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In the well of the Chamber, in the well of the House I have two young ladies that I actually work with in my factory, and I would like to introduce them.

Erin and Leslie LaClair. Could we give them a warm welcome, please.

DEPUTY SPEAKER RYAN:

Thank you, sir.

I hope you enjoy your visit here to our Chamber today.

Will the Clerk please call Calendar Number 169.

THE CLERK:

On page 12, Calendar 169, House Bill Number 6276, AN ACT CONCERNING COMPETENCY TO STAND TRIAL, favorable report of the Committee on Judiciary.

DEPUTY SPEAKER RYAN:

The Chairman of the Judiciary Committee, Representative Fox of the 146th.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

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

DEPUTY SPEAKER RYAN:

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

Representative Fox, you have the floor.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

This comes to us from the Department of Mental Health and Addiction Services, and it addresses a situation where defendants are found to not be competent to stand trial. And what happens in those situations is that sometimes defendants who are found not to be competent are placed in out treatment -- outpatient treatment facilities, and other times they are placed in inpatient treatment facilities.

And what happens, though, is that if they are placed in an inpatient treatment facility and if the facility, if the court and if the prosecutor feel that the defendant has, after a period of time, reached a level of -- that did not require inpatient treatment, then what happens is that they right now do not have a mechanism by which they can shift the defendant from inpatient treatment to outpatient treatment.

And what this would do is enable them -- provided the, as I said, the prosecutor, the court, and the inpatient facility all agree that the defendant has reached a level of competence that no longer required

inpatient treatment, this would allow them to return to court and then to obtain placement in an outpatient facility.

And I urge passage.

DEPUTY SPEAKER RYAN:

Thank you, Representative Fox.

Will you remark further on this bill?

Representative Hetherington of the 125th.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. I rise in support of this bill.

As Chairman Fox indicated, this bill allows persons who have been determined not to be competent to stand trial to be treated in a less restrictive environment, if that can be justified. And so they no longer need to be -- remain in the most restrictive environment.

It is good for ultimate rehabilitation, and it has a potential savings, because it no longer will require people to be held in an inpatient facility if they can continue to gain competency in an inpatient facility. And it does require judicial review before anyone is released or downgraded in level of security. And I urge passage.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative Hetherington.

Will you remark further on this bill? Will you remark further on this bill? If not, will the staff and guests please come to the well of the House. Will the members please take your seats. The machine will be open.

THE CLERK:

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

DEPUTY SPEAKER RYAN:

Have all members voted? Have all members voted? Will the members please check the board to determine if your vote is properly cast? If all members have voted, the machine will be locked and the Clerk will take a tally.

The Clerk will announce the tally.

THE CLERK:

House Bill 6276.

Total Number voting	146
Necessary for adoption	74
Those voting Yea	146

Those voting Nay 0

Those absent and not voting 5

DEPUTY SPEAKER RYAN:

The bill passes.

Will the Clerk please call Calendar Number 69.

THE CLERK:

On page 32, Calendar 69, House Bill Number 6306, AN ACT CONCERNING THE LISTING OF ADVANCED PRACTICE REGISTERED NURSES IN MANAGED CARE ORGANIZATION PROVIDER LISTINGS AND PRIMARY CARE PROVIDER DESIGNATIONS, favorable report of the Committee on Public Health.

DEPUTY SPEAKER RYAN:

The Chairman of the Insurance and Real Estate Committee, Representative Megna of the 97th.

REP. MEGNA (97th):

Thank you. Thank you, Mr. Speaker.

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

DEPUTY SPEAKER RYAN:

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

Representative Megna, you have the floor.

REP. MEGNA (97th):

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REP. FOX: Any other questions, I don't see any so, thanks.

Next we have Michael Alevy.

MICHAEL ALEVY: Good afternoon. My name is Michael Alevy, I'm a Senior Assistant Public Defender and I'm here today representing the Office of the Chief Public Defender to testify in our support of Raised Bill Number 6276, AN ACT CONCERNING COMPETENCY TO STAND TRIAL.

I would like to say, just by way of introduction that before being asked to assist Attorney Sullivan during this legislative session as her liaison assistant I've spent the last 14 years in New Haven in GA 23 representing clients in Court on a daily basis and certainly have had the opportunity to represent clients in matters concerning competency and restoration issues.

It is the -- the Raised Bill -- proposed bill adds a requirement that a treatment provider who is charged with restoring the competency of a defendant submit a progress report to the Court in the case of a defendant whose continued inpatient commitment is no longer the least restrictive setting in which to achieve their restoration to competency.

We believe that the addition of this reporting requirement in this particular case is significant. Currently there is no requirement. There are a number of other cases where progress reports are required. This creates a new requirement and it is significant because it adds to the flow of relevant information to a Court who is making a determination about the appropriateness of inpatient treatment and it does it in a timely fashion.

