

PA10-029

HB5249

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**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2010**

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PART 3  
595 – 894**

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Those absent and not voting 4

DEPUTY SPEAKER ORANGE:

Thank you, Mr. Clerk, and the bill passes.

Will the Clerk please call Calendar Number 58.

THE CLERK:

Also on page 30, Calendar 58, substitute for  
House Bill Number 5249, AN ACT CONCERNING THE  
CONFIDENTIALITY OF CERTAIN DOCUMENTS AND RECORDS IN  
PSYCHIATRIC SECURITY REVIEW BOARD PROCEEDINGS,  
favorable report of the committee on Government  
Administration and Elections.

DEPUTY SPEAKER ORANGE:

Representative Michael Lawlor, you have the  
floor, sir.

REP. LAWLOR (99th):

Thank you, Madam Speaker. Good evening.

DEPUTY SPEAKER ORANGE:

Good evening to you, too, sir.

REP. LAWLOR (99th):

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

DEPUTY SPEAKER ORANGE:

The question is acceptance of the joint  
committee's favorable report and passage of the bill.

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REP. LAWLOR (99th):

Thank you, Madam Speaker.

This bill makes two relatively small changes and clarifications in the rules that apply to the Psychiatric Security Review Board and their proceedings.

The PSRB is the board that has jurisdiction over people who have been found not guilty by reason of insanity. There's been some questions in the past about the extent to which the records that are relied upon during the actual court proceedings, the public court proceedings, where someone is claiming they're not guilty by reason of insanity, whether or not those documents are confidential or public even though they were used in court.

Plus, there's an additional question under the current law whether or not persons who are under the custody of the board, how the board would deliberate when that person is asked to participate in a temporary leave, which is something that under certain circumstances can be granted today.

There was a little bit of confusion regarding the intent of the statute, or the proposal, Madam Speaker. So an amendment has been drafted to add additional

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clarity to this.

Madam Speaker, the Clerk has LCO Number 3181.  
I'd ask the Clerk to call and I be allowed to  
summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 3181, which  
will be designated as House Amendment Schedule "A."

THE CLERK:

LCO number 3181, House Amendment Schedule "A,"  
offered by Representative Lawlor.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to  
summarize the amendment. Is there objection to  
summarization? Is there objection? Hearing none,  
Representative Lawlor, you may summarize.

REP. LAWLOR (99th):

Thank you, Madam Speaker.

This amendment doesn't -- does not in any way  
change the intent of the bill. It simply makes it  
clearer than it was in the file copy.

That what this makes clear is that when a person  
has been found not guilty by reason of insanity --  
that happens in open court during a regular criminal  
trial. It's a defense that a defendant can assert.

During the course of the trial evidence will be offered in the public courtroom, which would consist in large part of actual medical testimony from doctors, reports, et cetera, which are then relied upon by the court or jury to make a determination of whether or not a person is actually not guilty by reason of insanity.

Obviously, all those documents have been offered in the public session of the courtroom, and it would seem that that would be public information at that point. The defendant himself or herself is actually offering this, the evidence to bolster their claim that they're not guilty by reason of insanity.

There was an outstanding question about whether or not that would, after the trial is over, does that actual evidence that was offered in court, is that confidential or not? And I think common sense would tell you that since it's already been out in public, since it was already volunteered by the defendant, it would no longer be confidential.

So what this makes clear is that going forward when the PSRB, the board has to make certain decisions relating to this particular defendant, they can go back and review the information that was actually

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offered in the courtroom publicly as a basis for their decision.

So I think that makes crystal clear what the intent was. It's somewhat -- the summary that's accompanying the file copy is somewhat misleading because of the less clear language of the file copy, but I think this clarifies it so that it's not opening up all the otherwise confidential medical records. It's only relating to those things that have been publicly offered in court by the defendant to bolster their claim of not guilty by reason of insanity.

I would urge adoption, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Lawlor.

Will you care to remark on the amendment?

Representative O'Neill.

REP. O'NEILL (69th):

Yes. Thank you, Madam Speaker.

