.  
Total number voting 136.  
Necessary for passage 69  
Those voting Yea 135  
Those voting Nay 1  
Absent and not voting 15

SPEAKER DONOVAN:

Bill passes. Clerk please call Calendar 471.

THE CLERK:

On page 7 -- I'm sorry, 18, Calendar 471,  
substitute for House Bill number 6341, AN ACT  
CONCERNING COMPETENCY TO STAND TRIAL, favorable report  
of the Committee on Judiciary.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

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

SPEAKER DONOVAN:

Questions on acceptance of the Joint Committee's

favorable report and passage of the bill. Remark sir.

REP. FOX (146th):

Thank you, Mr. Speaker. This bill addresses the current 5456 D motions which are those motions pursuant to our statute that deal with the issue of competency to stand trial. What this does is it allows access for the evaluators of the defendants upon such a motion to have -- for those evaluators will have access to the information in the DMHAS Database, especially those records that pertain to prior treatment and prior visits. It would be limited though only to dates of treatment according to a later amendment that I will call in a moment, the dates of treatment and locations. In addition, this bill gives -- extends the deadline for completing the initial competency exam from 15 calendar days to 15 business days. It also states that no later than five business days after a defendant is deemed to be -- to lack competency that a copy of that progress report must be given to the clinical team that originally evaluated the defendant. Mr. Speaker the Clerk has an amendment LCO number 6132. I ask that it be called and I be permitted to summarize.

SPEAKER DONOVAN:

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Will the Clerk please call LCO 6132, which will be designated House A.

THE CLERK:

LCO number 6132, House A offered by  
Representative Lawlor.

SPEAKER DONOVAN:

Representative seeks leave of the chamber to summarize the amendment is there objection of summarization? If not, you may proceed.

REP. FOX (146th):

Thank you, Mr. Speaker what this amendment does is it restricts the information that is available to that -- to the evaluator to those treatment dates and locations. It specifically states that no treatment information could actually be released without a release from the defendant. And I move adoption of the amendment.

SPEAKER DONOVAN:

Question before the chamber is adoption of House Amendment Schedule A. Will you remark? Remark further on the House Amendment Schedule A? Representative O'Neill.

REP. O'NEILL (69th):

Yes. Thank you, Mr. Speaker. If I could just

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ask in terms of the change as a result of this amendment will there be more information or less information ending up in the database? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker. It's -- the database will have the information but it's the access to the information, it will be less. It will be limited to the evaluator being aware of treatment dates and locations. It would not include the actual records unless a written release was provided by the defendant.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

And but for this amendment then the information would have been releasable to others or rather to the evaluator. There's the full medical record as opposed to just the dates of treatment? Through you, Mr. Speaker. Is that correct?

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker. Yes. That is -- there is that possibility and what this will do is it will allow the evaluator to at least be aware that there was prior incidents, there was prior treatment by DMHAS and that information could then be used accordingly.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

In other words the evaluator could eventually get access to that information if they, obviously if they got a written permission. Is there any other way that they would be able to obtain access to the information? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker. It would require signed consent to get that information but the fact that the evaluator will know that there was prior incidents and prior DMHAS contact and visits and evaluations would be of benefit to the evaluator.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. I thank the gentleman for his explanation of the amendment. One last question, I guess I should have checked on the computer, but I would ask is there a fiscal impact on this amendment?

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker. I don't believe there's a fiscal impact on the amendment. I believe simply because it would only address the existing DMHAS database.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Remark further on the amendment? Remark further on Amendment Schedule A? If not, let me try your minds. All those in favor of the amendment please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those nay. The ayes have it. The  
amendment's adopted. Remark further on the bill as  
amended. Remark further on the bill as amended. If  
not, staff and guests come to the well of the House.  
Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll  
call. Members to the chamber. The House is voting by  
roll call. Members to the chamber please.

SPEAKER DONOVAN:

Have all the members voted? Have all the  
members voted? Please check the board to make sure  
your votes were properly cast. If all the members  
have voted the machine will be locked and the Clerk  
will please take a tally. Will the Clerk please  
announce the tally.

THE CLERK:

House Bill 6341 is amended by House A.

Total number voting 136

Necessary for passage 69

Those voting Yea 136

Those voting Nay 0

Absent and not voting 15

SPEAKER DONOVAN:

The bill as amended is passed. Will the Clerk please call -- excuse me. Is there any announcements or introductions? Representative Cook.

REP. COOK (65th):

Thank you, Mr. Speaker. Mr. Speaker I rise for the point of introduction.

SPEAKER DONOVAN:

Please proceed, madam.

REP. COOK (65th):

I would like to introduce my friend Glen McCloud. He is here from Torrington. Also representing AT&T with the CWA 1298 Union. I would like to give him a warm welcome.

SPEAKER DONOVAN:

Welcome to the chamber. Thank you, Representative. Will the Clerk please call calendar 473.