Our view of the consequences of this legislation as well seem to suggest that it might allow for reduced reliance and utilization of inpatient treatment facilities. And certainly language which allows the Court to consider the change in circumstances and the change in view of the treatment providers is something that should be made aware of to Courts in a timely way.

So if there are any questions from the Committee I'd be happy to answer those at this time.

REP. FOX: Are there any questions from members of the Committee? Senator Kissel.

SENATOR KISSEL: Thank you very much, Mr. Chairman.

Welcome sir. For someone who's not involved in this on a day to day basis can you sort of walk me through exactly what we're talking about here. What you like, what you don't like, what your concerns are, what they're not. But sort of put us in that Court room where this paperwork is flying back and forth if you could.

MICHAEL ALEVY: Well what happens in a Court room is when we are assigned to represent individuals. One of the first things that any lawyer who is representing a defendant in a criminal case is going to do is going to have to sit down and have a sit down and have a conversation. That conversation and the ability to communicate in a coherent way with a client who understands what's going on with their case and is able to assist in their own defense in a critical and a crucial first step.

When we are in a situation where we have indications from our interactions with clients that that is not occurring, doesn't seem to be possible to do, we have an obligation under the Connecticut General Statute 54-56d, to raise

that to the Court and request a -- a hearing or an examination to determine whether our client is competent or not. The way that typically works out is that most of the clients are incarcerated and held in lieu of bond or there are some of them however who are not held in lieu of bond. A referral will be made to the Office of Court Evaluations in New Haven, that's done through the Connecticut Mental Health Center.

And there are provisions in the statute that examinations must be conducted within a certain period of time, reports back to the Court with the recommendation and a finding whether the clinical team who has done the evaluation finds somebody is competent or not. And if they are not competent, whether there is a substantial likelihood that they could be restored to competency through some type of treatment or educational program. Another prong that the Court must address is whether -if there is a likelihood of restoration where that restoration process takes place, either inpatient or outpatient setting.

We often can argue about what is the least restrictive means, the statute requires that the Court look at the least restrictive means to attempt the restoration. And sometimes we get into a battle with the experts and sometimes we can agree on where this should take place.

What we like in this new language is that when somebody's case is continued for restoration attempts in an inpatient setting, that this new language provides a mechanism for the Court to be informed of the change of circumstances. In other words, the treatment provider has now perhaps altered their position about what are the least restrictive settings for the restoration to take place. This requirement

that a report done when they change their view on that particular issue we think is -- is important. We think that any mechanism for the Court to allow the Court to have current information that's relevant and that it gets in a timely way is -- is a good thing.

SENATOR KISSEL: And -- and if I may Mr. Chairman, how would you find that information out now? And I think that this could have beneficial implications in that my guess is that inpatient treatment is probably more expensive than outpatient so while your goal might be least restrictive methodology that also might be less costly methodology. I'm not exactly sure that's not necessarily the goal. But if you don't have this mechanism right now, what allows you as defense counsel to -- do you have to go visit this person in inpatient, do you have to go talk to their counselors, how does it work?

MICHAEL ALEVY: Typically the cases are continued for a period of time. Sometimes upwards of 60 days and they just pend without any real contact between treatment providers and defense counsel or the Court unless someone at the restoration unit has something to say on report or may submit a progress report in accordance with the other conditions that require one. But generally a case can pend for upwards of 60 days before we come back to Court and examine the reports and the status reports.

SENATOR KISSEL: So this provides a mechanism so that sometime less than 60 days - sometimes less than the period that the Judge had said we're going to continue the matter until -- I'm assuming it's the Judge that continues the matter?

MICHAEL ALEVY: Correct.

SENATOR KISSEL: That if some kind of restorative measure takes place in two weeks then why does this individual have to spend another 45 days in inpatient when outpatient would be sufficient? Is that where we're going with this?

MICHAEL ALEVY: That's where we're going. I think that's exactly what this language addresses and it does create the opportunity for that progress report indicating there's been a change of circumstances to get back to the Court in a more expeditious way.

SENATOR KISSEL: Okay. And the entity that creates this progress report is which? You had said it.

MICHAEL ALEVY: In -- typically in my experience when I've had clients going through the restoration process this would be done through the forensic services at DMHAS, usually at CVH in the Whiting Facility. And they have a restoration unit up there who attend to restore the competency of those who have been sent there after the Court has found that that's the least restrictive setting for that restoration.

SENATOR KISSEL: And have -- and have you contacted them as far as their support for this measure or not support. Does this create another burden on them?

MICHAEL ALEVY: We -- we had had some contact with DMHAS and I -- they were in support of this as well. I don't think we were at odds with respect to this.

