Division of Public Defender Services
State of Connecticut

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TESTIMONY OF
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COMMITTEE ON PUBLIC HEALTH
MARCH 16, 2018

RAISED SENATE BILL 294
AN ACT CONCERNING THE PSYCHIATRIC SECURITY REVIEW BOARD

The Office of Chief Public Defender strongly supports Raised Bill 297, An Act Concerning the Psychiatric Security Review Board. Individuals are 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. Sec. 53a-13. This is more commonly known as being found "not guilty by reason of insanity" or NGRI. The recent abuse allegations at Whiting Forensic Institute show that more attention needs to be given to the care of the extremely vulnerable individuals at that facility as well as at the Dutcher facility. Raised Bill 294 is a necessary first step that would make substantive changes providing the acquittees under the supervision of the Board with improved due process and protection of their safety as well as state and federal rights that they are legally entitled to as involuntarily institutionalized individuals.

SECTION 1 makes minor technical changes to the provisions on how individuals are committed through Probate Court.

SECTION 2 changes the legal standard the Psychiatric Security Review Board must apply in considering discharge, conditional release or continued confinement of acquittees. Current language requires that the PSRB only consider the protection of society when determining if an acquittee should be discharged, released or held. This standard has resulted in individuals being held in the most restrictive setting long after medical necessity requires. Section 2 proposes a balancing test whereby the Board must balance the protection of society with rights that all institutionalized civil patients are otherwise entitled to under state and federal law, including the right to placement in the least restrictive environment. This should allow for the movement of individuals under the supervision of the Board more easily from an

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inpatient setting to an outpatient setting, where the Board would retain its current level of intensive supervision.

SECTION 3 would cap the term of PSRB supervision at the maximum sentence, yet provide a mechanism for the state's attorney to apply for civil commitment in the Probate Court for individuals who truly remain a danger to self or others or are gravely disabled. Under current law, an acquittee can be initially committed to the jurisdiction of the PSRB for a period of time equal to the maximum sentence he/she could have been sentenced to for the underlying crimes. This initial maximum PSRB commitment can be extended beyond that period, potentially forever, under a recommitment process that heavily relies on PSRB input and is governed by a legal standard which is heavily weighted against acquittees, and is not in accordance with the medical necessity which otherwise applies under civil commitment law. The current system has resulted in some individuals, who had an initial maximum criminal exposure of five years, being confined in excess of two decades at Connecticut Valley Hospital under the supervision of the Board. There are a small number of individuals who will be impacted by this provision in the immediate future, but the injustice to them is grave under the current system. The Office of the Chief Public Defender would commit to having the attorneys who represent the acquittees at the PSRB provide representation at the initial determination in Probate Court.

SECTION 4 would give acquittees, their legal guardians and representatives the right to apply for a temporary leave, an essential step leading to conditional release to the community; and limits the requests to once every six months. Current law does not allow acquittee to initiate the process to determine whether temporary leave would be appropriate. That power is restricted to the Commissioner or Superintendent of the Whiting facility. This has led to patients, who are otherwise clinically deemed discharge ready, to languish at Connecticut Valley Hospital for months or years without a hearing on possible temporary leave. This situation often leaves acquittees with little hope for community release, since it curtails the chance to create a track record of success through temporary leaves. This is an important proposal, as it gives the patients more opportunity to initiate Board reviews of their treatment plans and progress.

As a technical matter, the term 'temporary release' appears three times in section 3, and should be changed to 'temporary leave' to conform to the other statutory provisions. In line 4, the phrase "an order of temporary release" should read "an order of temporary leave". In

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lines 6-7, the phrase "a person who should be temporarily released" should read "a person who should be granted temporary leave". In line 8, the phrase "... application for temporary release...." should read "...application for temporary leave...."

Section 5 directly addresses the lack of oversight and review of the video tape system at Whiting. All PSRB acquittees are represented by counsel, in most cases appointed by the Division of Public Defender Services. The clients regularly report incidents to our attorneys and tell them to "check the videotape". DMHAS does not allow the lawyer representing the acquittees any access to those tapes, even when they have a release and directly request them. Further, many of these incidents are reported to the PSRB as evidence justifying continued placement in the most restrictive setting; leaving the acquittee with no access to the only objective evidence which would exonerate them. This proposal would give counsel for the acquittee the right to review the tapes, upon request, without a release. The acquittees are provided with counsel throughout their commitment to the PSRB. It makes no sense to hinder the lawyer's ability to advocate for and protect this very vulnerable population. The lawyer should have access to the tapes in order to ensure that clients are being properly treated and not abused.

Section 6 conforms existing statutory language to encompass changes occasioned by Raised Bill No. 294.

Section 7: Under current law, as reflected in 17a-599, the PSRB has sole and unreviewable legal authority to order an acquittee confined in maximum security and transitioned back out from maximum security. The legal standard for confinement at the Whiting maximum security facility is vaguely defined as "...so violent as to require confinement under conditions of maximum security...." DHMAS and CVH have internal policies regarding clinical conditions which would indicate whether a civil patient is appropriate for confinement at Whiting, or appropriate for confinement in the medium security Dutcher facility. The Dutcher facility is also a locked facility. The DHMAS/CVH internal policies are more in line with the medical necessity model applicable to all non-PSRB patients. There are currently acquittees confined in the Whiting maximum security who are not actively symptomatic, who take medications in accordance with the recommendations of their psychiatrist, who are substantially treatment compliant and/or are not assaultive or otherwise management problems; individuals who CVH have not recommended to the Board for transfer for reasons which defy understanding under the operative legal standard, and for whom there is no provision or internal legal

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mechanism by which they can pro-actively move the legal process. Eliminating this provision would allow acquittees to move more easily from Whiting, the maximum security facility to the less restrictive Dutcher facility. It is critical to note that the Dutcher facility itself is a locked facility subject to a strictly controlled level system governing any access a patient has to community exposure.

The shocking abuse allegations at Whiting make it clear that there needs to be change at the facility and in the process at the PSRB. The Office of Chief Public Defender urges this committee to report favorable on this proposal.