STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

JAMES D. McGAUGHEY
Executive Director

Phone: 1/860-297-4307
Confidential Fax: 1/860-297-4305

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Judiciary Committee
February 26, 2007

Presented by: James D. McGaughey
Executive Director

Good afternoon and thank you for this opportunity to comment on **Raised Bill No. 1238, AN ACT CONCERNING THE CIVIL COMMITMENT OF PERSONS FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT.** This bill would provide for civil commitment of people whose maximum terms of commitment to the Psychiatric Security Review Board (PSRB) are ending, but who are still considered to meet the criteria for civil commitment because of danger to themselves or others.

Under current law, when a criminal court commits an acquittee (someone who is found not guilty "by reason of mental disease or defect") to the supervision of the PSRB, the term of commitment is statutorily limited to the maximum sentence that could have been imposed if the defendant had been convicted of the charges against him or her. However, that term of commitment can be extended beyond the initial term if, at the point it is about to expire, the criminal court determines that the individual would still present a danger to him or herself or to others. In reaching such a determination, the court usually relies on reports from the PSRB and clinicians who work with it.

This means that the criminal courts retain jurisdiction and authority to confine the person well beyond the period of maximum penalty for the crime with which the person was charged. The entity those courts rely on to inform their decisions - the PSRB - is mandated and deliberately structured to ensure a primary focus on public safety and preventing a recurrence of criminal conduct. Indeed, at PSRB proceedings acquittees bear the burden of proving they do not present a risk. It is not surprising, therefore, that the PSRB tends to produce very conservative recommendations regarding extensions of commitment. In fact, last year, according to its website, action was taken to extend the terms of commitment for 15 individuals - exactly three times the number of acquittees who were newly committed to the Board's supervision.

This bill acknowledges that, at the point where criminal sanctions would normally terminate, decisions about the supervision of individuals with mental illness who continue to present a danger to themselves or others should be made in accordance with procedures and standards for civil commitment. No one who is found to meet the criteria for civil commitment would be summarily dropped or discharged from supervision. However, their fate would no longer be determined exclusively, and for an indefinite period of time, by the criminal courts and a closely related administrative body.

Principles of basic fairness argue that once the maximum potential term of incarceration has passed, an acquittee should be treated in a manner similar to people who were convicted and have "paid their debt to society" by serving their sentences. The fact of a person's mental illness should not, in and of itself, subject that person to indefinite scrutiny from the criminal justice system, especially when the mechanism of civil exist to protect society's interests. Indeed, civil commitment would likely give individuals in this circumstance increased incentives to take responsibility for their own recovery and to cooperate with treatment. I urge your support of this bill.

Thank you for your attention. If there are any questions, I will try to answer them.