

PA10-028

HB5247

House	1072-1080	9
Judiciary	631-633, 636, (652), (654-655), 854-856	10
Senate	1619-1625, 1779-1781	10
		29

H – 1076

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
PART 4
895– 1168**

ch/gdm/gbr
HOUSE OF REPRESENTATIVES

74
April 20, 2010

has been 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 5109 as amended by House A.

Total Number voting 144

Necessary for adoption 73

Those voting Yea 144

Those voting Nay 0

Those absent and not voting 7

SPEAKER ALTOBELLO:

The bill as amended is passed.

Will the Clerk please call Calendar 48.

THE CLERK:

On page five, Calendar 48, Substitute for House Bill Number 5247, AN ACT CONCERNING COMPETENCY TO STAND TRIAL, favorable report of the Committee on Judiciary.

SPEAKER ALTOBELLO:

Representative Lawlor of the 99th, you have the floor, sir.

REP. LAWLOR (99th):

Thank you, Mr. Speaker. Good afternoon.

ch/gdm/gbr
HOUSE OF REPRESENTATIVES

75
April 20, 2010

SPEAKER ALTOBELLO:

Good afternoon, sir.

REP. LAWLOR (99th):

I move acceptance of the Joint Committee's favorable report and passage of the bill.

SPEAKER ALTOBELLO:

The question before the Chamber is acceptance of the Joint Committee's favorable report and passage of the bill.

Please proceed, sir.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

This bill adds some language to the existing law which governs the circumstances under which criminal defendants who have been found not competent to stand trial can be re-examined after they have been released by the Department of Mental Health and Addiction Services.

A number of years ago, Mr. Speaker, the -- the Legislature made a change to the law in the aftermath of the case where someone had been charged with murder, found not competent to stand trial, and a number of years later was enrolled as a full-time student at one of our state universities with, I

believe, it was an A average.

One of the journalist organizations in our state found out about that, broadcast to report it, and I think the aftermath of that caused the General Assembly to consider whether or not we should require, in certain circumstances, the re-examination of people who have been found not competent to stand trial.

We did so but we limited it to certain crimes involving serious physical injury and death, so, in other words, murder, manslaughter, assault first degree. In recent years, it's become clear that this same problem exists with other very serious violent offenders and, in particular, sexual offenders.

So this bill adds to the list of crimes, the felony sexual offenses, which allows a judge to order periodic re-examination of a defendant who has been found not competent to stand trial after that defendant has been released by the defendant -- by the Department of Mental Health and Addiction Services.

In addition to that, Mr. Speaker, it adds some clarifying language which governs the actual procedures which the court has to follow when it's going to issue these orders. And it clarifies, as well, that this will end at the time when the statute

of limitations would expire for the prosecution of that offense.

I think, Mr. Speaker, a number of you may not really be familiar with the difference between not competent to stand trial and not guilty by reason of insanity because we did have a discussion about that topic last week, I believe it was.

These are defendants who have never been -- who -- for -- for whom the prosecution became impossible because a court had made a finding that the person did not understand the charges against them or was not able to assist in their own defense based on an evaluation by psychiatrists and other medical professionals and a hearing in court.

When that happens, Mr. Speaker, the case is, in effect, dropped but can be reinstated if at any time the defendant is restored to competency. Frequently, defendants are restored to competency and then the prosecution just begins again. This covers the situation where a person has not been restored to competency and may be out -- and the statute of limitations for prosecuting the crime has not expired. This requires the periodic re-examination to make sure that they are not now competent to be prosecuted, to

ch/gdm/gbr
HOUSE OF REPRESENTATIVES

78
April 20, 2010

allow for the prosecutors to initiate that within the existing statute of limitations.

It's a somewhat complicated situation, Mr. Speaker. These changes are relatively simple. The main change adding some additional crimes to the list through a periodic re-examination is authorized following a court order.

I urge passage of the bill.

SPEAKER ALTOBELLO:

The question before the Chamber is passage of the bill.