THE CLERK:

On page 19, Calendar 473, House Bill number 6343,  
AN ACT CONCERNING TEMPORARY LEAVE ORDERS ISSUED BY THE  
PSYCHIATRIC SECURITY REVIEW BOARD, favorable report of  
the Committee on Judiciary.

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 19  
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**2009**



**State of Connecticut**  
**DIVISION OF CRIMINAL JUSTICE**

**Testimony of the Division of Criminal Justice**  
**Joint Committee on Judiciary – March 24, 2009**

**In support of:**

- **S.B. No. 6341 An Act Concerning Competency to Stand Trial**

The Division of Criminal Justice would respectfully request the Committee's Joint Favorable Substitute Report for S.B. No. 6341 to effect a change to subsection (m) of § 54-56d of the General Statutes.

Section 54-56d subsection (m), which is entitled "Release or placement of defendant who will not attain competency," allows a court to order an incompetent defendant, whose restoration is not a "substantial probability," to be released or to be placed in the custody of the Department of Mental Health and Addiction Services (DMHAS). The statute expressly provides that, if the court orders release or placement of a defendant who is charged with the commission of "a crime that resulted in death or serious physical injury," the court may order periodic examinations of the defendant's competency to continue throughout the time period in which the defendant may be prosecuted.

The Division of Criminal Justice proposes that subsection (m) be amended to also include the periodic examinations of defendants charged with serious sex offenses. In addition to being a good forensic psychiatric practice, this would provide for better monitoring of sex offenders and enhance public safety.

The proposed amendment includes the following statutes as providing a basis for periodic examinations: subsection 2 of § 53-21; subsection 2 of § 53a-60(a); sections 53a-70, 53a-70B, 53a-71, 53a-72a or 53a-72b. The following language would be in addition to the changes already made in the Raised Bill:

(m) If at any time the court determines that there is not a substantial probability that the defendant will attain competency within the period of treatment allowed by this section, or if at the end of such period the court finds that the defendant is still not competent, the court shall either release the defendant from custody or order the defendant placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation. The commissioner given custody, or the commissioner's designee, shall then apply for civil commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270 to 17a-282, inclusive, and 17a-495 to 17a-528, inclusive. The court shall hear arguments as to whether the defendant should be released or should be placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation. If the court orders the release of a defendant charged with the commission of a crime that resulted in the death or serious physical injury, as defined in section 53a-3, of another person, or with a violation of subsection (2) of section 53-21, subsection (2) of section 53a-60(a),

sections 53a-70, 53a-70b, 53a-71, 53a-72a or 53a-72b, orders the placement of such defendant in the custody of the Commissioner of Mental Health and Addiction Services, the court may, on its own motion or on motion of the prosecuting authority, order, as a condition of such release or placement, periodic examinations of the defendant as to the defendant's competency. Such an examination shall be conducted in accordance with subsection (d) of this section. Upon receipt of the written report as provided in subsection (d) of this section, the court shall, upon the request of either party filed not later than thirty days after the court receives such report, conduct a hearing as provided in subsection (e) of this section. Such hearing shall be held not later than ninety days after the court receives such report. If the court finds that the defendant has attained competency, the defendant shall be returned to the custody of the Commissioner of Correction or released, if the defendant has met the conditions for release, and the court shall continue with the criminal proceedings. Periodic examinations ordered by the court under this subsection shall continue until the court finds that the defendant has attained competency or until the time within which the defendant may be prosecuted for the crime with which the defendant is charged, as provided in section 54-193 or 54-193a, has expired, whichever occurs first. The court shall dismiss, with or without prejudice, any charges for which a nolle prosequi is not entered when the time within which the defendant may be prosecuted for the crime with which the defendant is charged, as provided in section 54-193 or 54-193a, has expired. Notwithstanding the erasure provisions of section 54-142a, police and court records and records of any state's attorney pertaining to a charge which is nolle or dismissed without prejudice while the defendant is not competent shall not be erased until the time for the prosecution of the defendant expires under section 54-193 or 54-193a. A defendant who is not civilly committed as a result of an application made by the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation pursuant to this section shall be released. A defendant who is civilly committed pursuant to such an application shall be treated in the same manner as any other civilly committed person.

In conclusion, the Division of Criminal Justice thanks the Committee for the opportunity to present testimony on H.B. No. 6341. The Division would be happy to provide any additional information the Committee might require or to answer any questions that you might have.



M. JODI RELL  
GOVERNOR

**STATE OF CONNECTICUT**  
DEPARTMENT OF MENTAL HEALTH  
AND ADDICTION SERVICES  
*A HEALTHCARE SERVICE AGENCY*

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

**Testimony of Michael Norko, M.D.**  
**Director of Forensic Services**  
**Department of Mental Health and Addiction Services**  
**Before the Judiciary Committee**  
**March 24, 2009**

Good afternoon, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. I am Dr. Michael Norko, Director of Forensic Services for the Department of Mental Health and Addiction Services, and I am here today to speak in support of H.B. 6341, An Act Concerning Competency to Stand Trial and H.B. 6343, An Act Concerning Temporary Leave Orders Issued by the Psychiatric Security Review Board, which will be addressed by Ellen Weber Lachance of the Psychiatric Security Review Board in her testimony.

