

Legislative History for Connecticut Act

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HB 5945	PA 583	1979
House - 10117-10121		5
Senate - 5333-5334, 5382		3
Judiciary - 766-767, 769-771, 804-805, 816-820		12
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CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1979

VOL. 22  
PART 29  
9934-10300

10117

House of Representatives

Thursday, May 24, 1979

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kdd

CLERK:

House Bill No. 5370, with House Amendment Schedule "A".

Total number voting 140

Necessary for passage 71

Those voting yea 113

Those voting nay 27

Those absent and not voting 11

DEPUTY SPEAKER COATSWORTH:

The bill is passed.

CLERK:

Calendar No. 1254, File No. 1021, Substitute for House Bill  
No. 5945, AN ACT CONCERNING THE RIGHTS OF PERSONS ADMITTED TO  
STATE TRAINING SCHOOLS. Favorable Report of the Committee on  
Appropriations.

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER COATSWORTH:

Rep. Richard Tulisano.

REP. TULISANO: (29th)

I move acceptance of the Committee's Joint Favorable Report  
and passage of the bill.

DEPUTY SPEAKER COATSWORTH:

The question is on acceptance of the Joint Committee's  
Favorable Report and passage of the bill. Will you remark, sir?

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REP. TULISANO: (29th)

on the Yes, Mr. Speaker. Mr. Speaker, the Clerk has an amendment,  
LCO No. 8688. Clerk please read.

DEPUTY SPEAKER COATSWORTH:

The Clerk please call and read LCO No. 8688, House Amendment  
Schedule "A".

CLERK: Mr. Speaker, House Amendment, private bill, to

REPRM LCO No. 8688, offered by Rep. Tulisano of the 29th.

In line 26, delete everything after the period. Delete lines 187  
to 193, inclusive, in their entirety.

REP. TULISANO: (29th)

and Mr. Speaker.

DEPUTY SPEAKER COATSWORTH:

REP. You have the amendment, sir. What is your pleasure?

REP. TULISANO: (29th)

PRO. Mr. Speaker, I move adoption of the amendment.

DEPUTY SPEAKER COATSWORTH:

tic The question is on adoption of House Amendment Schedule "A".

And will you remark?

REP. TULISANO: (29th)

the Yes, Mr. Speaker. Mr. Speaker, what the amendment does, is  
it deletes that portion of the proposed file copy, which would  
require that hearings be held by April 1, 1980 of all individuals  
to whom commitments were made prior to October 1 of this year.

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That is, it will create a completely undue financial burden on the State of Connecticut to be able to do that in a short period of time. Therefore I move adoption of the amendment.

DEPUTY SPEAKER COATSWORTH:

Will you remark further on the adoption of the amendment?

Will you remark further on the adoption of the amendment? If not, all those in favor of the amendment, please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER COATSWORTH:

Opposed, no. The ayes have it. The amendment is adopted and ruled technical. Will you remark further on the bill as amended by House Amendment Schedule "A"?

REP. TULISANO: (29th)

Yes, Mr. Speaker. What the bill does is it establishes due process procedure for involuntary placement of mentally retarded in facilities by the Department of Mental Retardation. The existing law gives the power to the probate court, but does not provide standards for commitments or procedures and this establishes both. It establishes the standards with regard to the individual, for the commitment as well as the minimum levels to protect retarded from improper commitment, recognizing that numbers of retarded are able to live in the community without undue placement.

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DEPUTY It also provides a system for reviewing placements that are made subsequent to said placement. I move passage of the bill.

DEPUTY SPEAKER COATSWORTH:

Will you remark further on passage of the bill? Will you remark further on the bill as amended? Will you remark further? If not, the members please be seated. Staff and guests come to the well of the House. Members please be seated. Staff and guests come to the well of the House. The machine will be opened.

RE The House of Representatives is voting by roll call at this time. Will all members please return to the chamber. The House of Representatives is voting by roll call at this time. Will all members please return to the chamber.