Will you remark? Will you remark?

Representative O'Neill of the 69th, distinguished ranking member of the Judiciary Committee, you have the floor, sir.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

And I would also urge passage of the bill. This is something that came to us from the Department of Mental Health and Addiction Services and has the support of the -- not only the Department, but also of the Division of Criminal Justice, as I recollect, the testimony at the public hearing and that this tightens up, perhaps the best way of saying it, the system, so

that there will be less likelihood of someone slipping through the cracks leaving the jurisdiction of the Department of Mental Health and Addiction Services without the courts knowing that they have, in fact, done that, so that there will be an opportunity for the court system to, in effect, bring the person back in to at least make sure that they are given a chance -- or the state is given a chance to try the case against them.

There is one question that I would like to place on the record and that -- want the answer to it. And that is that the -- the -- when -- when an individual is charged with the crimes that we're -- we're talking about here, and they are determined not to be competent, the -- in some cases it talks about that the time limitation for the prosecution has expired.

In the cases that we're dealing with that are -- because we're adding some sexual offenses to the list, what is the time limitation that we're talking about?

Through you, Mr. Speaker.

SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

Well there is a lot of variables that would determine that. It would depend on the specific circumstances. In general, the statute of limitations for sex offenses is five years. I believe that's the case, for most -- which is the case for most felonies. There is a different rule for sexual abusive of children, and I believe the current law -- the current criminal statute of limitations is 30 years from the age of majority, or within five years of the date the complaint is made to the police, whichever comes sooner.

There is an additional exception to the statute of limitations, which is very fact specific involving time that if -- if the defendant fled the prosecution -- fled the jurisdiction to avoid prosecution, sometimes that time does not count. There are other certain exclusions to the -- to the -- to this -- to the period of the statute of limitations as well.

So it would depend on a specific situation but unless it involves a child, the typical statute of limitations is five years from the date of the offense.

Through you, Mr. Speaker.

SPEAKER ALTOBELLO:

Thank you, Representative Lawlor.

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

I was particularly concerned about the -- that we make sure that everyone understands that the 30 years that -- that applies for the children because that is -- has become a very salient topic of discussion regarding sexual abuse and prosecution of these cases and, if someone is deemed ultimately at -- at some point to be not competent to stand trial, that the timeframe that we're talking about here can be a very, very long one indeed during which they would still be subject to these period re-evaluations to determine whether or not they are still not competent to -- to stand trial.

That being said, Mr. Speaker, I would urge adoption of the bill.

Thank you.

SPEAKER ALTOBELLO:

Thank you for your remarks, Representative O'Neill.

Further on the bill? Further on the bill?

If not, staff and guests please return to the

ch/gdm/gbr
HOUSE OF REPRESENTATIVES

82
April 20, 2010

well. 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.

SPEAKER ALTOBELLO:

Have all the members now voted? Have all the members now voted? Please check the board to make sure your vote has been properly cast.

If all members have voted, the machine will be locked. Would the Clerk will please take a tally. Would the Clerk please announce the tally?

THE CLERK:

House Bill 5247.

Total Number voting 145

Necessary for adoption 73

Those voting Yea 145

Those voting Nay 0

Those absent and not voting 6

SPEAKER ALTOBELLO:

The bill passes.

Will the Clerk please call Calendar 350?

THE CLERK:

S – 603

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2010**

**VOL. 53
PART 6
1609 – 1919**

cd
SENATE

117
April 28, 2010

Thank you, Mr. President.

Mr. President, if there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

Without objection, this item may be placed on the consent calendar.

Mr. Clerk.

THE CLERK:

Returning to calad -- calendar page 16,
Calendar Number 456, Substitute for House Bill
Number 5247, AN ACT CONCERNING COMPETENCY TO STAND
-- STAND TRIAL, favorable report of the Judiciary
Committee.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, I move acceptance of the joint
committee's favorable report and passage of the
bill.