H.B. 6341 proposes several amendments to Sec. 54-56d of the C.G.S. related to competency to stand trial. In short, these amendments are intended to: (1) improve treatment provided to restore competency to stand trial by increasing clinical information available to hospital treatment teams; (2) create an expanded opportunity for a rapid treatment option that may pre-empt lengthier and far more costly admissions; and (3) improve the quality of reports and testimony by our evaluators to the superior courts.

Related to the first item, we are requesting that our court clinic teams be able to transmit the clinical information they gather during their evaluation to the hospital when the court orders the

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defendant to be sent to the hospital for treatment to restore competence to stand trial. This will help to inform our treatment teams and may reduce the time an individual has to spend in our hospital.

Related to the second item, we are asking that the timeframe for conducting the evaluation be changed from "15 days" to 15 business days, while keeping the timeframe for submitting the report to the requesting court the same (it will remain at 21 business days). The reason for this request is that we are beginning a pilot program to offer a period of voluntary rapid treatment to defendants for whom competence evaluations are ordered in an attempt to treat defendants sufficiently so that they are able to pass the competency examination. If we have 15 business days instead of 15 calendar days within which to attempt this rapid treatment, we are more likely to be successful. We have found that 3 weeks of treatment can make a substantial difference in a patient's well being. Success here means that the defendant gets hospital treatment more quickly; a higher percentage of defendants will be found competent; and the judicial process may proceed with less interruption due to mental health factors.

It should be noted that the average competency restoration requires 99 days of hospitalization at a cost of \$109,000. Since we perform 210 of these evaluations annually, we expend \$22.9 million on restoring trial competence each year. If by a 30-day rapid treatment intervention we can avoid the need for some of these 99-day restoration commitments, it should be possible to achieve savings that can be redirected toward treating other individuals in our system. Because of the potential positive budgetary impact of this item, we ask that this take effect upon passage, rather than October 1, 2009 as presently proposed.

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Related to the third item, we are requesting two things. First, we ask that the final restoration report submitted by CVH be made available to the original court clinic team that did the evaluation. The report is currently given only to the court, the prosecution and the defense. By sharing the final report with the original evaluators, we hope to provide feedback about the continuity of the defendant's problems, and the accuracy of the initial assessment of competency and restorability. Having this information will provide valuable data to the evaluators that will improve the quality of their work, as well as their reports and testimony to the court, and will enhance the accuracy of data provided to the court about the assessment of restorability of individual defendants upon future evaluations.

Secondly, we also request that the evaluation teams be able to access the DMHAS database of treatment episodes, so that they will be able to request specific releases of information regarding the defendant for those programs where the defendant has received treatment. This database does not contain any progress notes, treatment plans or other clinical information— it is not an electronic medical record. It is merely a list of service episodes, with dates of admission and discharge, and diagnoses given during those episodes. Having this information will increase the likelihood of securing the defendant's release of information for relevant clinical data that will both improve the quality of the report to the court and enhance the ability of the hospital team to provide timely and effective treatment to the defendant who has been ordered into such restoration treatment. The amendment does nothing to alter the defendant's ability to decline the release of information; it merely improves our ability to request the most relevant releases. Without relevant clinical data, it is much harder for our evaluation teams to provide the court with informed opinions about the required

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assessments under Sec. 54-56d of: "substantial probability" of restoration, the "least restrictive placement appropriate and available to restore competency," an estimate of the time period necessary for restoration, or the determination as to "whether the defendant appears to be eligible for civil commitment."

Following further discussions with some of the legal advocacy groups regarding the language of subsection(d), we are proposing additional changes to it so that they may be more comfortable with our intent. Advocates are concerned about permitting access to the database of treatment episodes without the defendant's consent. This database is already available to all DMHAS treatment providers and to our jail diversion staff. The latter make use of this information to craft treatment plans that will allow the courts to divert clients away from the criminal justice system into treatment. We would expect our examiners who conduct competence to stand trial evaluations to not include information derived from the database for episodes of care about which the defendant declines to consent to release of information. We propose that additional language be added to the proposed amendment of subsection (d) in order to explicitly state this limitation on the use of the information. The additional language is noted in **bold print** and underlined below:

When performing an examination under this section, the examiners shall have access to the defendant's treatment history contained in the Department of Mental Health and Addiction Services' database of treatment episodes **for purposes of requesting appropriate releases of information from the defendant. No information about treatment episodes for which the defendant declines to consent to the release of information shall be**

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included in the examiners' report to the court or provided in any testimony on the matter of competence to stand trial. This restriction shall not prevent other legally authorized releases of this information.

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