RE Have all members voted? Is your vote properly recorded? If so, the machine will be locked and the Clerk will please take a tally.

DE The Clerk will please announce the tally.

CLERK:

Pa House Bill No. 5945, as amended by House Amendment Schedule "A".

Re Total number voting 140

Necessary for passage 71

pe Those voting yea 140

pe Those voting nay 0

pe Those absent and not voting 11

House of Representatives

Thursday, May 24, 1979

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DEPUTY SPEAKER COATSWORTH:

DEP The bill as amended is passed.

CLERK:

Calendar No. 1265, File No. 1101, Substitute for House  
Bill No. 6587, AN ACT ENABLING A MUNICIPALITY TO LEVY PROPERTY  
TAX ON ADMINISTRATIVE BUILDINGS AND WASTE TREATMENT FACILITIES  
OF REGIONAL WATER AND SEWER DISTRICTS. Favorable Report of the  
Committee on Finance, Revenue and Bonding.

REP. MILNER: (7th)

Mr. Speaker.

DEPUTY SPEAKER COATSWORTH:

Rep. Thurmon Milner.

REP. MILNER: (7th)

Mr. Speaker, I move acceptance of the Joint Committee's  
Favorable Report and passage of this bill.

DEPUTY SPEAKER COATSWORTH:

The question is on acceptance of the Joint Committee's  
Favorable Report and passage of the bill. Will you remark, sir?

REP. MILNER: (7th)

Mr. Speaker. This bill will enable a municipality to levy  
property tax on administration buildings and waste treatment faci-  
lities of regional water and sewer districts. Mr. Speaker, the  
Clerk has an amendment LCO No. 8904. Will the Clerk please read



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PROCEEDINGS  
1979

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5201-5561



SENATE

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LFU

The vote is:

31 YEA

1 NAY

The Bill is passed.

We had voted the Bill itself. The Amendments were adopted. That was the Bill itself, Calendar 1260 and the Bill is passed, 31 -

THE CLERK:

Clerk is going to turn back to page 5, File 1021 and 1193, Favorable Report of the Joint Standing Committee on Appropriations, Substitute for House Bill 5945, AN ACT CONCERNING THE RIGHTS OF PERSONS ADMITTED TO STATE TRAINING SCHOOLS as amended by House Amendment, Schedule A.

THE CHAIR:

Page 5, Calendar 1238. Senator Schneller.

SENATOR SCHNELLER:

Mr. President, I move the Joint Committee's Favorable Report and passage of the Bill.

THE CHAIR:

Question is on acceptance and passage as amended by House A. Will you remark Senator Schneller?

SENATOR SCHNELLER:

Yes, Mr. President. The Bill would change the criteria for and procedures used in court ordered placements of mentally retarded persons in

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LFU

state facilities. House A eliminates the provision in the original Bill that would have required all court ordered placements to be reviewed every two years and that persons committed to state facilities prior to October 1, 1979, have their commitment reviewed on April 1, 1980. There is \$5,000 in new costs in the judicial department to provide for counsel and diagnostic evaluations of persons who are unable to pay the minimal costs to be incurred and funding for this amount is appropriated in acts without appropriations that we previously adopted. If there is no objection, I would move it to the Consent Calendar.

THE CHAIR:

Further remarks on the Bill? Objection to the Motion to place on Consent? Hearing neither, it is so ordered. The item is on the Consent Calendar.

THE CLERK:

Clerk is going to turn to page 8 of the Calendar, under the heading Disagreeing Actions, Calendar 768, File 776, Favorable Report of the Joint Standing Committee on Government Administration and Elections, Substitute for Senate Bill 1450, AN ACT CONCERNING PAYMENT OF PERMITTED EXPENSES BY CAMPAIGN TREASURERS, as amended by Senate Amendment, Schedule A. House rejected Senate A on 5-29.

THE CHAIR:

Senator Casey.