With respect to the language of the amendment, I do not see, and perhaps it's implicit in the underlying bill, but I do not see any reference to actually offering of the evidence in court. It appears to be relied upon by the board.

So it appears as though a -- some sort of a

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hearing is going to be held or evidence is going to presented to the board outside of a courtroom setting. So I'll start with that, looking at line 5.

So while the description always seemed to be referring to court presentation, is there some presentation that's made outside of a courtroom that this language is intended to encompass as well? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Madam Speaker.

The controversy or the lack of clarity under the current law is when these appeals then come to court, a decision of the PSRB comes to court and these documents are now relied on in court to make these decisions.

So we're talking about documents that have already been publicly disclosed, whether or not they're competent evidence subsequently in court. So there's a question now about whether or not, because they're medical records they're confidential. So this gets around that rather obscure sort of legal point.

But I think common sense would tell you that

things that have already been publicly disclosed that are being relied upon by the defendant that are being put forward in a context of a hearing would then be competent evidence in court and not confidential.

Because, otherwise, what happens is the -- theoretically, you'd have to ask the defendant or the aquitee for consent, and if the aquitee was trying to contest -- trying to prevent an adverse decision by the board, they could block the evidence from being introduced in court by claiming it's confidential.

So I think that's the essence of the initiative here, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Madam Speaker.

It -- I guess my question perhaps wasn't as clear as I need to make it. The -- it appears that, as the description of the amendment is being made, that it is intended to apply to evidence that is presented in court. And as I read the amendment, it -- what it literally says is, the psychiatric and psychological reports concerning the aquitee that are in the possession of the board shall not be public records,

except that information in such reports relied on by the board, and then it goes on to say, or used as evidence concerning the discharge.

And I'm focusing right now on the evidence relied on by the board. And appears as if, based on the way the sentence reads to me, that if the board is being presented with some kind of evidence that is being used, that that is going to be subject to this exception from not being public. In other words, it makes it public. This language would make that evidence, whatever it is, public.

So the question is, is there some sort of a hearing or a presentation to the board outside of a courtroom that would then be subject to this language? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Madam Speaker.

I apologize. I just wanted to clarify a point. The board hearings are public hearings. So the public could attend the hearing of the PSRB. Evidence would be presented before the board in a public hearing. It is not unusual that the decisions of the board are

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then appealed into court.

And the question is when you get to court, are -- is evidence that's been considered at the public hearing of the PSRB, which oftentimes has a lot to do with evidence that was initially presented in court in the not guilty by reason of insanity finding, whether that is somehow now confidential once it gets back to court and therefore, potentially not competent evidence.

So these are -- we're talking about only evidence that's been presented in public proceedings already dealing with the status of the acquitee, or the defendant prior to that, that would continue to be public once it has initially become public.

So I think there's a legitimate question that's been posed in court, and I think this clarifies the status of that information which was, you know, once public and it continues to remain public. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Madam Speaker.

And I assume then that the rest of that sentence

relates to evidence that is not necessarily relied on by the board, but is presented in some other forum.

And I'm assuming that that is language, or that language really relates to -- and the rest of it, line 5 and 6, relates to -- and 7 -- relates to the presentation of evidence in a court proceeding, which I think was the main thrust of the chair of Judiciary's comments earlier on. But that, that all relates to the court proceedings.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Madam Speaker.

Yes. That's correct.

DEPUTY SPEAKER ORANGE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you. Thank you, Madam Speaker.

I think with that, at least out of clarification for my edification, I believe that this is an amendment that should be adopted.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

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Thank you, sir.

The question is not an option. Will you remark further? Let me try your minds. All those in favor, of the amendment House Schedule "A," please signify by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Will you care to remark further on the bill as amended? Will you care to remark further on the bill as amended? If not, staff and guests please 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 in the Chair.)

SPEAKER DONOVAN:

Have all the members voted? Have all the members

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voted? Please check the roll call board to make sure your vote has been properly cast. If all members voted, the machine will be locked and the Clerk will please take a tally.