THE CHAIR:

The question before the chamber is acceptance
and passage. Will you remark further?

SENATOR MCDONALD:

Yes, Mr. President.

Mr. President, this legislation comes to us as another department bill from the folks at the Department of Mental Health and Addiction Services and is intended to address certain circumstances that they have encountered in dealing with judges who have expressed concern that they are not notified when a defendant who's been deemed not competent or not -- or has been civilly committed is later released from the hospital, and there was a concern that they -- whether there should be notification to the court when that happened.

There is also a concern expressed that -- by some of the -- some judges that they wanted to know whether sexual offenses would qualify as -- as a serious physical injury for some purposes under DMHAS's jurisdiction. This, again, Mr. President, was legislation brought to us by the Department of Mental Health and Addiction Services. We had favorable testimony from Dr. Michael Norco at the Forensics Services Department of DMHAS. We also had testimony from the Division of Criminal Justice, and I know of no opposition to the proposal. And, through you, Mr. President.

cd
SENATE

119
April 28, 2010

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

It's my understanding that the nub of what this bill does is it expands the court authority to order periodic re-exams of those deemed incompetent to stand trial for those charged with sex offenses or specified crimes that result in injuries similar to the re-examination order for those who commit the -- a crime resulting in death. And I'm wondering what right now is the authority that the court has to order re-exam -- to order the re-examination of individuals being held who committed a crime resulting in death? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Mr. President, can we stand at ease for one second?

THE CHAIR:

The chamber may stand at ease.

[Chamber at ease.]

cd
SENATE

120
April 28, 2010

SENATOR MCDONALD:

Thank you --

THE CHAIR:

Senate please be in order.

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, there's nothing that prevents a court from ordering a re-examination, but they often times aren't notified about it. And so this would create an obligation to notify the court when -- when somebody has restored to competency. It would also, I should say, require that the Department notify the court if it releases the defendant before any statute of limitations has expired on the underlying conduct if the individual has been restored to competency. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

So this bill would cause the notification of the court. Does this bill also require a

cd
SENATE

121
April 28, 2010

notification of victims of the crime and, if not, is it the responsibility of the court upon being notified that at least the victims? And let me -- let me paint a picture, somebody commits a heinous crime, not guilty by reason of mental defect or deficiency. They're housed. They are then brought up to a period of time where they are mentally competent, restored. It is still within the statute of limitations period of time where these individuals could be pursued. I guess what this bill contemplates is that there would be some notice to the court, but let's say my constituent is a spouse or a child who's now gain majority of a victim of a crime that resulted in death or severe harm. I -- I don't -- I'm concerned about a situation where everybody in the judicial system knows about this situation except the victims. And all of the sudden they're -- they bump into the individual that has then released from custody. Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

cd
SENATE

122
April 28, 2010

Through you, Mr. President, the -- once the court would be no -- notified of this development, the court would have the opportunity to order a competency hearing and at that time the order would go out to, not only the prosecutors, but would trigger the prosecutors' obligations for notification of victims as well. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

So even though an individual's mental health has been restored, they still would have to go through the process of a competency hearing and that in all instances compene -- competency hearings involve notification of victims. Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

I believe that's correct.

THE CHAIR:

Senator Kissel.

cd
SENATE

123
April 28, 2010

SENATOR KISSEL:

Thank you very much.

That -- that answers my questions and my concerns. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Are there further remarks? Will you remark further?

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

If there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

Is there objection? Is there objection?
Seeing none. This item may be placed on the consent calendar.

Mr. Clerk.

THE CLERK:

Calendar Number 457, File Number 494,
Substitute for House Bill 5406, AN ACT CONCERNING
THE COURTS OF PROBATE, favorable report of the
Committee on Judiciary.

THE CHAIR:

cd
SENATE

277
April 28, 2010

THE CLERK:

Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the chamber? Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the chamber?

Mr. President, the items placed on the first consent calendar begin on calendar page 1, Calendar Number 485, Senate Joint Resolution Number 45; Calendar 486, Senate Joint Resolution Number 46.