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Members of the Circle that our business is not really concluded. Senator Schneller has a Bill that he wants to reconsider and put a different Amendment on so after you vote on the Consent Calendar, we're not really thru, so don't head for the doors too quickly. The machine will be opened.

Senator Schneller.

SENATOR SCHNELLER:

Mr. President -

THE CHAIR:

I'm just calling to your attention that you might have pushed the wrong button. Have all Senators voted? The machine will be closed and locked. On the Consent Calendar, the total voting is:

32

17 Necessary for passage

32 Yeas

HB 7975, HB 7936, HB 7953, HB 5945, HB 7694, HB 5370,  
SB 1483, HB 7884, SB 1418, SB 1429, SB 1667, SB 1467, HB 7153

0 Nay

The Consent Calendar is adopted. Senator Schneller.

SENATOR SCHNELLER:

Mr. President, I ask that the Senate stand at ease for possible reconsideration of an Amendment that I offered earlier today dealing with the extension of State employees contracts. There might be a technical flaw in the Amendment. We would have had a new Amendment here but unfortunately the

JOINT  
STANDING  
COMMITTEE  
HEARINGS

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PART 3  
743-1145

1979

JUDGE KNIERIM (Continued): trusts and that's found in Section 45-267 - so if there is a need to supervise inter vivos charitable trusts, I think it ought to be where we already supervise charitable trusts - in the probate court. We're more than able to furnish the Attorney General with lists of charitable trusts that would be filed with us, send him notices for all hearings that may be held in those trusts, as we now do. We can do this without cost to the state because the statutes already provide for an adequate fee for courts to handle this jurisdiction. So, if there is a need to supervise inter vivos charitable trusts, I think we ought to use existing facilities and not create a split jurisdictions since we already spend a great deal of time on testamentary charitable trusts.

We've been in the records keeping business for some 300 years, we microfilm all our records - they're kept in a safe place and, very important, the public has access to them because they're out in the town. If they are filed with the Attorney General, perhaps that would not be the case.

Senate Bill 1543 which deals with the Attorney General representing judges - I would join in Mr. Coffey's remarks that this be looked at together with House Bill 7749. It's good legislation but the two statutes ought to be combined.

House Bill 7884 - an act concerning revocation of a will by divorce. I like the idea behind this bill. I think it can be developed but if you take a look at it, it doesn't really go far enough. The problem is that certainly when a divorce takes place and there's an existing will which does not benefit the divorced spouse, we might say, Well, why revoke that will? What the bill has not address itself to is are the divorced spouse's relatives. Supposing my wife divorces me and my will leaves my estate to her mother, to my mother-in-law, this act would suggest that that will is not revoked by a divorce since it does not leave money to my divorced spouse. I think that we have to do some more drafting to develop this concept - I'm not against the concept, but it just doesn't go far enough. Also, the bill does not say which spouse is mentioned and it's not clear, if there are two divorces in a row, we're not sure which spouse needs to be mentioned and which spouse needs not to be mentioned - so there is some drafting problems.

House Bill 5945 - an act concerning the rights of persons admitted to state training schools. Again, I support the concept in this bill and there's no doubt that Section 19-569d of the general statutes needs to be revised, but I think that perhaps some of the language in this bill would create as

JUDGE KNIERIM (Continued): many problems as we now have with the present law. For example, a standard set up in this bill for deciding on commitments is whether or not we have clear and convincing evidence that "minimum social standards" are not being met. I don't really know what that means - Belt it's an idea that has to be developed in clearer language.  
#5 There are burdens on...

REP. J. BERMAN: What number was that bill?

JUDGE KNIERIM: That bill was 5945. The bill suggest the payment of counsel out of the Probate Administration Fund and, since that fund is primarily for the administration of the probate courts, we don't think that's a proper expense against the fund. Counsel fees for citizens ought to be paid out of the general fund. The probate court in this bill is given good, flexible latitude in placing a respondent in a foster home, a group home, or a regional center, but the bill has not addressed the cost - who pays for that placement? I think that ought to be addressed. I think the bill can be redrafted in certain and become a good piece of legislation, and it is a necessary piece of legislation, I'd be glad to help in that regard if I can.