The Clerk, please announce the tally.

THE CLERK:

House Bill 5249 as amended by House "A."

Total Number voting 148

Necessary for adoption 75

Those voting Yea 148

Those voting Nay 0

Those absent and not voting 3

SPEAKER DONOVAN:

The bill as amended passes.

Will the Clerk please call Emergency Certified Bill Number 5545.

THE CLERK:

House Bill 5545, AN ACT CONCERNING DEFICIT

MITIGATION FOR THE FISCAL YEAR ENDING JUNE 30, 2010, LCO Number 3314, introduced by Representative Donovan and Senator Williams.

SPEAKER DONOVAN:

Distinguished Chair of the Appropriations Committee, Representative Geragosian, you have the

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Calendar page 10, Calendar Number 383, File Number 68 and 548 Substitute for House Bill 5249, AN ACT CONCERNING CONFIDENTIALITY OF CERTAIN DOCUMENTS AND RECORDS IN PSYCHIATRIC SECURITY REVIEW BOARD PROCEEDINGS, as amended by House Amendment Schedule "A," favorable report on Committees on Judiciary and Government Administration and Elections.

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 in concurrence with the House.

THE CHAIR:

Question's on acceptance pas -- and passage in concurrence. Will you remark, sir.

SENATOR MCDONALD:

Yes, Mr. President.

Mr. President, this bill clarifies that the confidentiality of certain mental health information about people under the supervision of the Psychiatric Security Review Board after being

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acquitted of a crime due to a mental illness or defect and makes clear that when an acquittee has psychiatric records that they are not typically public records but psychological or psychiatric information used in the -- as evidence in a public hearing concerning the acquittee's release or conditional release, or, otherwise, their temporary leave is not confidential.

Also, Mr. President, the bill clarifies that temporary leave in these circumstances is a matter in which the psychiatric or psychological records may be utilized as evidence in a public hearing or other court proceeding. Through you, Mr. President.

THE CHAIR:

Thank you, Senator McDonald.

Senator Kissel, you seek the floor.

SENATOR KISSEL:

Yes, I do, sir. Thank you, Mr. President.

THE CHAIR:

Please proceed.

SENATOR KISSEL:

Question, through you to the proponent of the bill. I understand this bill is originally

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offered the Department of Mental Health and Addiction Services. I guess -- I guess I -- by way of predicate background, acquitted -- this entire process, who would be the individual subject to this process? Are these people that plead not guilty by reason of insanity? Is that who we're about here? Or what other kinds of matters where -- would this bill apply to? Through you, Mr. President.

THE CHAIR:

Thank you, sir.

Senator McDonald, do you care to respond?

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, through you, this would apply to individuals who are acquitted of a crime because of their mental disease or defect. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you. And so, again, they're acquitted because they have mental disease or defect. Does that mean that they would have had to have gone

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through a trial or is this someone -- something that someone could plead to? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, this would be the result of an acquittal by a court because of the mental disease defect and would apply to individuals who, notwithstanding that acquittal, have been remanded to the supervision of the Psychiatric Security Review Board for ongoing services. Through you, Mr. President.

THE CHAIR:

Thank you, sir.

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

So through you, Mr. President, would these individuals be considered criminally insane? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

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SENATOR MCDONALD:

Through you, Mr. President, that's not a typical term used anymore in the criminal justice world but in colloquial terms that might be accurate, through you, but had not been con -- they have not been found guilty of the crime because they lacked the mental capacity to be guilty of the -- the scienter, if you will -- for any criminal act. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. So they wouldn't have the substantive mens rea to commit the underlying criminal act.

Nonetheless, these are very problematic cases because quite often there's not a question as to whether the individuals committed the act. The analysis has to do with whether they had the mental capacity to understand what they were doing. So even if these individuals are acquitted, is it my understanding that quite often they are still in secure facilities or closely monitored if released into the public? Through

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you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, they can often times be under -- under programs that are administered by the state in supervised settings. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And -- and I believe once upon a time the City of Norwich -- I think they had an institute for the criminally insane -- I believe and that's where the term came from. I'm -- I'm sort back in my history. I guess, politically correct terms of art and better definitions have -- have moved forward into this twenty-first century. But do we have -- what are the facilities the State of Connecticut has now for these individuals? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

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SENATOR MCDONALD:

Through you, Mr. President, I don't know that I've got an exclusive list, but the most common one is the Whiting Forensic Institute. Through you, Mr. President.