SENATOR KISSEL: I appreciate your patience with me. Once upon a time, Special Public Defender but I didn't have anybody that I couldn't speak to so I never ran into this particular issue. But it makes sense to me that we have feedback -- that this is essentially creating a feedback

mechanism such that someone isn't in limbo for 60 days and nobody really knows once that train leaves the station, we're not going to revisit after 60 days if we're talking about probably not only least restrictive but most cost efficient. It strikes me that this has valuable content in two areas. And that's beneficial for not only the -- the accused but also for our state's finances as well.

So, thank you, sir.

MICHAEL ALEVY: Thank you, Senator.

REP. FOX: Thank you.

Are there any other questions?

Representative Hetherington.

REP. HETHERINGTON: What would happen if the Commission found that the -- the accused condition had actually deteriorated? Would that prompt a report too?

MICHAEL ALEVY: The statute as currently written requires Representative Hetherington, the submission of report of certain --

REP. HETHERINGTON: Right.

MICHAEL ALEVY: -- key moments. I don't -- from what -- from my understanding of the statute and what I read here today -- and I don't think that there is any specific mechanism to report early some type of -- you know, degradation and the condition or other difficulties that they may be having with respect to restoration of competency.

REP. HETHERINGTON: Is that a concern do you think that a person who is being treated for example

in a facility, has gotten worse and perhaps needs some elevated form of treatment.

MICHAEL ALEVY: That would certainly be of a concern and I would anticipate that although perhaps not required under the statute that - if the treatment providers felt that there was a need to inform the Court -- a required guidance from the Court with respect to that, that that would be forthcoming. Generally my experience is that the lines of communication between defense counsel and the Court and State's Attorneys who are dealing with these cases has been fairly -- you know, open.

REP. HETHERINGTON: Right.

MICHAEL ALEVY: But what we see in this particular proposal in this bill is a specific case of requiring a progress report in a very specific circumstance that we think is a positive step.

REP. HETHERINGTON: That would typically be in a situation where the person is -- is confined in a treatment facility because if the person were being treated on an outpatient basis really there would be nothing to reduce the restrictive environment to.

MICHAEL ALEVY: Well I think that in terms of what constitutes a restrictive environment I think that even though somebody was in outpatient treatment status that there could be restrictions placed on that individual as a condition of their release and participation in an outpatient program. I think that reporters do have that flexibility to monitor very closely what people are doing when they're outpatient. But certainly in this case if we can move somebody -- and this is on the input from the treatment provider --

REP. HETHERINGTON: Right.

MICHAEL ALEVY: -- this is something that they're offering the Court information regarding and certainly if we can move them to a less restrictive setting that's what the statute as it's currently written requires that a Court look at what is the least restrictive setting to accomplish the restoration.

REP. HETHERINGTON: So this would simply provide more current information?

MICHAEL ALEVY: Right, we see it generally as a -- right -- this mechanism to get current information to the Court in a timely way.

REP. HETHERINGTON: Thank you.

Thank you, Mr. Chairman.

REP. FOX: Thank you. Representative Baram.

REP. BARAM: Thank you, Mr. Chairman.

Just a couple of questions, one is -- have the prosecutors taken a position on your proposed amendment and if so could you summarize it for us?

MICHAEL ALEVY: Certainly, if -- if -- to be clear, this is not a bill that has been -- or language that has been proposed by the Office of the Chief Public Defender, we are supporting the bill as it -- in its current form, and I am not aware of any input or a position from the State's Attorneys.

REP. BARAM: If somebody has made progress in obtaining competency but they still might be considered a danger to society, how do you balance their danger -- dangerous prepotency

with their progress in regaining competency? Does the bill in your opinion allow somebody to be out treated as you put it to a less restrictive facility solely on the basis of making progress with competency or are there other factors such as their dangerous prepotency that are taken into account?

MICHAEL ALEVY: Well the proposed bill as worded at this particular time what we see is simply an avenue for the treatment provider to report the change in status of one particular area. And that is the area that the Court looks at among many other factors or variables that have to do with the least restrictive setting. The language clearly indicates that if a Court receives information and receives its progress report, they would then have an opportunity to essentially conduct a bond hearing where the Court would have the opportunity to factor in all the variables that a Court typically does when it comes to ordering a release or a reduction in bond.

So I think that public safety issues are addresses and those kind of concerns are addressed by the mechanism for a bond reduction hearing in front of the Court. This progress report, with respect to the change in status simply addresses one piece or one variable that would be considered, I think, a change in circumstances that the Court should be aware of when it makes determinations with respect to release.