House Bill 7854 - an act concerning access to psychiatric records. I have no comment except to caution that I hope this bill does not prevent the abuse of psychiatric records in commitment proceedings for mentally ill persons. There is a small phrase that could be added and I've stated it in my written testimony that would make that absolutely clear. I don't think it was intended that it prevent proper use of the records in court, but as it's drafted it may require us to subpoena those acts...those records and I don't think we should really have to go through that in those commitment proceedings that we have.

Are there any questions, Mr. Chairman?

SEN. DE PIANO: No questions.

JUDGE KNIERIM: If I may, I would ask Judge Kenny to explain the bond bill to you briefly and, rather than my spending the time on it, since he is more familiar with it.

SEN. DE PIANO: Just one minutes, Judge.

REP. J. BERMAN: Judge, I was just going to ask if you would give some thought - not in this session - to the question of appeals and, as you know now, when an admission of a will in probate...the probate court goes through the entire appeal.

HB 7759



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DANIEL KENNY: Do you want to take them?

SEN. DE PIANO: Submit it right to our secretary and we'll take it from there. Thank you very much. Elliot Dober.

ELLIOT DOBER: My name is Elliot Dober. I am.....  
(Unable to transcribe - handicapped person).....

REP. TULISANO: Thank you, Elliot. Will you leave your statement.

SEN. DE PIANO: He left it already. (Not included with any of material sent)

REP. TULISANO: Okay, thank you. Lyn Gravink.

LYN GRAVINK: Thank you, my name is Lyn Gravink and I'm Deputy Commissioner of the Department of Mental Retardation. I would like to speak just briefly on Committee Bill 5945 that relates to the admission of people to state training schools. The staff at the Department of Mental Retardation has reviewed Committee Bill 5945 - excuse me - and find that we cannot support it in the form that it is proposed. It would create a number of problems which we feel would not be in the best interest of the mentally retarded persons we serve. There are some positive aspects to this proposal and I will comment on those as well.

The major problem with this bill is Section 1-E, which is Line 78 and following, which allows the probate court to commit directly to a particular facility, such as foster home or a group home. At the present time the majority of clients are admitted on a voluntary admission, not a probate court commitment, and this is used really quite rarely...usually, after a person has been in admission and probably in an instance where he loses his guardian - his or her guardian. However, the real problem is that the admission process involves considerable on-going evaluation and a client is frequently admitted to one setting and then transferred to another if it's more appropriate. The individual program plan is developed by an interdisciplinary team and reviewed on a regular basis. As a person develops or his needs change, a client would move to a more appropriate setting. A typical example would be an admission to a regional center for an evaluation period or a period to stabilize some disturbed behavior, and then a move to either a foster home or a group home, or then later to a supervised apartment or community training home.

The bill, as it is written, would require the probate judge to determine which of these settings was most appropriate at



LYN GRAVINK (Continued): the time of the hearing. Such determinations are never made on the basis of an evaluative examination by one psychologist alone, but a team of several clinicians, educators, social workers, residential care staff, parents, etc.

There are some other concerns about the bill - the terms "least restrictive environment" which is used in a couple of places in the bill as it's drafted is, at the moment, a very undefined term. It is very much a personal and situational thing that varies between individuals and at different times in his or her life. We've communicated with other states and authorities and have been advised that at this time it is best kept out of laws because it has not been defined. It is, in addition, an issue involved in a class action suit brought against the Department of Mental Retardation by the Connecticut Association for Retarded Citizens and, may as a result, be defined by the federal court.

There's also a question, as was mentioned earlier, about what is "minimal social standards" for personal, social and hygienic skills. That's used as one of the basis for admission and that certainly varies from individual to individual.