THE CHAIR:

Right in my district.

Senator Kissel.

SENATOR KISSEL:

Very good, Mr. President.

And through you, Mr. President, does -- I guess when it comes to releasing health -- health information, does the individual who has been acquitted have to sign off on the release of this otherwise confidential health information, or does the bill anticipate that because it will be deemed nonconfidential that the individual does not have to sign a waiver or otherwise consent to the release of their health information? Through you, Mr. President.

THE CHAIR:

Senator -- Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

That's exactly the purpose of this legislation. Under current law, that information would be nonpublic record and would be prevented from disclosure pursuant to a privilege under the law for psychologic -- psychologist or psychia -- pardon me -- psychiatric or psychologist-patient privileges. And this would make it clear that those privileges would not apply in these limited circumstances because of the substantial governmental interest involved. Through you, Mr. President.

THE CHAIR:            :~L

Thank you, sir.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

And through you, given the fact that these individuals are being acquitted of these criminal charges due to lack of mental capacity, would some of these individuals have guardians acting on their own behalf or in charge of some of their decisions, and would those guardians have an ability to object to the release of this information? Through you, Mr. President.

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THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, it is certainly possible that in some circumstances there might be a conservator or guardian appointed for the individual, but they would not -- in my understanding of the law in this legislation -- such an individual would not have standing to challenge the confidentiality of the records given the important public purpose served by the legislation. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Would these -- would this -- would the ambit of this law allowing the release of these medical records, especially these records as pertain -- pertaining to a individual's sanity or insanity, mental health and all its ramifications, if these records were, in part, originally private, in other words, if the investigation into the individual charged with a crime brought in private otherwise private and

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confidential mental health records and then the State did some of their own investigation, is it contemplated by this legislation that all of those records upon acquittal because of mental defect or disease would then be released to the public?

Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, my reading of the legislation, Senator Kissel, is that it would apply to any psychiatric or psychological reports that were in the possession of the board, whether produced by the board or otherwise obtained by the board would be not -- nonpublic for purposes of -- of this legislation. Through you, Mr. President.

THE CHAIR:

Thank you, sir.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

Just a few more questions to the proponent of the bill. Have rep -- does the file indicate, if at all, whether individuals from advocacy groups

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for those with mental health issues, have they had a opportunity to collaborate and participate on this particular proposal or otherwise offer their opinion regarding the status of mental health records for these individuals? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, well, first, I should note that -- that Dr. Norco is the director of Forensic Services at DMHAS, has a very keen interest in -- in making sure that these issues are fully vetted, if you will. In addition, we had the executive director of the Psych -- of the Psychiatric Security Review Board testify in favor of the legislation, as well as the state's attorney from the Judicial District of Danbury. And to my knowledge, Senator Kissel, when we had this public hearing, those are the only individuals who testified. We received no testimony in opposition of which I'm aware.

THE CHAIR:

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Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

One last question, I know that there's some really strong federal protections for -- for health records for individuals, and I believe that the concerns and protections are even more heightened when it comes to records that affect psychi -- psychiatric and psychological reviews because they have far-ranging consequences, not only on the individual who's subject to that review, but I would guess their spouse and their children and everybody else associated with them, and has this proposal been analyzed with an eye toward federal constraints on the release of this kind of medical data. Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

I believe I know the answer, Mr. President, but could I stand at ease for one moment?

THE CHAIR:

The chamber will stand at ease.

[Chamber at ease.]