Calendar page 8, Calendar Number 299, House Bill number 5251.

Calendar page 9, Calendar 372, House Bill 5252.

Calendar page 10, Calendar 383, Substitute for House Bill 5249.

Calendar page 11, Calendar 402, Substitute for Senate Bill 447.

Calendar page 15, Calendar 452, Substitute for House Bill 5376; Calendar 453, House Bill 5281.

Calendar page 16, Calendar 455, House Bill 5542; Calendar 456, Substitute for House Bill

cd
SENATE

278
April 28, 2010

5247, Calendar 457, Substitute for House Bill

5406.

Calendar page 17, Calendar 464, House Bill

5530.

Calendar page 23, Calendar 75, Substitute for
Senate Bill 229.

Calendar page 24, Calendar Number 98,
Substitute for Senate Bill 312.

Mr. President, that completes those items
placed on the first consent calendar.

THE CHAIR:

Thank you, Mr. Clerk.

If you would announce the vote again, the
machine will be opened.

THE CLERK:

The Senate is now voting by roll call on the
consent calendar. Will all Senators please return
to the chamber? The Senate is now voting by roll
on the consent calendar. Will all Senators please
return to the chamber?

THE CHAIR:

Have all the members voted? Have all the
members voted? The machine will be closed.

Mr. Clerk, please call the tally.

cd
SENATE

279
April 28, 2010

THE CLERK:

Motion's on adoption of Consent Calendar
Number 1.

Total number of voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The consent calendar passes.

Are there any points of personal privilege or
announcements?

Senator Gomes.

SENATOR GOMES:

I'd just like it -- thank you, Mr. President.

I'd just like it to be noted that I missed a
vote today on Senate Bill 168, and I was out of
the area. And if I'd been here, I would have
voted in the affirmative.

THE CHAIR:

Thank you, sir. The Journal is so noted.

SENATOR GOMES:

Thank you.

THE CHAIR:

Any further points?

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 2
327 - 670**

2010

SENATOR MCDONALD: Thank you very much.

And please thank both Carmen L. Rivera, and I will thank Carmen E. Rivera for being here today. Thank you very much.

Are there any questions from -- well, actually, it's kind of hard to question the letter writer but -- but we can, but just so -- just please extend to Ms. Rivera my -- my gratitude.

Representative Gonzalez.

REP. GONZALEZ: [Spanish.]

She says that she lives for 25 years in the same building.

[Spanish.]

JOLENE GATES: Thank you very much.

SENATOR MCDONALD: Thank you.

JOLENE GATES: Thank you.

SENATOR MCDONALD: Next Dr. Norko followed by Kevin Brace.

Is Kevin Brace here?

DR. MICHAEL NORKO: Good afternoon, Senator McDonald, distinguished members of the Judiciary Committee. I am Dr. Michael Norko, the director of Forensic Services for the Department of Mental Health and Addiction Services.

HB 5247

SB 229

HB 5252

SB 221

I'm here today to speak in favor of several bills, and I will just briefly summarize some of the key points about each of these. Before

beginning, I'd also like express our appreciation to the attorneys for the Legislative Commissioner's Office, who've been very helpful to us in drafting these bills

House Bill 5247 is bill about competency to stand trial. In this bill we have some minor word changes but there are three policy changes that we're proposing. All of these are in subsection (m) of the bill. This is the provision of the bill in which if an individual is found by the court to be not competent to stand trial and not restorable to competency to stand trial, then they're generally referred to the Commissioner of the Department of Mental Health and Addiction Services and civilly committed.

At the time that the person is discharged from the hospital, many courts have wanted to know from us when that occurred that the person left the hospital. And our current laws don't allow us to notify the court about that because the person just becomes a civil patient, and we're not allowed to violate the confidentiality without the person's release of information.

This bill would allow the court to order the commissioner to give a notice when the person is leaving the custody of the commissioner as long as this -- the statute of limitations had not yet run out on that person.