REP. BARAM: And lastly, what happens if somebody cannot be returned to competency and let's assume that within that particular crime that was allegedly committed there is enough circumstantial evidence to perhaps put on a viable case, is the person released because of their inability to stand trial based on

competency or can the state proceed based upon circumstantial evidence even if no competency exists to meaningfully participate in the trial? And what happens with regard to continued incarceration or treatment if -- if -- is the person just let free at that point? How -- how does that work?

MICHAEL ALEVY: There are provisions in the statute as currently written for civil commitment proceedings to take place and go forward if someone is found to be nonrestorable competency.

There are clearly constitutional issues and statutory requirements that no person can be tried or convicted or sentenced if they are not competent, if they cannot understand the nature of the proceedings against them and if they cannot assist their counsel in their defense. That said, the mechanism that is in place currently -- 54-56d, the competency statute is for civil commitment proceedings.

REP. BARAM: Thank you.

REP. FOX: Thank you.

Are there any other questions?

If I may just ask, in your experience or if you -- have you heard of situations where somebody is found not to be competent, they're placed in an inpatient facility, the 60 day continuance -- that what you -- that's the typical --

MICHAEL ALEVY: If I could just -- those are numbers I threw out there. I think the statute allows for up to a 90 day continuance --

REP. FOX: Okay.

MICHAEL ALEVY: -- or a maximum, usually Court's set that a little bit short of that.

REP. FOX: Okay. Well let's just say for example it's a 60 day --

MICHAEL ALEVY: Okay.

REP. FOX: -- and -- and have you had situations where after two weeks you've heard from either your client or your client's family or -- or somehow word got to you that he doesn't really belong in an inpatient facility and he would do much better in an outpatient facility. I mean does that --

MICHAEL ALEVY: I don't have any particular cases. I mean I get calls from family complaining about --

REP. FOX: Yeah.

MICHAEL ALEVY: -- where there family members are all the time. In that particular context I have not had a situation in the competency area where that's come up.

REP. FOX: But this would do, this would address that situation if that -- that's what the purpose of this is, right?

MICHAEL ALEVY: Right. I think that would address the situation where the view of the treatment provider who is originally in Court perhaps recommending that the least restrictive means for restoration was in the inpatient facility, they've not changed their view.

REP. FOX: Yeah.

MICHAEL ALEVY: And -- and that information is critical for the Court to have as soon as it -- as it can have.

REP. FOX: And that could come after a two or three or four week period?

MICHAEL ALEVY: It could potentially. There are sometimes cases where we come back for a hearing in 60 days and a treatment provided would testify that they want more time essentially. That they're making progress but they haven't achieved competency, and would get another continuance date of up to 60 days or so or longer. So this can happen on a couple of -- you know, there can be a couple of iterations of this process going on. So we really see it as an opportunity to get this relevant information. If there is a change in circumstances according to the treatment provider, back to the Court as soon as possible.

REP. FOX: Okay. Thank you.

Senator Coleman.

SENATOR COLEMAN: Quick question. I'm trying to test my own recollection. Is there a relationship between this statute and section 54-40 of the General Statutes?

MICHAEL ALEVY: I'm sorry, Senator if you could just refresh my recollection.

SENATOR COLEMAN: Like Senator Kissel I at one time worked as a public defender and when we suspected that a defendant was not competent to stand trial --

MICHAEL ALEVY: That may be the old number -- is that the old number?

SENATOR COLEMAN: That might be the old --

MICHAEL ALEVY: I think it might be the old number for what is now 54-56d.

SENATOR COLEMAN: Okay. And it's now 54-56d?

MICHAEL ALEVY: Yes, sir.

SENATOR COLEMAN: Okay. Thank you.

REP. FOX: Any other questions? Seeing none, thank you.

MICHAEL ALEVY: Thank you.

REP. FOX: Next is Maryann Lombardi.

MARYANN LOMBARDI: Good afternoon, Senator Coleman, Representative Fox, members of the Committee. My name is Maryann Lombardi; I am a member of the Connecticut Council on Developmental Disabilities. The Council is a Governor appointed body of persons with developmental disabilities, parents of children with developmental disabilities and agency representatives that serve people with developmental disabilities.

The Council receives federal funding from the administration on Developmental Disabilities to implement the Developmental Disabilities Act and to promote full inclusion of people with developmental disabilities to the community. The Council encourages you to support Senate Bill 918, AN ACT CONCERNING SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPARIRED. This bill provides more safeguards to people with disabilities who are physically challenged communicating consent to sexual intercourse when the attacker knows about the victims inability

crime victims with disabilities are less likely to go reported at the criminal justice system. One reason why a crime may go unreported is that the perpetrator may be a family member who assists that person with a disability. And the case in point, it was the mother's boyfriend who assaulted the young twenty-five-year-old woman in her own home.

The Council hopes that you will see the importance in strengthening the definition of physical helplessness. The - a profound sense of injustice was expressed by the Connecticut Council of Developmental Disabilities and the disability community when the verdict was overturned.