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THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

And I appreciate the indulgence of the chamber. It was worth it, though, because my understanding was only half-cooked. I have -- now have the benefit of further collaboration on the issue, and I can report to Senator Kissel that when an individual asserts the defense of -- of being not guilty by reason of mental disease or defect, one of the things that they are giving up is their right to assert any confidentiality for the records under federal law. Through you, Mr. President.

[Senator Coleman of the 2nd is in the Chair.]

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

Mr. President, great to see you this afternoon.

THE CHAIR:

Always a pleasure to see you, sir.

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SENATOR KISSEL:

Thank you, sir.

Well, I have no further questions for the proponent, but I would say that certainly his last answer was -- was half-cooked but certainly not half-baked, and I appreciate him fleshing it out and that makes perfect sense.

And I guess this is what we all used to know as not guilty by reason of insanity, now it's not guilty by reason of mental disease or defect which is probably a more sensitive phrasing of the issues underlying the situation, certainly, wide-ranging consequences, but it makes perfect sense that an individual by reason of this kind of pleading would have to give up certain rights both within the state of Connecticut and on the federal level.

I appreciate the kind indulgence of the co-chair of the Judiciary Committee in answering my questions, and all my questions have been answered. And I -- I'm happy to support this bill which, indeed, was a recommendation of the Department of Mental Health and Addiction Services. Thank you very much, Mr. President.

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THE CHAIR:

Thank you, Senator.

Would you care to make further remarks? Are there further remarks? If not, Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

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

THE CHAIR:

Without objection, so ordered. This item may be placed on our consent calendar.

Mr. Clerk.

THE CLERK:

Calendar page 11, Calendar Number 402, File Number 580, Substitute for Senate Bill 447, AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR AN ADULT WHO IS SUBJECT TO A CONSERVATORSHIP OR CONSERVATORSHIP PROCEEDING, favorable report of the Committee on Judiciary.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, I move acceptance of the joint

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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

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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.

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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  
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**2010**

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

Psychiatric Security Review Board has voluntarily put their mental state before the Superior Court when they raised the affirmative defense of not guilty by reason of insanity. So that all those mental health records and issues have -- were already made public by the person who was charged with the crime asserting that defense.

What this particular bill does is to ensure that that -- that those mental health records or those -- excuse me -- those reports that are considered and relied on by the Psychiatric Security Review Board remain -- remain available to the public. And not just all of the records, those are only the ones that are relied on by the Psychiatric Security Review Board in regard to their hearing. So there's a limitation. It's not every single record that they have. It's only those records that would be relied on and considered by them in making a decision.

So it's our position that that is -- it just carries forward what the -- what the acquittee had already voluntarily been willing to disclose as part of the criminal case.

The second reason why it's important that these records be available is that it is not uncommon for acquittees to appeal from decisions of the Psychiatric Review Board. And if their records or their -- those reports are considered confidential in any way, there can be a move by the acquittee to restrict the Superior Court from looking at the bad things while they then try to introduce the good things. And what we want the Superior Court to have as part of the appeal process is all the information that the Psychiatric Security Review Board relied on in making their decision.

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

remember it. I've been there. I couldn't remember it. But thank you very much for your testimony.

KATHERINE WEBSTER-O'KEEFE: Thank you very much.

SENATOR McDONALD: Ellen Lachance, followed by Keva Peterson.

Is Keva Peterson here? Okay. Then Terri Drew will be next.

ELLEN LACHANCE: Good afternoon, Senator McDonald, and distinguish members of the Judiciary Committee.

I'm Ellen Lachance, and I'm the executive director of the Psychiatric Security Review Board. And I'm here to speak in support House Bill 5249, dealing with the confidentiality of acquittee records.

You have a copy of my written testimony. I'm going to try to condense my point so.