The bill also calls for periodic examinations of people who have been charged with crimes in which there was a serious physical injury or death to a victim, but we've had many questions from courts about wanting to include other types of crimes, such as serious sexual assaults, which are not included in the definition of serious physical injury often. So we've proposed in this bill a number of

additional charges that should be added, and the one thing that I will note is that there was one charge that's left off from this list, and we'd like to propose that a reference to Statute 53a-70a which is aggravated sexual assault be added to the bill as it stands now.

The third policy to mention is that there is currently no limit in the statute about how frequently the periodic examinations can be ordered, and we'd like to propose that the periodicity be set at six months. If someone's already been found not competent to stand trial and not restorable, it's very unlikely that there'll be any integral changes at that frequency so for more frequently than every six months.

I will note that in the written testimony you have the very last line of my testimony here on House Bill 5247 is actually inaccurate and should have been deleted. It's currently deleted from the online version, but you should delete that last sentence from your written version, and I apologize for that error.

Senate Bill 229 is about the Supervised Diversionary Program. The bill proposes a number of technical changes and one policy adoption. Some of the technical changes include, for example, in the section related to 54-56 l subsection (d), clarifying the intended responsibilities of the various agencies, DMHAS, CSSD, and the CSSD contracted providers and clarifying what the eligibility requirements are to make the law consistent with current practice and our understanding of the intent of the law.

With regard to a policy change, the original law did not specify a maximum period of time for the Supervised Diversionary Program, and

Representative Lawlor.

REP. LAWLOR: Thanks, Mr. Chairman.

Good afternoon, Dr. Norko.

Just to -- to clarify on the -- the bill relating to not competent to stand trial, et cetera. Would it be fair to say that that's the result of negotiations among various agencies, or is that just something that's emerging from DHMAS.

HB5247

DR. MICHAEL NORKO: Yes. We've -- we've had that -- we've had discussions with Judicial about that and are in agreement about the language and the need to add the sexual offense statutes, for example, to the list.

REP. LAWLOR: And -- and how about the periodic notification that type of stuff? Have you talked to the prosecutors about that as well?

DR. MICHAEL NORKO: Yes. They're in -- they're in favor of being able to order DMHAS to give a lead to the court -- a notice when the person is discharged.

REP. LAWLOR: And -- and so, as far as you know, are any state agencies, at least, opposed to this?

DR. MICHAEL NORKO: Not that I know of.

REP. LAWLOR: All right. Thank you.

SENATOR MCDONALD: Anything further?

Thanks very much.

DR. MICHAEL NORKO: Thank you.

202
cd

February 26, 2010
JUDICIARY COMMITTEE 10:00 A.M.

Suzy Rivera.

Is Suzy Rivera here? Suzy Rivera. If not,
after Mr. Kane, Katherine Webster-O'Keefe. Is
Katherine Webster --

okay, you'll be next.

Good afternoon.

KEVIN KANE: Good afternoon, Senator McDonald,
Senator Kissel, Representative Fox,
Representative O'Neill and the rest of the
Committee.

I'm Kevin Kane, the Chief State's Attorney and
with me is State's Attorney Stephen Sedensky,
the State's Attorney for the Judicial District
of Danbury. Steve is going to talk, initially,
on House Bill 5249. And I would like to
briefly just talk about House Bill 5427.
Thank you for inviting us here today. I think
it will be brief. With the weather out here, I
think people all want to go but these are
important issues, and we would like to discuss
them.

(HB 5247)

STEPHEN SEDENSKY: Good afternoon, Senator McDonald,
members of the Judiciary Committee. As Chief
State's Attorney Kane said, my name is Stephen
Sedensky. I'm the State's Attorney for the
Judicial District of Danbury.