Thank you for your time and consideration on this important bill.

SENATOR COLEMAN: Thank you so much for your testimony.

Are there questions for Ms. Lombardi?

Are there questions?

Seeing none, thank you for your testimony.

MARYANN LOMBARDI: Thank you.

SENATOR COLEMAN: Next is Dr. Michale Norko.

MICHAEL A. NORKO: Good afternoon, Senator Coleman, Distinguished Members of the Judiciary Committee; I'm Dr. Michael Norko, the Director of Forensic Services for the Department of Mental Health and Addiction Services and I'm here today to speak in support of House Bill 6276, AN ACT CONCERNING COMPETENCY TO STAND TRIAL and Senate Bill 918, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO

COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPARIED.

House Bill 6276 is a DMHAS sponsored bill and it has just one purpose, which is to allow us in DMHAS when we're treating someone to restore their competence to stand trial to -- to inform the Court that the person may be well enough now that a least restrictive alternative is available in order to continue the restoration effort.

Right now we offer those opinions to the Court when we do the first evaluation of someone's competence to stand trial. So first we tell the Court whether we think the person is competent or not. If we think they're not competent we tell the Court whether we think they can or cannot be restored. And if we think they can be restored then we tell the Court whether we think an inpatient or an outpatient setting is the least restrictive placement that's appropriate and available and then the Court makes a decision. That's all part of our current law.

What we don't have in our current law is an ability for us to acknowledge that someone during the course of their hospital stay might have improved enough that they no longer need a hospital level of care even though they may not yet be restored to competence. This allows us to send a report to the Court and for the Court to go through the very same considerations it already goes through at the earlier stage of these proceedings.

So it's really the same thing but it allows us to have this consideration of least restrictive alternative at a later time when someone's already been hospitalized.

We evaluate close to 600 defendants a year, about 200 of them are found not competent and restorable and are sent to inpatient settings and about 15 of them are sent to outpatient settings. So we are currently doing some outpatient restoration but not a lot of it. Representative Hetherington had a question before about someone's deteriorating condition that may have been related to while they were in outpatient restoration.

As things go now, if someone's in outpatient restoration and their situation deteriorates we inform the Court that they've deteriorated and they require to be placed in an inpatient setting and then the Court has a hearing on that matter.

There was also a question about danger to society from Representative Baram. I can speak to that. First of all we would not make a recommendation to the Court that someone could be released to a less restrictive setting if clinically they would represent a danger to themselves or anyone else. And secondly it's the Court that makes this determination. It's not the treatment team; it's not the hospital, so the Court has the opportunity to hear from both the defense and the prosecution and to make its own decision about the conditions of release if it wants to release someone.

I also wanted to speak briefly in support of Raised Bill 918. From our perspective in mental health this bill accomplishes two important changes. The first is that it removes most of the last statutory references in Connecticut to persons as mental defectives and we think that's an unfortunate use of phraseology and this would eliminate most of the remaining references to that term in our statutes.

violence to report abuse that's perpetuated by people they know and trust.

For victims with disabilities whose daily care may be dependent on an abuser, it takes an unbelievable amount of courage to report an assault. When victims come forward to seek justice they deserve the protection of laws that do not treat their disabilities as liabilities.

S.B. 918 would address the problems that *State v Fortin* identified and it would strengthen the legal protections that are available to victims of sexual violence.

CSACS hopes that the Committee will join us in strongly supporting this important piece of legislation.

Thank you for your consideration and I'd be happy to answer any questions you might have.

SENATOR COLEMAN: Are there questions for Ms. Doroghazi?

Seeing none, thank you for your testimony.

ANNA DOROGHAZI: Thank you.

SENATOR COLEMAN: Kevin Kane.

KEVIN KANE: Good afternoon, Senator Coleman and Representative Fox and members of the Committee. Thank you for inviting us here to testify. I brought two people with me to help. I get the idea over the past years that the Committee is probably sick of seeing nobody -- seeing only me.

The Division is here to testify in support of several bills. 6276 is the DMHAS competency bill we helped and consulted with DMHAS on that

language. The Division is in favor of that language on that bill.

6313; this was a matter that came before the legislature last session at the end of the session as a budgetary matter, the Intensive Probation Bill. We agreed at the time last spring that it represented a reasonable method to relieve some real budgetary problems and some impossible problems that we were trying to deal with regard to overcrowding in corrections and to provide another vehicle. We said we were in favor of it then, we're still in favor of it today.

With regard to the two other bills here, Neil Kelly on my left is an Assistant -- Senior Assistant State's Attorney from Bridgeport. He's had particular experience trying cases involving victims who are developmentally -- victims of sexual assaults who are developmentally disabled. And Attorney Kelly is here to testify in support of Senate Bill 918. Neil --

NEIL KELLY: Thank you, Mr. Kane.