Section 2 (b) appears to be lifted from legislation that involves mental health patients since it frequently uses the term of "patient" which is not usually used for retarded persons who are not considered ill and are not considered "patients" unless they, like all the rest of us, become ill.

There are some needs for further clarification on the whole issue of what the differences are about the rights of a child and his guardian, and an adult mentally retarded person.

We do support the idea of improving the existing law and the existing procedures to assure due process - it is needed in what we currently have on the books. However, we feel that the procedures spelled out in this bill would not assure the client the best opportunity for receiving the most appropriate services. There is another bill before the Public Health Committee this year that dealt with transfers and appeals to transfer, which this bill also speaks to, after a person was admitted and would be moved from one setting to another. That bill was postponed for further study of the whole issue.

There are some questions also being raised about the voluntary admission process and the assurance of due process in

LYN GRAVINK (Continued): that voluntary admission, and we suggest that a great deal of study needs to go into the whole area of admission, of guaranteeing the right of individuals, of assuring due process, etc., before changes are made in this particular area of the law. Our department is available and prepared to work with the appropriate members of the Committee or other interested persons in this behalf. This particular bill deals with probate court admissions, in fact that's a very small number. Last year, out of 139 first admissions to our residential settings, only 2 of them were through the probate court - so we suggest we would be able to do this with this existing law until the improvements that need to be made can be made in the whole structure of admission and commitment.

SEN. DE PIANO: Thank you very much. Any questions? Seymour Alpert.

SEYMOUR ALPERT: Thank you, Mr. Chairman, members of the Judiciary Committee - my name is Seymour Alpert. I'm the First Assistant Commissioner of Revenue Services and I am in charge of inheritance taxes. I'd like to comment briefly on two bills, the first of which is Raised Committee Bill No. 1560. This is an act concerning penalty for failure to file succession tax returns that Judge Knierim spoke on a little while ago.

This bill would impose a penalty of \$25 plus a penalty of 2 1/2 percent per month up to 25 percent of the taxes finally determined for the late of the succession tax return. While we are also in favor of the early settlement of estates, I question whether there is any need for this bill. It is my understanding that this bill is favored and is being pushed by a group of probate judges in Fairfield County who have a localized problem. That does not exist widespread. This problem that they have can be cured by other means, I believe, especially by the enactment of Public Act 7764 which  
#6 was before this Committee last Thursday. Under this bill there would be a penalty of three times the amount of the succession tax if property of the decedent were transferred without administration being taken out in Connecticut. In addition, of course, this...the legislation last year increased the amount of interest that we charge from 9 percent to 12 percent, and this, of course, is also embetterment to the late filing.

I've spoken to judges around the state - many of them, at least - and it is my belief that the problem is not a widespread problem.

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RAPHAEL PODOLSKY (Continued): House Bill No. 78 --- you stop me if you want to grill me on these things -- House Bill 7854, deals with access to records. I think that the people who drafted and supported this bill recognize it can only move forward to a compromise version. You've heard testimony from Attorney Lerner. You've heard testimony from the Connecticut Psychiatric Society, which is the main opponent of the bill as drafted that if the bill is revised in accordance with the compromise that was submitted as a substitute it is acceptable to them. I recommend that you follow the substitute.

There is one change however that I would suggest you deal with. The bill, as I understand it, including the substitute, is not designed to substitute. There is already a statute that says that you can obtain -- you have access to records in all cases from a hospital that has state aid. That would include -- that basically includes the state hospitals.

Under Doe v. Institute of Living, which is a 1978 Supreme Court case, it's said that a tax exemption is not state aid and therefore § 4-104 does not apply to private hospitals. As I read this bill, this bill would apply to private hospitals. Something should be said however that it does not weight the rights that already exist against state hospitals under § 4-104, and so I would suggest that you add to phrase:

"Nothing in this act shall limit a patient's right of access to his own records under section 4-104.

I have not spoken to the Psychiatric Society. I'm not certain of what their position is on that; but, I believe that that is consistent with the intent of the compromise. In other words, 4- -- as to private hospitals, this bill would apply but public hospital patients could still rely on 4-104.