I'm here in support of House Bill 5249, AN ACT
CONCERNING THE CONFIDENTIALITY OF CERTAIN
DOCUMENTS AND RECORDS IN PSYCHIATRIC SECURITY
REVIEW BOARD PROCEEDINGS. We do have a number
of cases currently pending in Danbury before
the Psychiatric Security Review Board. And as
I said, we are in support of that. One thing
that it's important to remember is that any
acquip -- acquittee that becomes before the

Thank you.

Are there answer any questions on that bill?

SENATOR MCDONALD: Nope. I think we're all set.

STEPHEN SEDENSKY: Thank you.

SENATOR MCDONALD: Anything further, Mr. Kane.

KEVIN KANE: With regard to House Bill 5427, Dr. Norko already testified. He did an excellent job. If there are any questions, I'd be glad to answer them, but I -- I don't know that there are.

(HB 5247)

There is one bill. The bill, what it does is allows the periodic re-examinations to determine when somebody's competent after they've been released after a finding that the person is -- is not competent so that we can make sure.

It arose out of a case long ago where somebody was charged with murder. They were found to be incomp -- incompetent. After awhile they were released from custody, out for a long time, and then went to school. And it was discovered that the person appeared to be no longer incompetent. And the State had a very -- and that was a murder charge where the statute of limitations had not run, double jeopardy had not attached and the State had a very difficult time getting that defendant back -- to charge with the crime and be re-examined.

Since then the Legislature very wisely enacted amendments to 54-56d which when I started practicing law I think it was four lines long. Now it's about two pages and reads a little bit like the internal revenue code. But what -- what this does is allows us to have people

re-examined and determine whether or not they're -- they -- they have regained competency. And right now it applies just to crimes involving a death or serious physical injury.

There are additional crimes in which the perpetrators make may present a very serious danger to the public. First degree sexual assault, risk of injury to children are some of them. And it lists, in the bill itself, there those dangerous particular statutes. We've asked that -- that the provisions be extended to. Dr. Norko mentioned one more addition, sexual assault and the aggravated sexual assault in the first degree that he would like the bill to be amended and that crime added to it. We agree. This we've would work together on.

There is one additional crime and that's second degree assault with a firearm assault in the second degree with a firearm that's consistent to the one that's already in there, subsection 2 of the 53a-60 section. We'd like to -- we'd like to request that that crime be added also.

Thank you very much.

SENATOR MCDONALD: Thank you.

Any questions?

Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Bill 229, the diversionary bill that did you have testimony for --

KEVIN KANE: Yeah.

REP. HOLDER-WINFIELD: I was just wondering, the proposal, you have to go to three years versus

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 3
671 – 1026**

2010



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In Support of:

H.B. No. 5247 (RAISED) An Act Concerning Competency to Stand Trial

Joint Committee on Judiciary
February 26, 2010

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Substitute Report for H.B. No. 5247, An Act Concerning Competency to Stand Trial. This legislation is the result of an ongoing collaborative effort between the Division and the Department of Mental Health and Addiction Services.

The bill would amend section 54-56d (m) of the General Statutes. This section allows a court to order an incompetent defendant, whose restoration to competency is not a "substantial probability," to be released or placed in DMHAS custody. The statute expressly provides that if the court orders the 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 during which the defendant may be prosecuted.

H.B. No. 5247 expands the crimes for which the court has the option of ordering such periodic reassessment of competency to include certain sex crimes as well as a crime where physical injury is caused by use of a weapon. These offenses certainly are serious enough to warrant the periodic review provided by Section 54-56d (m) even though they do not necessarily involve the "serious physical injury" required for such review under the existing law. Specifically, H.B. 5247 would add the following crimes to those offenses for which the court would clearly have the option to order periodic review:

- **Section 53-21 (a) (2) - Injury or risk of injury to a minor where the defendant "has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child."**
- **Section 53a-60 (a) (2) - Assault in the Second Degree where the defendant "with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument other than by means of the discharge of a firearm."**

Accepted
PAGE 24
#252

- Section 53a-70 - Sexual Assault in the First Degree.
- Section 53a-70b - Sexual Assault in a Spousal or Cohabiting Relationship.
- Section 53a-71 - Sexual Assault in the Second Degree.
- Section 53a-72a - Sexual Assault in the Third Degree.
- Section 53a-72b - Sexual Assault in the Third Degree with a Firearm.