KEVIN KANE: And this represents the position of the Division, now it's to Attorney Kelly.

NEIL KELLY: Good afternoon, members of the Judiciary Committee, Senator Coleman, Representative Fox. As stated by Mr. Kane my name is Quneillouss Kelly, I've been with the State's Attorney's Office for 20 years, located in Bridgeport, Connecticut.

As mentioned earlier I'm here to speak on behalf of not only Bill -- Senate Bill Number 918 but also House Bill Number 6314, which is AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS PLACED OR TREATED UNDER THE DIRECTION OF THE COMMISSIONER OF DEVELOPMENTAL SERVICES.

SB919

Michael Alevy, Senior Assistant Public Defender, Office of Chief Public Defender
Re: ***Raised Bill No. 6276, An Act Concerning Competency to Stand Trial***
Judiciary Committee Public Hearing, February 23, 2011

been raised by defense counsel, the state's attorney or the court. Once so raised, a court will order the examination of the defendant by a clinical team as currently provided for by statute.

If a court finds, after receipt of the report and testimony of the examination team, that a defendant is not competent to stand trial the statute requires that the court next determine whether, if provided with a course of treatment, there is a substantial likelihood that a person may be restored to competency and under what conditions and circumstances such restoration attempts may take place. In cases where the court finds there is a substantial likelihood that a defendant can be restored to competency, the court will frequently find that an inpatient mental health facility is the least restrictive setting in which to undertake the restoration process. Once a court places a defendant in such a facility, the case is continued for up to 90 days while restoration is pursued.

Under the current law, progress reports regarding restoration efforts are required to be submitted to the court in five circumstances: (1) within seven days of a scheduled hearing; (2) when the defendant has attained competency; (3) when a defendant will not attain competency within a specified period; (4) when a defendant will not attain competency absent administration of medications; or, (5) when a defendant would be eligible for civil commitment.

The proposed bill adds a sixth circumstance requiring a progress report in cases in which a defendant has not been restored to competency but who has improved sufficiently so as not to warrant continued inpatient commitment as it was no longer the least restrictive placement appropriate and available to restore competency.

For the reasons stated the Office of Chief Public Defender requests that this bill be reported favorably.

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LINE 9

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Testimony of
Michael Alevy, Senior Assistant Public Defender
Office of Chief Public Defender

Raised Bill No. 6276, An Act Concerning Competency to Stand Trial

Judiciary Committee Public Hearing
February 23, 2011

The Office of the Chief Public Defender supports passage of **Raised *Bill No. 6276, An Act Concerning Competency to Stand Trial.*** This bill adds a requirement that a treatment provider charged with restoring the competency of a defendant in a criminal case submit a progress report to the court in the case of a defendant whose continued inpatient commitment is no longer the least restrictive setting appropriate and available to restore competency

The Office of Chief Public Defender believes that the addition of this new reporting requirement will facilitate the achievement of several important goals;

1) It will help ensure that courts have timely and relevant information needed to place defendants in the most appropriate and effective therapeutic setting to accomplish restoration;
2) It will allow for a reduced reliance and utilization of costly inpatient treatment facilities; and,
3) It will ensure public safety by allowing the court to consider whether such a change of circumstances warrant a reduction of bond and release of a defendant to a recommended outpatient facility.

Connecticut General Statutes *§54-56d, Competency to Stand Trial*, provides that no defendant may be tried, convicted or sentenced if that defendant is not competent A defendant will be found not competent to stand trial if, after a hearing conducted pursuant to the statute, a court finds that the defendant is unable to understand the nature of the proceedings against him or to assist in his own defense Such a hearing will take place when the issue of competency has

CONNECTICUT LEGAL RIGHTS PROJECT

P.O. Box 351, Silver Street, Middletown, CT 06457
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Statement in SUPPORT of H.B. 6276, An Act Concerning Competency to Stand Trial

Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee. Connecticut Legal Rights Project, Inc. **SUPPORTS H.B. 6276, An Act Concerning Competency to Stand Trial.**

The Connecticut Legal Rights Project, Inc. (hereafter "CLRP") is a non-profit legal services agency that provides individual and systemic legal services to indigent adults who have, or are perceived as having, psychiatric disabilities and who receive, or are eligible to receive, services from the Department of Mental Health and Addiction Services (hereafter "DMHAS"). CLRP maintains offices at all DMHAS operated in-patient and out-patient facilities in the state. Our offices are staffed by attorneys and paralegal advocates. This testimony is informed by CLRP's expertise in Connecticut's mental health system.

