



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Deborah Del Prete Sullivan, Legal Counsel, Director Office of Chief Public Defender

JUDICIARY COMMITTEE - MARCH 18, 2024

Raised Bill No. 5500

AN ACT CONCERNING REVISIONS TO VARIOUS LAWS CONCERNING JUROR COMPENSATION, THE DEPARTMENT OF CORRECTION AND CRIMINAL LAW AND CRIMINAL PROCEDURE

Except for Section 8 of this bill, the Office of Chief Public Defender (OCPD) supports Raised H.B. 5500 - An Act Concerning Revisions to Various Laws Concerning Juror Compensation, The Department of Correction and Criminal Law and Criminal Procedure. Except for Section 8, the majority of this bill is the result of the collaboration between this office and the Division of Criminal Justice.

Section 8 proposes language that would change not only the intent of subsection (d) of C.G.S. 54-56d, *Competency to stand trial* regarding the order of the court for a competency hearing, but significantly impact clients for whom an attorney has requested a competency to stand trial examination.

A defendant shall not be tried, convicted, or sentenced while they are not competent. Defendants have the right to understand the nature of the proceedings and to assist in their own defense. If, at any time during a criminal proceeding it appears that the defendant is not competent, counsel has an obligation to request an examination to determine competency.

Current law provides that the court is required to grant counsel's motion to determine competency, only if the court finds "that the request for an examination is justified and that, in

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accordance with procedures established by the judges of the Superior Court, there is probable cause to believe that the defendant has committed the crime for which the defendant is charged”.

The proposed language in Section 8 provides discretion to the court as to whether to order a competency examination until it first considers “all available information” as to whether the defendant’s participation in a jail diversion program is not appropriate.

Defense counsel appreciate the significance of ordering competency evaluations and only request such after all other options, including diversionary programs, community-based programs and jail diversion had been considered and/or exhausted and the collateral consequences of competency restoration have been weighed.

Once a competency evaluation has been requested by counsel, the courts should not be required to consider the defendant’s ability to participate in any other treatment or diversionary program. A question exists as to how the court obtains the “available information” as contemplated. Does this now require the court to hold a hearing at which the defense is to present evidence of prior and/or current mental health issues, treatment, and their lack of participation?

Under the proposal, even if a person is not competent, the court can order them to participate in treatment, regardless of whether it is jail diversion or community-based without an understanding of the proceedings and without any resolution of the pending charges. If not competent, he/she cannot understand conditions of release, or the consequences if they fail to participate, making them vulnerable to incarceration.

OCPD recognizes the current mental health crisis, including that the competency to stand trial process has become overburdened and delayed, however the proposed language in Section 8 will not improve the competency process or protect the rights of people who do not understand the charges against them and are unable to assist in their own defense.

This office requests that in lieu of the proposed language amending subsection (d) of C.G.S. 54-56d in Section 8, that the following be inserted:

(d) **Examination of defendant. Report.** If the court finds that the request for an examination is justified and that, in accordance with procedures established by the judges of the Superior Court, there is probable cause to believe that the defendant has committed the crime for which the defendant is charged, the court shall order an examination of the defendant as to his or her competency, except that in cases where

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the most serious crime charged against the defendant is a misdemeanor, the court shall order the defendant to be examined by the least restrictive means available, which may include an examination on an outpatient basis.

Conducting competency evaluations in the community allows clients to maintain housing and relationships with community-based treatment providers and protects their right to understand the nature of the proceedings and assist in their own defense.

If the Committee is not inclined to substitute this language, this office requests that Section 8 be deleted in its entirety from the bill. Thank you.

