



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Monte Radler, Public Defender, Connecticut Valley Hospital Office of Chief Public Defender

Public Health Committee – March 28, 2022

Raised S.B. 450 - An Act Concerning Connecticut Valley and Whiting Forensic Hospitals

Mission Statement of the Division of Public Defender Services

Striving to ensure justice and a fair and unbiased system, the Connecticut Division of Public Defender Services zealously promotes and protects the rights, liberty and dignity of all clients entrusted to us. We are committed to holistic representation that recognizes clients as individuals, fosters trust and prevents unnecessary and wrongful convictions.

The recent abuse allegations at Whiting Forensic Institute, and the resulting final report of the Task Force to Review and Evaluate CVH and WFH, the Psychiatric Security Review Board, and Behavioral Health Care Definitions issued pursuant to Public Act No. 18-86, show that more attention needs to be given to the care of the extremely vulnerable individuals at Connecticut Valley and Whiting Forensic Hospitals.

Public Act No. 18-86, An Act Concerning Whiting Forensic Hospital and Connecticut Valley Hospital, originally provided, in pertinent part: "Section 1 (a) There is established a task force to (1) review and evaluate the operations, conditions, culture and finances of Connecticut Valley Hospital and Whiting Forensic Hospital, [and] ... (6) examine the role of the Psychiatric Security Review Board established pursuant to section 17a-581 of the general statutes...." The Task Force issued its "Final Report" on December 16, 2021, which included, in pertinent part, Findings and Recommendations as follows:

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- “There was unanimous concern among the members of the Task Force ... about the lengthy periods of commitment placed upon acquittees found NGRI.... The stated purpose of the PSRB is to protect public safety; these lengthy commitments do little to further that end. Rather, they seem to be more a mechanism to reassure the public that an individual will never get out of an institution. Per statute, once an individual has received appropriate treatment such that they no longer pose a danger to self or others, he or she must be released to the community. To do otherwise goes against all principles of recovery and criminal justice.”
- With respect to the role of the PSRB, the Task Force states, in pertinent part, that “[t]he PSRB – one of only three in the United States – was established in 1985, for the stated purpose of protecting public safety. By a 6 to 1 majority, the members of the Task Force agreed that abolishing the PSRB should be considered. If not, however, there was unanimous agreement on a number of ways in which it could be modified to better respect patients’ rights, including amending the mission of the PSRB to balance protection of society with patients’ rights, including: amending the mission of the PSRB to balance protection of society with patients’ rights; ending the option of re-commitment to the PSRB in favor of a civil commitment process, if relevant; allowing patients the opportunity to petition for temporary leave status.... In addition, there was near-unanimous agreement that placement and movement of patients within the hospital setting remain a clinical decision rather than a judicial one, eliminating the role of the PSRB in the internal movement of patients within the hospital....”

The Office of Chief Public Defender strongly supports **Raised Bill No. 450, An Act Concerning Connecticut Valley and Whiting Forensic Hospitals**, most specifically those sections of the bill amending provisions of the statutory scheme applicable to hospital patients [acquittees] who were placed under the jurisdiction of the Psychiatric Security Review Board after being found not guilty by reason of lack of capacity due to mental disease or defect pursuant to C.G.S. § 53a-13. **Raised Bill 450** is a necessary first step that would make substantive changes providing acquittees under the supervision of the Board with improved due process and protection of their safety as well as those state and federal rights that they are legally entitled to as involuntarily institutionalized individuals.

This testimony primarily addresses specific subsections of **Raised Bill No. 450** that directly apply to acquittees under the jurisdiction of the Psychiatric Security Review Board who are patients at Whiting Forensic and/or Connecticut Valley Hospital.

SECTION 3 modifies C.G.S. § 17a-582, the NGRI initial commitment statute, so that the court’s statutorily mandated primary concern is no longer simply the protection of society, but instead balances the protection of society *and* the “safety and well-being of the acquittee.”

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SECTION 4 modifies *C.G.S. § 17a-584* by changing the legal standard the Psychiatric Security Review Board must apply in considering discharge, conditional release or continued confinement of acquittees. While current language requires the PSRB to only consider the protection of society when determining if an acquittee should be discharged, released or held, the new standard requires the PSRB to balance concern for the protection of society with concern for the “safety and well-being of the acquittee.” The existing standard has resulted in individuals being held in the most restrictive setting long after medical necessity requires. “Safety and well-being of acquittees” presumably covers rights that institutionalized civil patients are otherwise entitled to under existing state and federal law. The adoption of a balancing test should facilitate greater movement of individuals under the supervision of the Board from inpatient to outpatient treatment settings; the Board otherwise retaining its current level of intensive outpatient supervision for acquittees conditionally released from hospital supervision.

SECTION 5 modifies *C.G.S. § 17a-593*, the NGRI discharge statute, changing the court’s statutory mandate from simply protecting society to a mandate which balances the protection of society with the “safety and well-being of the acquittee.” The existing standard has resulted in individuals being held in the most restrictive settings long after medical necessity and/or modern data-driven risk assessment research require.

SECTION 6 creates a separate task force whose tasks “include but need not be limited to, an examination of the necessity for the continued existence of the PSRB.”

SECTION 7 replaces *C.G.S. § 17a-587*. New subsection b allows the hospital to directly authorize temporary leaves from Whiting Forensic Hospital and Connecticut Valley Hospital to outpatient treatment and/or residential facilities based on the hospital’s clinical judgment that the patient is safe to engage in the community transition process rather than going through the PSRB process for permission. Current law does not allow acquittees or their legal advocates to initiate the temporary leave process to determine whether temporary leave would be appropriate. The existing protracted multi-level process, which dates back to the early 1980’s, has created a situation where patients who are otherwise clinically deemed discharge ready languish at Whiting Forensic Hospital for months or years without a hearing on possible temporary leave.

SECTION 8 modifies *C.G.S. § 17a-521* so that Whiting Forensic Hospital would operate like any other civil psychiatric facility in the state, wherein the superintendent can permit any patient, including an acquittee, to leave temporarily.

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DHMAS, Whiting Forensic Hospital and Connecticut Valley Hospital already have well developed, data-driven internal policies regarding clinical conditions which predict whether a civil patient is appropriate for confinement at Connecticut Valley Hospital and/or Whiting Forensic Hospital, or highly structured day and overnight transitional treatment in facilities supervised by Connecticut's Regional Mental Health authorities [while remaining under the general oversight of Whiting Forensic Hospital]. These internal policies are more in line with the medical necessity and recovery models applicable to all non-PSRB involuntary commitment patients. Currently there are acquittees who have been confined in Whiting Forensic Hospital or Connecticut Valley Hospital for a decade or more who are not actively symptomatic, who take medications in accordance with the recommendations of their psychiatrist, who are substantially treatment compliant, and/or who are not assaultive or otherwise management problems. These are individuals whom WFH or CVH have not recommended to the Board for transfer or community transition, or whom the Board has denied transfer or community transition for reasons which defy common understanding under operative legal and best practice medical standards, and for whom there is no provision or internal legal mechanism by which they can proactively move the legal process forward. Adoption of this provision would facilitate a process which would enable acquittees to move more easily from Whiting, the maximum-security facility, to the less restrictive Dutcher facility, and then to highly supervised community-based treatment, without compromising public safety under the most up-to-date risk assessment understanding.

The shocking abuse allegations at Whiting make it clear that there needs to be change at the facility and in the process involving the PSRB. Therefore, the Office of Chief Public Defender requests that the Committee support this bill.