Since 1985, the PSRB has had jurisdiction over all individuals found not guilty by reason of insanity. The statute definition is "by reason of mental disease or defect." Following an acquittal, the court then commits an individual to the Board, the Psychiatric Security Review Board, and the Board then orders that acquittee confined to either DMHAS or the Department of -- Developmental Services. Thereafter, it remains the Board's responsibility to determine the confinement of an acquittee, as well as the circumstances under which that acquittee may transition to the community. The Board holds public hearings every two weeks in which these matters are heard before the Board. Decisions made by the Board are appealable to Superior Court, and acquittees can apply directly to the

court for discharge from the Board. Unlike a private individual who seeks psychiatric care and expects their personal psychiatric information and history to be kept confidential per Connecticut's confidentiality statutes, an acquittee has abdicated that right when they seek a defense claim of insanity. An -- an acquittee's psychiatric information becomes public at the time of their crime and while they are committed to the Board.

In a -- in the copy of the Board's current statutes that you have before you, specifically 17a-596(d), the last line references the confidentiality of acquittee treatment records, and it is ambiguous. It is that ambiguity that we wish clarified. The lack of clarity contributed recently to a court decision in which an acquittee appealed a decision by the Board to transfer out of his maximum security setting. The judge in that case prevented some of that acquittee's psychiatric information from being heard by the public in open court. That decision threatens to prevent the public from hearing critical information about an acquittee's treatment and risk. We believe that the public has a right to know how the Board makes its decisions.

This statutory change mirrors the Board's current practice relative to our public hearings. The proposed amendment would entitle the public ac -- access to relevant psychiatric information about an acquittee's treatment and risk without opening the acquittee's entire psychiatric record for public inspection. This clarification of our statute ensures an appropriate balance between the public's access to critical information and the privacy of acquittee treatment records.

The Board has collaborated with the Legislative

Commissioner's Office to offer substitute language, which you have before you in the testimony, and provides the sta -- the clarity we are seeking. Favorable action will assist the Board in ensuring the public's right to know the basis for our decisions while safeguarding treatment records.

I'm happy to answer any question you may have.  
SENATOR MCDONALD: Are there any questions?

Thanks very much.

ELLEN LACHANCE: You're welcome.

SENATOR MCDONALD: Terri Drew, followed by Colleen Murphy. Is Murphy here? Okay.

Good afternoon, Ms. Drew.

TERRI DREW: Good afternoon, Senator McDonald and the members of the Judiciary Committee, special hello to Representative Tong, who represents Stamford, as well as Representative Fox.

My name is Terri Drew. I am the Director of the Youth Services Bureau for the City of Stamford. I am here to testify in support of House Bill 5148, AN ACT CONCERNING FUNDING FOR THE JUDICIAL BRANCH.

The Youth Services Bureaus are explicitly defined via state statute as the local agency that is designed to act as an agent for the purpose of evaluation, planning, coordination and implementation of prevention and treatment services for delinquent, pre-delinquent and troubled youth. The Stamford Youth Services Bureau has a lengthy and effective history of collaborating with local and regional organizations to provide services to and advocate for the positive development of

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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.



**STATE OF CONNECTICUT**  
**PSYCHIATRIC SECURITY REVIEW BOARD**

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**Testimony of Ellen Weber Lachance, Executive Director**  
**Psychiatric Security Review Board**  
**Before the Judiciary Committee**  
**H.B. 5249**  
**February 26, 2010**

Good morning/afternoon, Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. My name is Ellen Weber Lachance, and I am the Executive Director of the Psychiatric Security Review Board. I am here to speak in support of H.B. 5249 regarding the confidentiality of acquittee records.

As you are aware, the Board, since 1985, has had jurisdiction over individuals found not guilty of a crime by reason of mental disease or defect. These individuals were tried and acquitted, in open court, of serious crimes because of their psychiatric illness. Once acquitted, the court commits the insanity acquittee to the Board and the Board, in turn, orders the acquittee confined for treatment to either the Department of Mental Health and Addiction Services or the Department of Developmental Services. The Board continues its oversight of the acquittee by approving transfers from inpatient facilities, dictating when and under what circumstances an acquittee can transition to the community and providing recommendations to Superior Court about an acquittee's readiness for discharge from the Board.