REP. TULISANO: This is supplement 4-104?

RAPHAEL PODOLSKY: Right. Right.

REP. TULISANO: It's something that has to be mentioned.

RAPHAEL PODOLSKY: But, I think it's necessary because you could otherwise read it as limiting 4-104, so I think it's important to the patients in public hospitals, state hospitals, don't lose benefits that they already have in their existing law.

House Bill No. 5945 sets up a commitment procedure for the mentally retarded. The Probate Court administrator,

RAPHAEL PODOLSKY (Continued): Glen Knierim, testified in support of this bill with one, with a couple of changes. I think that efforts should be made to change the bills to his satisfaction and the committee should be able to then proceed and report it favorably.

In particular, I know that he objected, and I think, correctly, to the fact that the provision for payment of counsel fees for appointment of counsel for indigent and for medical examinations was through the Probate Court Fund. I think he's right that that is an incorrect way to do it. It should be through the Judicial Department Appropriation, which is out of the General Fund, which is the way that it is done for Mental Health commitments. This bill is really model on the mental health statute.

I was not here when the representative of the Commissioner of Mental Health Retardation testified. I was told that the testimony was against the bill. It seems to me that that is a form of opposition which the Committee should reject. The bill is necessary in part because of the lack of due -- of well established due process procedures in commitment matters in which the Department of Mental Retardation may be involved.

The Department of Mental Health has, in the past, supported the legislation you've adopted in previous years to make sure that you have reasonable due process standards for committing the mentally ill. I think it's unfortunate that the Commissioner of Mental Retardation is not supporting an analagous bill as it affects the mentally retarded; but, I would hope that if we could find a version that Judge Knierim would find acceptable that I would hope the Committee would recommend that.

House Bill 5504, raising the legal rate of interest from 6% to 8%, a 33% increase, perhaps in excess of the present inflationary guideline. It seems to me that this is not an appropriate bill.

REP. TULISANO: (Comments Inaudible)

RAPHAEL PODOLSKY: Well, 6%, it seems to me, is a reasonable approximation of what money earns if you put it in a bank. What this really deals with is the interest that you can claim for the period of time when money has not been paid over. That 6%, it seems to me is reasonable and that's the existing statute. Eight percent really attempts to impose a penalty of an extra 2% for not having made the payment. It seems -- I see this as

MS. McCARTY: Thank you, Mr. Chairman. I'm Maryann McCarty, representing the Connecticut Bankers Association. I'd like to clarify Mr. Freedman's statement, early, it was the Savings Bank Association who testified in opposition to 525. We, however, would like to join them at this time. 525 is an act concerning liens on proceeds on fire insurance for outstanding taxes and demolition expenses. As with the Savings Bank Association, we have no problem with the tax part of the bill. That's good, we approve of it, but on the demolition expenses, we are definitely in opposition to this. Demolition expenses as you all know vary from taxes. The amount could be anything. It would take precedence over a mortgage lien. The way the bill is written right now, the mortgagee wouldn't even have any notification of the fact that the building was going to be demolished unless they checked the town records every now and then.

With taxes, we can escrow for taxes. It goes through public scrutiny, a certain amount of accountability and we can escrow for these. There is no way we can make accommodations for demolition expenses. The alternative might be in having mortgage applicants seek demolition insurance, which I understand is quite hard to get, which I am told. That would be an alternative. But at least with taxes, we have the building left. With this, we have no alternative.

REP. TULISANO: Thank you very much. John Pyatak.

MR. PYATAK: Mr. Chairman, Members of the Committee, ladies and gentlemen. My name is John Pyatak. I am yet another legal services attorney and I believe I'm the last.

REP. TULISANO: Who's taking care of the office?

