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VERTEFEUILLE, J., concurring. I concur with the result reached by the majority affirming the judgment of the trial court and with parts II and III of the majority opinion. I do not join, however, in part I of the opinion. While I agree with the majority that the trial court properly applied a definition of ''psychiatric disabilities'' that requires a diagnosis from the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association,[1] I believe the majority's efficient means of reaching this conclusion ignores the important history and legislative backdrop of definitions of ''psychiatric disabilities'' as applied to criminal acquittees. I also believe that this approach simply does not respond adequately to the legitimate questions raised by the defendant, Dawn March, on appeal. Although it is true that the promulgated regulations of the psychiatric security review board (board) provide a proper definition of psychiatric disabilities, the majority's analysis fails, I believe, to provide the appropriate context for the resolution of the defendant's claim.

This court previously has acknowledged that criminal acquittees have a special status that differs from the status of those committed through the civil commitment process (civil committees). In *State* v. *Metz*, 230 Conn. 400, 416–17, 645 A.2d 965 (1994), we stated that ''our statutes distinguish between those who are civilly committed and those who are insanity [criminal] acquittees. We have upheld the validity of such disparities in a number of cases. *State* v. *Miller*, 192 Conn. 532, 538, 472 A.2d 1272 (1984); *State* v. *Reed*, 192 Conn. 520, 529, 532, 473 A.2d 775 (1984). The use of a less demanding measure of the quantum of evidence for the initial confinement of [criminal] acquittees than that afforded civil committees . . . has been constitutionally justified because of the unique status of persons acquitted by reason of insanity. *State* v. *Miller*, supra, 538; *Warren* v. *Harvey*, 632 F.2d 925, 931 (2d Cir. 1980); *State* v. *Warren*, 169 Conn. 207, 215, 363 A.2d 91 (1975). We have acknowledged that [t]he obvious difference between insanity [criminal] acquittees and other persons facing commitment is the fact that the former have been found, beyond a reasonable doubt, to have committed a criminal act. *Warren* v. *Harvey*, supra, 931; *State* v. *Warren*, supra, 215.'' (Internal quotation marks omitted.)

The United States Supreme Court also has recognized the special status of criminal acquittees. In *Jones* v. *United States*, 463 U.S. 354, 370, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983), the court held ''that when a criminal defendant establishes by a preponderance of the evidence that he is not guilty of a crime by reason of insanity, the Constitution permits the Government, on the basis of the insanity judgment, to confine him to a

mental institution until such time as he has regained his sanity or is no longer a danger to himself or society. This holding accords with the widely and reasonably held view that insanity [criminal] acquittees constitute a special class that should be treated differently from other candidates for commitment.'' See also *Parrish* v. *Colorado*, 78 F.3d 1473, 1475–76 (10th Cir. 1996). Accordingly, I would conclude that the well recognized special status of criminal acquittees does not warrant the application of the higher, civil commitment definition of psychiatric disabilities when determining whether criminal acquittees are persons who continue to suffer from ''psychiatric disabilities.''

Although the legislature did not adopt a definition of psychiatric disability for purposes of General Statutes § 17a-580 (11), it did make clear that the principal concern in the decision whether to discharge an acquittee was public safety. General Statutes § 17a-593 (g) provides that in deciding whether to discharge the acquittee, the court should consider ''that its primary concern is the protection of society . . . .'' Applying the higher, civil commitment standard for psychiatric disabilities for criminal acquittees seeking discharge, as the defendant urges, would not be consistent with the clear legislative intention in § 17a-593 (g) of protecting society while at the same time discharging criminal acquittees who are not psychiatrically disabled to the extent that they are dangerous.

I would also address, and reject, the defendant's contentions that at all times since the adoption of the statutes relating to the board, the legislature clearly intended that the civil commitment definition of psychiatric disabilities be applied by the trial court when evaluating a criminal acquittee's application for discharge. The defendant further contends that when the legislature amended General Statutes § 17a-495 in 1994 to delete from that section the reference to statutes relating to the board; see Public Acts 1994, No. 94-27, § 1 (P.A. 94-27); it did not intend to separate the standards associated with civil commitment from those governing criminal acquittees. Consequently, the defendant argues, the definition of psychiatric disability contained in § 17a-495 is still the correct definition to be applied to § 17a-593. I do not agree with these contentions.