This office supports the other sections of the bill which provide as follows:

Section 1 amends *C.G.S. 51-247, Compensation of jurors. Guidelines re reimbursement of expenses*, to permit jury selection to be more inclusive of persons who are unemployed or work part time who have no source of compensation. The proposal provides a flat fee to the person for the first five days of service equal to the minimum wage for an 8-hour day. In addition, certain out of pocket expenses such as family care or travel would be established at a rate as established by the Jury Administrator or federal General Services Administration respectively. For any juror serving in excess of 5 days, would be compensated with a flat fee equal to the minimum wage again based upon an 8-hour day along with family care and/or travel expenses being reimbursed. Connecticut's juror compensation is structured so individuals who are employed full time can serve. However, unemployed, and part-time or per diem employees unable to bear the hardship of not working as they will not be paid are unable to participate as a juror. By providing just compensation to these individuals, the system will be fairer and expand access to persons in the community to serve as jurors.

Section 2 This section amends subsection (c) of *C.G.S. 29-38c, Person posing risk of imminent personal injury to self or others. Is Firearms or other deadly weapons or ammunition. Warrant for seizure. Risk protection order prohibiting acquisition or possession*, to provide adults with the right to counsel if the subject of a risk protection order. Under current law, anyone subject to a risk protection order has a right to counsel. However, indigent persons have no access to counsel due to their lack of financial resources. *P.A. 23-89, An Act Concerning Risk Protection Orders or Warrants and Disqualifiers for Firearm Permits and Eligibility Certificates Based on Temporary Commitment Certification*, granted juveniles the right to representation by the Division of Public Defender Services but did not extend legal representation by the Division of Public Defenders to adults. This amendment would insure indigent adults, the subject of the risk protection process, appointment of a public defender, if eligible, per statute.

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Section 3 This section is a recommendation of the Sentencing Commission of which this office is a member and amends *C.G.S. 54-56l, Pretrial supervised diversionary program for persons with psychiatric disabilities and veterans*, to expand eligibility for this pretrial diversion program to persons with intellectual disabilities and autism.

Section 4 This section amends **C.G.S. 14-227, Operation while intoxicated**, to eliminate any requirement to install an ignition interlock device on a motor vehicle when a person is arrested for violating C.G.S. 14-227a, C.G.S. 14-227m, or subdivision (1) or (2) of subsection (a) of C.G.S. 14-227n where the basis of the arrest was the use of cannabis and the charge has been withdrawn, nolleed or dismissed, or in cases where a person has been acquitted after a court or jury trial or a conviction for such has been vacated, overturned or erased.

Section 5 This is new and technical in nature. The intent is to clarify that an offense committed utilizing interactive computers, networks, telecommunications service, and other electronic communications including, but not limited to, emails and text messages is deemed to “have been committed either at the place of origin **or** receipt. Discussions with the Division of Criminal Justice have been that the intent is not to have a person be charged at both the place of origin **and** the receipt of such.

Section 6 This amends section 18-85 of the 2024 supplement to the general statutes to provide that compensation is to be paid to an inmate based upon merit, diligence, and skill at a rate of not less than \$1. Higher rates of pay would be based upon factors as determined by the Commissioner of Corrections. Current law provides for compensation to be paid at a rate of not less than \$5 but not more than \$10.

Section 7 This section amends C.G.S. 54-53 and appears to be a technical amendment and this office takes no position.

Section 8 This section is a recommendation of the Sentencing Commission of which this office is a member and amends subsection (d) of C.G.S. 54-56d. This office is **opposed** for the reasons stated at the beginning of this testimony. See discussion above.

Section 9 This section is a recommendation of the Sentencing Commission of which this office is a member and amends subsection (i) C.G.S. 54-56d. The proposal provides criteria for the court to consider when determining the appropriate least restrictive placement available to restore the competency of the defendant. The proposal provides that if a charge is not a felony, outpatient treatment is the least restrictive placement unless good cause shown to find otherwise.

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Section 10 This section amends C.G.S. 53a-38, Calculation of terms of imprisonment, to provide that a person confined pretrial to their residence with a condition that they cannot leave unless authorized, received credit towards any sentence thereafter imposed. The amendment is effective October 1, 2024, and effective upon sentences of imprisonment being served on or after October 1, 2024.

In conclusion, this office requests that the Committee adopt this office's proposed language in lieu of the language in **Section 8** or delete **Section 8** in its entirety and vote favorably on the remainder of the bill. Thank you.