MR. PYATAK: There's four in the office, my particular office. I'm from Rockville. Two days a week I'm at the Mansfield Training School. My particular concerns are with the mentally retarded. I'm here to support Raised Committee Bill 5945. I will not burden the Committee with the legal arguments for this bill since each of you have a copy of the memorandum which I have prepared. Instead I would like to go through the bill with you and explain what it would do and respond to the Commissioner's comments and respond to Judge comments, which we accept by the way.

Currently a Court of Probate may commit to any training school or other facility provided for the care and training of the mentally retarded, any person who is found to be mentally retarded who is not mentally ill or a carrier of a



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MR. PYATAK (Continued): communicable disease. I would like to tell you something first about the Mansfield Training School which is not necessarily true only for that institution but is endemic to all institutions.

Your daily life at Mansfield is controlled and structured from the time you awake each morning until the time you go to sleep. If you have a job on the grounds which begins, say at seven o'clock, and it takes five minutes to get to that job, if you try to leave at 6:30 they may try to detain you. They will try to detain you in your cottage. If you stop going to that job you may be punished with building restrictions which can last a few days or sent to a more tightly controlled cottage or building. You may not leave the school when you want to leave. If you leave the school, the state police will come after you, they will pick you up and bring you back to the school. You may go shopping or to the movies, but only under the watchful eye of an aide. If you live in a crowded building, sometimes in a single, going to sleep in a single room with 20 or 30 beds. If this leads to frustrations and arguments and fights, a report is written which goes into your files and if you want to get out of the institution, these reports carry significant weight. You may have one phone call a week. You may not go on the grounds after dark. You must go to bed when you are told to go to bed. In short, you have been incarcerated. You have lost your freedom to partake of the same entertainment, services, and the mobility that the population at large enjoys.

I think that the present law, 569D, offers little protection of our liberty and fails to satisfy the due process clause of the Constitution. I believe that this bill goes a long way towards clarifying these fundamental rights. And while there are problems in drafting with what is minimal social skills, I have talked with Judge , and he has graciously offered to sit down with me to discuss the kind of wording changes that are needed in this bill.

Section 1A provides that a probate court shall have the power to place a person under the care of the commissioner of retardation. No one has broken a law here. We are talking about developmentally disabled persons, who through no fault of their own, require help and habilitation. They are not enemies of society. They should be provided with suitable habilitation in the least restrictive setting commensurate with their needs. There may be problems with the guidelines provided to the court as to who is placed. But the language of this bill is a significant improvement over the present

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MR. PYATAK (Continued): unconstitutional act. Who are the persons who will be placed? I think that that is very, very clear, Mr. Chairman. I am saying that it is unconstitutional.

REP. TULISANO: It is not a court decision?

MR. PYATAK: No it isn't...yes, it is...rather, no it isn't. Correct.

REP. TULISANO: Would you make that clear so that ...inaudible...

MR. PYATAK: No I do not contend. The law says that all mentally retarded persons may be committed to the state institutions. First, not all psychologists agree as to what mental retardation means; secondly, not all psychologists would agree as to which people are mentally retarded and which people are not mentally retarded; and third, not all mentally retarded persons should be put in an institution. I have clients, who would have you shaking your heads if they were here before you today as to why they were put in Mansfield, why they are in Mansfield, and I think that that is a significant question that you should be asking yourselves. Because they are there and when they want to get out of Mansfield, if they are a voluntary admission, which most of them are, the superintendent says, no, I don't think you are ready to get out, I am going to take you to probate court and have you committed. And then you have to either go to probate court or you can work out some kind of a deal where you might try to get him in a group home or a supervised apartment of BMR.

These restrictive alternatives, I would like to say something about that. The commissioners representative said here that the commissioner and other persons in the United States don't understand what least restrictive alternative is. I have no problem with least restrictive alternative as it is used in this bill. Let me explain.

You take the commissioner out of the clouds and bring him down to reality here in the state of Connecticut, the department of retardation has several facilities where they place a person. You may place a person in a group home or they may place a person in a supervised apartment or perhaps a therapeutic foster home. This is a declining degree of restrictiveness. I think it is very, very obvious when you're put in an institution, , knows which cottages they put people in and one cottage is more restrictive than another. They know that. It is all very easily defined in terms of how it is set up today within this state.