With regard to our recommendation for a Joint Favorable Substitute report, the Division respectfully requests that the Committee amend the bill to also allow for periodic review in cases where the defendant is charged with violating Section 53a-70a, Aggravated Sexual Assault in the First Degree and Section 53a-60a, Assault in the Second Degree with a Firearm.

Allowing the courts the option to order periodic review of individuals charged with these offenses is not only good forensic psychiatric practice, it also would provide for better monitoring of sex offenders and other potentially dangerous offenders enhancing public safety.

In conclusion, the Division of Criminal Justice expresses its appreciation to the Judiciary Committee for this opportunity to present our input and recommendation on this bill. We stand ready to provide any additional information the Committee might require or to answer any questions.

Respectfully submitted,

**Kevin T. Kane
Chief State's Attorney**

PAGE
22

~~NO~~
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~~REP~~
~~STEP~~
 221
 6749

Testimony of Michael Norko, M.D.
 Director of Forensic Services
 Department of Mental Health and Addiction Services
 Before the Judiciary Committee
 February 26, 2010

Good morning, 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 (DMHAS), and I am here today to speak in support of H.B. 5247, An Act Concerning Competency to Stand Trial; S.B. 229, An Act Concerning the Pretrial Supervised Diversionary Program for Persons with Psychiatric Disabilities; H.B. 5252, An Act Concerning the Pretrial Alcohol Education Program and the Pretrial Drug Education Program; S.B. 221, An Act Prohibiting the Disclosure of Employee Files to Inmates; and H.B. 5249, An Act Concerning the Confidentiality of Certain Documents and Records in Psychiatric Security Review Board Proceedings, which will be addressed by Ellen Weber Lachance of the Psychiatric Security Review Board (PSRB) in her testimony.

House Bill 5247 proposes: minor changes in wording in subsection (i) and subsection (m)(*new* subdivision 5) of the statute; and policy changes in the subsection that addresses defendants who have been found by the court to be not competent and not restorable to competency for the criminal charges under consideration [subsection (m)]. These changes in the statute would allow DMHAS to better respond to requests and concerns that we have received from judges and the Office of the Chief State's Attorney.

When a defendant is found not competent and not restorable to competency to stand trial, in most cases the defendant is ordered by the court into the custody of the Commissioner of DMHAS for the purpose of civil commitment to an inpatient psychiatric unit. HB 5247 would permit the court to order that the court be given notice by DMHAS at any time, prior to the expiration of the statute of limitations for the current charge(s), that the defendant is released from the custody of the Commissioner of DMHAS. This would address a concern of judges that the court is not notified when the individual with unresolved charges is released from a DMHAS inpatient psychiatric unit. The current statute does not permit this communication absent the individual's consent to release of confidential information. Some courts have ordered periodic examinations under subsection (m) as a way to find out if the individual remains in the hospital, which is an expensive use of evaluation resources to discover merely whether the individual is still in the Commissioner's custody or not.

The current statute, in subsection (m), allows the court to order periodic examinations of competency of individuals who have been found not competent and not restorable for crimes that resulted in the death or serious physical injury of another person. This bill would also allow the court to order periodic examination of competency for individuals who have been accused of committing serious sexual offenses or of assault with a deadly weapon or dangerous instrument that resulted in physical injury. Several courts have wanted to order periodic examinations in these types of cases, but the current law does not permit it. We propose that a reference to CGS 53a-70a (Aggravated Sexual Assault) be added to the proposed amendment of charges for which periodic examinations may be ordered.

Regarding the proposed limit on the frequency of such periodic exams, we note that examinations ordered more frequently than every 6 months are very unlikely to produce recommendations different from the finding of not competent and not restorable by the court, and such examinations require a significant expenditure of limited staff resources.