In performing the above functions, the Board regularly receives psychiatric and psychological reports concerning the mental status and treatment of acqutees. The confidentiality of acqutees' treatment records, as currently defined in our statute 17a-596(d), is ambiguous. It is this ambiguity the Board seeks to clarify. Connecticut's confidentiality statutes, as referenced in 52a-146c through 52a-146j, are intended to encourage private individuals to seek psychiatric treatment with the assurance that their information remains private. This concern is absent for acqutees because the insanity defense is an affirmative defense and, as such, the fact of their psychiatric illness, as well as much of their psychiatric information, becomes public at their criminal trial.

The Board's primary mandate is public safety. The public has a right to know how the Board reaches its decisions and performs its function in protecting the public. The Board keeps the public informed about the status of insanity acqutees through regular public hearings which often contain information about the acqutee's mental status, diagnosis, prognosis, course of treatment and readiness for community placement and discharge. A written Memorandum of Decision detailing these facts is issued following every hearing. By statute, acqutees can appeal Board decisions to Superior Court and they can apply directly to the court for discharge from the Board. During such court proceedings, it is imperative that all parties be able to publicly use information from the acqutee's psychiatric records to present their case.

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The need for the proposed amendment in the last sentence of 17a-596(d) became apparent following a recent Superior Court decision finding that information taken from an acquittee's psychiatric record was confidential, thus prohibiting discussion of such information in open court. The issue at hand was whether the acquittee was safe enough to be treated in a non-maximum security setting, a matter in which the public has a legitimate interest. Without the clarity of our statutes for guidance, the court's interpretation has the potential to allow an acquittee to selectively disclose in open court, information he or she wishes to be known, thereby providing an inaccurate picture about their mental condition, level of dangerousness and potential risk. The proposed amendment seeks to rectify this situation.

This statutory change mirrors the Board's current practice relative to our public hearings. The proposed amendment would entitle the public access to relevant psychiatric information about an acquittee's treatment and risk, without opening the acquittee's entire psychiatric record for public inspection. The clarification of our statute ensures an appropriate balance between the public's access to critical information about an acquittee's mental status and the privacy of acquittee treatment records.

The Board has collaborated with the Legislative Commissioners' Office to offer substitute language that provides the statutory clarity we are seeking. Favorable action will assist the Board in ensuring the public's right to know the basis for Board decisions while safeguarding acquittees' psychiatric treatment records.

## SUBSTITUTE LANGUAGE

### ***AN ACT CONCERNING THE CONFIDENTIALITY OF CERTAIN DOCUMENTS AND RECORDS IN PSYCHIATRIC SECURITY REVIEW BOARD PROCEEDINGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17a-596 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Prior to any hearing by the board concerning the discharge, conditional release or confinement of the acquittee, the board, acquittee and state's attorney may each choose a psychiatrist or psychologist to examine the acquittee. The results of the examination shall be in writing and filed with the board, and shall include, but need not be limited to, an opinion as to whether the acquittee is a person with psychiatric disabilities or mentally retarded to the extent that [his] the acquittee's release would constitute a danger to [himself] the acquittee or others and whether the acquittee could be adequately controlled with treatment as a condition of release. To facilitate examination of the acquittee, the board may order [him] the acquittee placed in the temporary custody of any hospital for psychiatric disabilities or other suitable facility or placed with the Commissioner of Developmental Services.

(b) The board shall consider all evidence available to it that is material, relevant and reliable regarding the issues before the board. Such evidence may include, but [is] need not be limited to, the record of trial, the information supplied by the state's attorney or by any other interested party, including the acquittee, and information concerning the acquittee's mental condition and the entire psychiatric and criminal history of the acquittee.

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(c) Testimony shall be taken upon oath or affirmation of the witness from whom the testimony is received.