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MR. PYATAK (Continued): This bill provides a respondent who goes to the probate court with the right to be represented by counsel which the current act does not provide. It is one of the reasons by the way, Mr. , why I believe that this 569 is unconstitutional. Take a look at such Supreme Court rulings as Power versus Alabama which say that counsel must be provided in any rproceeding which is going to cause a person to lose his liberty. Counsel should be appointed by the court, the respondent will be provided with proper notice of the hearing, the name of appointed counsel, his right to select counsel of his own choosing, the allegations of the application against him, who has made these allegations and who will be witnesses against him at the hearing. These are not foreign to constitutional law of both the state of Connecticut and of the United States of America. This is a basic right. It is a fundamental right, and one which few persons who believe in fair play would oppose. The right to free legal representation is a corollary of this basic right. Thus, this bill would provide a respondent with free legal representation of his own choosing. We would suggest that payment be made by the judicial department rather than under 45-4H as this bill is written right now. We agree with Judge on this point.

BELT #14

A questions was raised as to whether this bill places too much power in the probate court with regard to placement. I agree that the drafting has to be changed on this point. A probate court may place a person, but place him where? Behavior of a person must be viewed in its entirety by trained professionals. The responsibility of suggesting a particular placement should be with the department of mental retardation and the professionals they employ. It should also include the psychologist at the court hearing and by the attorney at the court hearing. They will make a decision as to where the person is placed and they will bring it before the court and they will suggest it. That's fine if the court has no problem then the person will be placed there. If the client has no problem, the person will be placed there. But, if the client has a problem with the placement, he can then seek a review either of the court order or of the placement in Superior Court. Right of appeal.

Finally, section 19-569F of the General Statutes says that a person committed to a training school by a probate court may not leave until the superintendent feels he is ready to leave. There is no hearing afforded with the requisite provision of notice, right to counsel, and right of appeal. It is necessary that 569F be revised to provide this very basic right to review of placements in the state training schools, so that we can

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MR. PYATAK (Continued): meet the dictates of the Supreme Court in the ruling of O'Connor versus Donaldson that "confinement must cease when those reasons (for confinement) no longer exist."

I therefore would respectfully request that this Committee provide this bill with a joint favorable report, send it to the floor of the house for its consideration. I am prepared to answer any questions that you might have.

SEN. DEPIANO: Thank you.

REP. TULISANO: David Sweet.

DAVID SWEET: My name is David Sweet. I am an attorney working in Hartford, Connecticut, part way into trusts and estates field. I am here to testify on several bills. I would like to state my opposition to Committee Bill #1544 concerning charitable trusts.

First, the jurisdictional clause as drafted in Section 1 is very vague. Although it attempts to clarify the language it does not state whether jurisdiction could be based on a trustee in Connecticut, a decedent, assets, or perhaps beneficiaries in Connecticut, charitable or non-charitable.

Secondly, its term for what is commonly known as charitable trusts is charitable, religious, or educational purpose. However, this does not parallel to succession tax exemption of Section 12-347, which uses the term charitable, educational, literary, scientific, historical, or religious purpose; or, the federal language which is also slightly different. Thus, for a term for what we commonly refer to as charitable, we will have three different definitions and the courts will be forced to interpret them.

Also, I believe this bill is going to replace an enormous burden of filing and reporting on everyone covered by it. The last section, part of Section 1, lines 26-29, extends it to all manner of estates in which any sort of bequest is made to a charitable trust, even if this was a specific request to an existing charitable trust.

I also oppose parts of raised Committee Bill #1546, an act concerning probate bonds. Section 18, deletes a sentence of Section 45-169 of the General Statutes, which allows the probate court to reduce bond if the state is reduced. I believe this power should remain with the probate judge. In addition, Section 19 of Bill 1546, requires the trustee for a