The statutory scheme that created the board (board statutes) was adopted by the legislature in 1985 and became effective July 1 of that year. Public Acts 1985, No. 85-506. Prior to the enactment of that statutory scheme, General Statutes § 17-176 was the definition section for our civil commitment statutes and provided in relevant part: ''*For the purposes of this chapter*, the following terms shall have the following meanings . . . .'' (Emphasis added.) General Statutes (Rev. to 1985) § 17-176. In 1987, the board statutes enacted in 1985 were codified for the first time in the General

Statutes in chapter 306. See General Statutes (Rev. to 1987) § 17-257a et seq. As a result, the previously existing definitions found in § 17-176 applied to the board simply because of the codification of the board statutes within chapter 306. In 1991, § 17-176 was transferred and recodified as § 17a-495, and for the first time, the statutes to which the definitions of § 17a-495 were to be applied were enumerated specifically. General Statutes (Rev. to 1991) § 17a-495 then provided in relevant part: ''For the purposes of sections 17a-75 to 17a-83, inclusive, 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, *17a-580 to 17a-603*, inclusive, and 17a-615 to 17a-618, inclusive, the following terms shall have the following meanings . . . .'' (Emphasis added.) The board statutes, then codified at General Statutes § 17a-580 et seq.,[2] therefore, specifically were referenced in § 17a-495. As a result of the 1994 amendment to § 17a-495, however, the specific reference to the board statutes, General Statutes §§ 17a-580 through 17a-603, was deleted from § 17a-495. See P.A. 94-27, § 1. The definitions in § 17a-495, therefore, no longer specifically applied to the board.

A review of the legislative history of P.A. 94-27 reveals that the legislature intended to sever any connection between the legal standards applicable to civil commitment and those applicable to criminal acquittees. In support of House Bill No. 5477, which became P.A. 94-27, Martha Lewis, the executive director of the board, presented written testimony that included the following statement: ''This bill clarifies that commitment to the [board] is solely for a person acquitted by mental disease or mental defect of a criminal act. This bill removes all references to the statutes governing the [board] and commitment to the [b]oard by the Superior Court from the statutes governing civil commitment of the mentally ill or mentally retarded. The purpose of the statutes governing commitment to the [b]oard are different from a civil commitment. *The public safety purpose of the [board] and the fact that persons under its jurisdiction have been found to have committed a criminal offense allow for different procedures and legal standards rather than those which are dictated in the procedures of a civil commitment.*'' (Emphasis added.) Conn. Joint Standing Committee Hearings, Judiciary, Pt. 1, 1994 Sess., p. 358.

A review of the proceedings in the state Senate discloses a similar statement from Senator George C. Jepsen, who was a member of the judiciary committee: ''This bill corrects an anomaly in the statutes which is that the [board] . . . was originally intended to deal exclusively with the issues surrounding the release of individuals who have been found guilty of crimes, but have been committed because of mental illness or have been committed because they present a danger. In short, they're kind of the criminal side of the equation.''

37 S. Proc., Pt. 3, 1994 Sess., p. 1013.

Lewis and Jepsen both gave statements during hearings on the bill underlying P.A. 94-27 that indicate that the original inclusion of the board statutes within the civil commitment statutes in the 1987 revision of the General Statutes was a codification error. Lewis stated that "the current statutory references that are deleted by [P.A. 94-27] were a result of a codification process and not a result of substantive intent." Conn. Joint Standing Committee Hearings, supra, p. 359. Senator Jepsen stated: "*For technical reasons,* this board has been brought . . . into statutory references that deal with the Probate issues before Probate Courts that deal with a judgment of individuals, whether they're competent to handle their own affairs, clearly, something radically different, [than] simply an individual, who for one reason or other, is no longer [able] to maintain their checking accounts or maintain lives . . . . That's very different from the criminal side of an individual who commits a crime . . . ." (Emphasis added.) 37 S. Proc., supra, pp. 1013–14. The deletions effected by P.A. 94-27 included the deletion of the board statutes, § 17a-580 et seq., from § 17a-495.

On the basis of this legislative history, I would conclude, first, that the original incorporation of the board statutes into the chapter of our statutes addressing civil commitment in 1987 was a codification error. Second, I would conclude that the adoption of P.A. 94-27 was a purposeful reversal of this error, designed to separate the procedures regarding criminal acquittees from those regarding civil committees. I would therefore reject the defendant's contention that P.A. 94-27 was not intended to reverse the inclusion of the board statutes as statutes to which civil commitment definitions were to be applied and that the 1994 amendment of § 17a-495 created inadvertent ambiguity in the definitions of psychiatric disability and dangerousness to be applied to criminal acquittees.

[1] American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th Ed. 1994).

[2] In 1991, the board statutes, then General Statutes §§ 17-257a through 17-257w, also had been transferred and recodified at General Statutes §§ 17a-580 through 17a-603.