The purpose of H.B. 6276 is to permit consideration by the court of the least restrictive alternative placement for individuals hospitalized for mental health treatment to restore competence to stand trial. The 1998 landmark U.S. Supreme Court decision in L. C. v. Olmstead found that the unnecessary institutionalization of persons with disabilities constitutes discrimination prohibited by the ADA, and re-affirmed the right of these individuals to be integrated into the community and interact with persons without disabilities to the fullest extent possible.

Connecticut General Statutes 54-56d(i) requires courts to determine the "least restrictive placement appropriate and available to restore competency," when a court receives an evaluation report of a defendant's competence to stand trial that recommends that the defendant is not competent to stand trial but may be restored to competence to stand trial with treatment. The courts make this determination based on information

DMHAS provides about the least restrictive placement for all defendants who are recommended not competent to stand trial but restorable.

On average, DMHAS evaluates approximately 590 defendants per year for competence to stand trial, and makes recommendations of findings of not competent to stand trial in about 47% of them, with 40% of the total defendants evaluated being found not competent and restorable (237 persons per year, on average). Each year, on average, approximately 200 individuals are ordered placed in a DMHAS inpatient setting for restoration treatment. Approximately 15 defendants per year are ordered to DMHAS outpatient restoration in consideration of the least restrictive placement available and appropriate for the restoration effort.

However, for the 88% of incompetent defendants receiving restoration orders who are sent to inpatient treatment, there is no statutory provision authorizing them to be returned to the community for restoration treatment when circumstances warrant such a transition. It is possible for individuals to improve sufficiently in the hospital that they no longer require an inpatient level of care, but still not be restored to competence to stand trial, particularly in a complicated trial scenario. Yet, they can remain institutionalized unnecessarily at a cost of $1,200 per day to the state.

H.B. 6276, if enacted, would allow the courts to consider situations such as these. Judges would be able to order that a defendant be transferred to outpatient restoration treatment in cases where the court finds that the individual is making progress toward attaining competency, and that inpatient placement is no longer the least restrictive placement appropriate and available to restore competency. The bill thus permits the court to make the same determinations about conditions of release as occurs during the initial consideration of outpatient restoration under Sec. 54-56d(i). The proposed language for this additional consideration is drawn from existing language in 54-56d(i).

In sum, Connecticut Legal Rights Project, Inc. supports the passage of H.B. 6276 because it would allow DMHAS to apply the principle of least restrictive placement to defendants who have been placed in inpatient treatment and are doing better clinically and making progress toward restoration of competence to stand trial.

STATE OF CONNECTICUT

DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
A Healthcare Service Agency

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Dannel P. Malloy
Governor

Patricia A. Rehmer, MSN
Commissioner

Testimony of Michael Norko, MD
Director of Forensic Services
Department of Mental Health and Addiction Services
Before the Judiciary Committee
February 23, 2011

Good afternoon, Senator Coleman, Representative Fox, 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. 6276, An Act Concerning Competency to Stand Trial and HB 918 An Act Concerning The Sexual Assault Of Persons Whose Ability To Communicate Lack of Consent is Substantially Impaired.**

HB 6276 is a DMHAS proposed bill before you today and the purpose of this bill is to permit consideration by the court of the least restrictive alternative placement for individuals hospitalized for mental health treatment to restore competence to stand trial. When a court receives an evaluation report of a defendant's competence to stand trial that recommends that the defendant is not competent to stand trial but may be restored to competence to stand trial with treatment, the court must make a determination regarding the "least restrictive placement appropriate and available to restore competency," according to Sec. 54-56d(i). The court has available to it the recommendation of the evaluators in making this determination, since we provide information about least restrictive placement for all defendants who are recommended not competent to stand trial but restorable.

On average for the last 3 calendar years, we have evaluated approximately 590 defendants per year for competence to stand trial, and made recommendations of findings of not competent to stand trial in about 47% of them, with 40% of the total defendants evaluated being found not competent and restorable (237 persons per year, on average). Each year, on average, approximately 200 individuals were ordered placed in a DMHAS inpatient setting for restoration treatment. Approximately 15 defendants per year were ordered to DMHAS outpatient restoration in consideration of the least restrictive placement available and appropriate for the restoration effort. (A smaller number of restorations are ordered in other agencies from among the defendants evaluated by DMHAS. In the last 3 years, the annual figures have averaged: 5 outpatient placements with the Department of Developmental Services, 10 inpatient placements with Department of Children and Families (DCF) and 7 outpatient placements with DCF.)

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The DMHAS Division of Forensic Services is interested in facilitating greater use of outpatient restoration as ordered by the courts. For example, we have a pilot project beginning in New Haven this month, which will use a structured manual approach to provide restoration services with the availability of a day-monitoring setting in the community. We hope to increase the number of recommendations we are able to make to the court for outpatient restoration as a result of this pilot, as well as improving the prospects for such outpatient restoration to be successful..