(d) Any hearing by the board, including the taking of any testimony at such hearing, shall be open to the public. At any hearing before the board, the acquittee shall have all the rights given a party to a contested case under chapter 54. In addition to the rights enumerated [thereunder] in chapter 54, the acquittee shall have the right to appear at all proceedings before the board, except board deliberations, and to be represented by counsel, to consult with counsel prior to the hearing and, if indigent, to have counsel provided, pursuant to the provisions of chapter 887, without cost. At any hearing before the board, copies of documents and reports considered by the board shall be available for examination by the acquittee, counsel for the acquittee and the state's attorney. [The confidentiality of these reports shall be determined pursuant to sections 52-146c to 52-146j, inclusive.] Psychiatric or psychological reports concerning the acquittee that are in the possession of the board shall not be public records, as defined in section 1-200, except that information from such reports relied on by the board or used as evidence concerning the discharge, conditional release, temporary leave or confinement of the acquittee shall not be confidential. The provisions of sections 52-146c to 52-146j, inclusive, shall not apply to such reports for the purposes of this section.

(e) Upon request of any party before the board, or on its own motion, the board may continue a hearing for a reasonable time not to exceed sixty days to obtain additional information or testimony or for other good cause shown.

(f) At any hearing before the board, the acquittee, or any applicant seeking an order less restrictive than the existing order, shall have the burden of proving by a preponderance of the evidence the existence of conditions warranting a less restrictive order.

(g) A record shall be kept of all hearings before the board, except board deliberations.

(h) Within twenty-five days of the conclusion of the hearing, the board shall provide the acquittee, [his] the acquittee's counsel, the state's attorney and any victim as defined in section 17a-601 with written notice of the board's decision. If there is no victim or the victim is unidentified or cannot be located, the board shall be relieved of the requirement of providing notice to the victim.

Sec. 2. Section 17a-590 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

As one of the conditions of release, the board may require the acquittee to report to any public or private mental health facility for examination. Whenever medical, psychiatric or psychological treatment is recommended, the board may order the acquittee, as a condition of release, to cooperate with and accept treatment from the facility. The facility to which the acquittee has been referred for examination shall perform the examination and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, it shall include its recommendations for treatment in the report to the board. Whenever treatment is provided by the facility, [it] the facility shall furnish reports to the board on a regular basis

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concerning the status of the acquittee and the degree to which [he] the acquittee is a danger to himself or others. The board shall furnish copies of all such reports to the acquittee, counsel for the acquittee and the state's attorney. [The confidentiality of these reports shall be determined pursuant to sections 52-146c to 52-146j, inclusive.] The facility shall comply with any other conditions of release prescribed by order of the board.



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

**Testimony on the Division of Criminal Justice**

*In Support of:*

**H.B. No. 5249 (RAISED) An Act Concerning the Confidentiality of Certain Documents and Records in Psychiatric Security Review Board Proceedings**

*Joint Committee on Judiciary*  
*February 26, 2010*

The Division of Criminal Justice supports H.B. No. 5249, An Act Concerning the Confidentiality of Certain Documents and Records in Psychiatric Security Review Board Proceedings. The proposed changes ensure that information considered by the Board or used as evidence is public record.

This change is important for two reasons; the first is transparency and protection of the public. It should be remembered that an acquittee before the Psychiatric Security Review Board (Board) has chosen to be there by voluntarily raising the affirmative defense "not guilty by reason of insanity." At their criminal trial they chose to make public their mental health status and be excused from criminal responsibility. The vast majority of acquittees were charged with extremely serious crimes, such as murder. Ensuring that material before the Board is public record continues the examination of evidence first brought to light by the acquittee in their underlying criminal proceeding. If a person who has engaged in serious criminal conduct is to be considered for release or less restrictive housing, the general public has a right to know and be protected by the availability of information before the Board.

The second reason is to ensure that all information seen or considered by the Board in making their decision is available to the Superior Court on appeal from the Board's decision. These appeals before the Superior Court are typically open to the public like other cases before the Superior Court. What some acquittees have sought to do is appeal the Board's decision concerning discharge, release or confinement and object to the Board's seeking to put the negative aspects of their psychiatric history into evidence before the Superior Court, claiming confidentiality, thus denying the Superior Court of all information considered by the Board in making their decision. Passage of this bill would enable the public eye to be kept on these very important proceedings.

**Respectfully submitted,**

**Stephen J. Sedensky III**  
**State's Attorney**  
**Judicial District of Danbury**