For the 88% of incompetent defendants receiving restoration orders who are sent to inpatient treatment, there is no statutorily available alternative for such persons to be returned to the community to continue with restoration treatment even when circumstances warrant such a transition. It is possible that an individual can improve sufficiently in the hospital so as to no longer require an inpatient level of care, but still not be restored to competence to stand trial, particularly in a complicated trial scenario.

This bill, if adopted, would allow the courts to consider situations in which this might occur. Judges would then be able to order that a defendant be transferred to outpatient restoration treatment in cases where the court finds that the individual is making progress toward attaining competency, and that inpatient placement is no longer the least restrictive placement appropriate and available to restore competency. The bill thus permits the court to make the same determinations about conditions of release as occurs during the initial consideration of outpatient restoration under Sec. 54-56d(i). The proposed language for this additional consideration is drawn from existing language in 54-56d(i). Passage of this bill would allow us to apply the principle of least restrictive placement to defendants who have been placed in inpatient treatment and are doing better clinically and making progress toward restoration of competence to stand trial.

I also wish to speak briefly **in support of Raised Bill 918, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired.** From our perspective, this bill accomplishes two important changes: 1) it removes most of the last remaining statutory references to persons as "mentally defective"; and 2) it removes the stigma of disability from the definitions of sexual assault, instead referring to the actual key issue, which is the victim's impaired ability to communicate lack of consent to sexual activity arising from any mental or physical condition. Thank you for the opportunity to address the Committee on these important bills. I would be happy to take any questions you may have at this time.

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CONNECTICUT
GENERAL ASSEMBLY
SENATE

PROCEEDINGS
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SENATOR LOONEY:

Thank you, Madame President.

Continuing, Calendar page 17, Calendar 418, House Bill 6276, move to place this item on the Consent Calendar.

THE CHAIR:

Seeing no objections, so ordered.

SENATOR LOONEY:

Thank you, Madame President.

Calendar page 18, Calendar 424, House Bill 6270, Madame President move to place this item on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Madame President.

Moving to Calendar page 21, Calendar 453, House Bill 6279, Madame President move to place this item on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Madame President.

Madame President moving to Calendar page 28,

before doing that and before voting on that Consent Calendar, we have one additional item to add which is Calendar page 40, Calendar 327, House Bill 6330.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Madame President. Now if the Clerk might call all of the items on the Consent Calendar before calling for a vote on that Consent Calendar.

THE CHAIR:

Mr. Clerk will you please call the bills?

THE CLERK:

From Calendar page 1, Calendar 489, Senate Joint Resolution 47; Calendar page 8, Calendar 226 substitute for Senate Bill 1153; Calendar page 9, Calendar 233, substitute for Senate Bill 1064; Calendar page 9, Calendar 248, Senate Bill 1150; Calendar page 11, Calendar 301, substitute of Senate Bill 518; Calendar page 12, Calendar 332, House Bill 6444; Calendar page 15, Calendar 407, substitute of Senate Bill 1209; Calendar page 16, Calendar 411, House Bill 6370; Calendar page 17, Calendar 415, House Bill 6275; Calendar page 17, Calendar 418, House Bill 6276; Calendar page 18, Calendar 424, House Bill 6270;

Calendar page 21, Calendar 453, substitute for House Bill 6279; Calendar page 28, Calendar 49, substitute for Senate Bill 480; Calendar page 34, Calendar 173, Senate Bill 1047; Calendar page 36, Calendar 232, Senate Bill 835; Calendar page 37, Calendar 238, substitute for Senate Bill 1062; Calendar page 39, Calendar 302, Senate Bill 737; Calendar page 42, Calendar 384, substitute for Senate Bill 377.

That completes the items previously placed on the Consent Calendar.

Madame President, I am told that there is one more item to place. Page 40, Calendar 327. HB6330

And, one other correction, Madame President. On page 39, Calendar 302, that was voted on previously, SB737 so we take that off the Consent Calendar.

That should complete the first Consent Calendar.

THE CHAIR:

Thank you. At this time I would ask you to call for a roll call vote and I will open the machine.

THE CLERK:

The Senate is voting on the first Consent Calendar. Would all Senators please return to the Chamber? The Senate is voting on the first Consent Calendar. Will all Senators please return to the

Chamber?

THE CHAIR:

Have all members voted? Have all members voted? If all members have voted the machine will be locked and Mr. Clerk, will you tell the tally?

THE CLERK:

Madame President

Total Number voting	36
Necessary for adoption	19
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar 1 has passed, is adopted.

The Senate will stand at ease for a moment, please.

(Chamber at ease)

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Madame President, if we might stand at ease for just a moment.