



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES

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Testimony of the Office of Protection and Advocacy for Persons with Disabilities Before the Judiciary Committee

Presented by: James D. McGaughey
Executive Director
March 12, 2008

Good afternoon, and thank you for this opportunity to comment on several of the bills on your agenda today.

Our Office supports **Raised Bill No. 639, AN ACT CONCERNING SERVICES PROVIDED BY THE DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES TO ARRESTED PERSONS.** This bill would allow the DMHAS Jail Diversion program to serve individuals who are charged with felonies as well as misdemeanors. Experience with similar programs in several other states demonstrates that recidivism rates for persons with psychiatric disabilities who are charged with felonies can be significantly reduced by participation in jail diversion programs. This approach is more cost-effective and far more humane than incarcerating people whose misconduct is often a manifestation of mental illness. However, I would point out two significant factors to bear in mind:

- To the extent the matter has been studied, it appears that the success of post-arrest diversion programs that serve people accused of felonies depends on ensuring that supportive housing and effective programming are readily available. Perhaps the closest example of a diversion program with a good success record is the Nathaniel Project in New York City. All the project's clients have serious mental illness and are accused of felonies. This project finds apartments and supports people in them, initially providing intensive supervision, coordination and intervention all of which fades over time depending on individual response. As people experience stability in their living environment, often for the first time in years, they begin to make other investments in their own recovery – like getting work and staying in treatment and out of trouble. Currently, we have an enormous need for this type of supportive housing in Connecticut. Simply expanding the reach of jail diversion will not help unless we also address the shortage of supportive housing and other relevant services that people need in order to begin recovering their lives.
- In the interests of justice, the jail diversion process also needs to extend to people with mental disabilities other than psychiatric ones. I am referring specifically to people with intellectual disabilities, but the same principal could also apply to people with acquired brain injuries and autism spectrum disorders. The policy gaps confronting people with intellectual disabilities who run afoul of the criminal justice system is lesser known, but equally compelling to those affecting people with psychiatric disabilities. Few people

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realize that simply having a diagnosis of mental retardation does not entitle a person to public services through the Department of Developmental Services. In the experience of our Office, unless a defendant has been found incompetent to stand trial and is subsequently committed to DDS, it is highly unlikely that he or she will receive any services. Our Office has advocated for a number of defendants with intellectual disabilities for whom alternatives to incarceration would have been readily accepted by all parties in the criminal justice system, but for whom DDS would not provide any services. Even sadder than seeing these people go to jail unnecessarily, is seeing them released at the end of their sentences without supports. Predictably, some reoffend, and face even stiffer penalties. DDS explains that it only has sufficient resources to serve people for whom it has legal responsibility. In short, I urge the Committee to amend this proposal to require DDS to establish a jail diversion program similar to DMHAS'. I have attached language that could be used for that purpose.

Our Office also supports **Raised Bill No. 5917, AN ACT CONCERNING A DEPARTMENT OF CORRECTION ADVISORY COMMISSION**. As the title implies, this proposal would establish an Advisory Commission to review DOC policies and practices and recommend changes. As the Committee is aware, increasing numbers of people with psychiatric disabilities have been incarcerated in recent years. Nationally, it is now estimated that over 20% of all prison inmates have a mental illness serious enough to require treatment and Connecticut estimates are similar. Many factors contribute to this unfortunate trend, but whatever its origins, it has tremendous implications for prison management, mental health care requirements, educational and rehabilitation programming, disciplinary practices and overall human rights. Considering that the correctional system also houses people with cognitive and intellectual disabilities, communications and sensory disabilities, and physical disabilities, it is heartening to note that our Office has been included on the membership of the commission.

Thank you for considering these comments. If there are any questions, please feel free to contact me and I will try to provide answers.

D R A F T

DDS Jail Diversion Program

Purpose: To establish a jail diversion and re-entry program for persons eligible for services from the Department of Developmental Services who are charged with the commission of a crime, or who have been convicted and sentenced for commission of a crime.

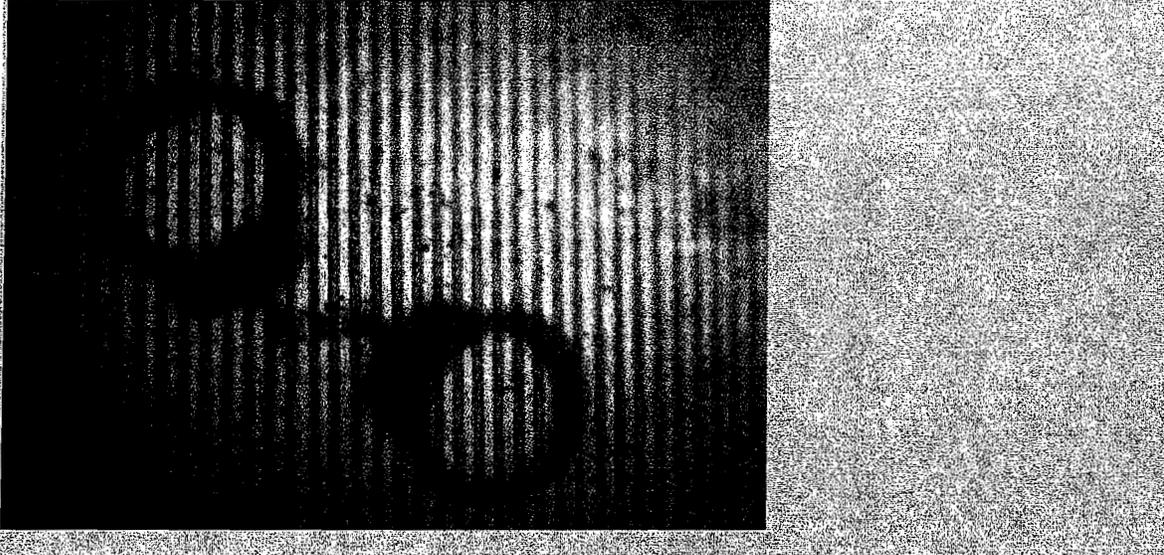
Section 17a-210 is amended by adding the following:

NEW (g) The commissioner shall establish a jail diversion and re-entry program to develop and oversee the provision of an individually designed plan of treatment and support for each person who is eligible for services from the department and who has been charged with commission of a crime or who has been convicted of committing crime and sentenced to a term of probation or a period of incarceration. Prior to the arraignment of any person who has previously received services or supports under the auspices of the department, or who is eligible for and would reasonably benefit from such services, the commissioner shall, with the consent of the arrested person, cause a multidisciplinary assessment to be performed and shall develop a proposed plan of supports and services for consideration by the court in the disposition of the criminal case. Prior to the discharge from custody of any person who has been convicted of a crime and who has previously received services or supports under the auspices of the department, or who is eligible for and who would reasonably benefit from an individual plan of services and supports, the commissioner shall, with the consent of the person, cause an individual plan of services and supports to be developed and implemented. The process for developing such individual plans and services shall involve the person and others designated by the person to act as his or her advocates, and its implementation shall be coordinated with other agencies having responsibility for probation, parole, and clinical, social and human services.

Locking up Laura

A mentally retarded woman languishes in prison because the state's Department of Disability Services is short on beds.

By Freda Moon



Laura sits in a holding cell in the cold, grey basement of Waterbury's Superior Courthouse, digging her face into the 1970s fly collar of a tan coat, three sizes too big.

"I don't want to go back," she says, tears streaking her dry cheeks. "I won't."

Laura—scared, frustrated and confused—is a child in a 24-year-old woman's body. With a mess of kinky black hair, huge dark eyes and the chipmunk features of a girl who hasn't yet shed her baby fat, it's easy to forget she's not a child, but a grown woman with an IQ of 61.

Laura is handcuffed. (At the request of her state-appointed guardian, we've used only Laura's first name.) Her ankles are shackled above her pink and white, lace-less sneakers. Her hands shake and her legs bounce as she twists in her chair—swatting at tears with her joined wrists. She was picked up on a domestic disturbance call in June and has been held at Connecticut's women's prison, York Correctional Institution in Niantic, since then. It's been over six months.

During that time, Laura's been injected with medication to "calm her;" experienced four-point restraints that shackle her—spread eagle—at all four limbs; and been under the suicide watch called Q15, where she's checked every 15 minutes, day and night, to ensure she's alive. Nobody—not the prosecutor, the judge nor the prison—seems to believe she should be there. But there's nowhere else for her to go. A critical shortage of supportive housing for people like Laura has kept her behind bars.

"What's happening is the Correctional Department is being used as a holding facility," says James McGaughey of the Office of Protection and Advocacy, the independent state agency that advocates for the rights of the disabled. "People realize that if they send this woman out onto the streets she could get into all sorts of trouble." But neither Connecticut's Department of Mental Health and Addiction Services nor the Department of Disability Services (formerly the Department of Mental Retardation) have taken responsibility for Laura.

Because the Department of Correction doesn't distinguish between mentally retarded inmates like Laura and those who suffer from schizophrenia, brain injuries and drug addiction (all are lumped into the "Mental Health Three" category in DOC's internal census), it's not clear how many mentally retarded adults are incarcerated, says McGaughey. But, based on his knowledge of the DDS caseload, McGaughey estimates that the number is around 200. DDS is "aware of" 15 to 18 individuals currently in DOC custody, says spokeswoman Joan Barnish.

Laura is not alone, and neither is Connecticut. The vulnerability and need that once landed the mentally ill and retarded in prison-like hospitals now places them in another, even harsher institutional setting: the jails and prisons of

the country's criminal justice system. The de-institutionalization movement, which sought to bring people like Laura out of isolation and into their communities, was never fully realized. A half-finished liberation movement, it "liberated" the mentally impaired onto the streets and into homeless shelters. Ultimately, it liberated them into squad cars, ill-equipped "correctional" institutions and the courtrooms of stumped judges—far more restrictive environments than the hospitals from which they were freed.

Decades after this incomplete project began, Laura's trapped in the sort of absurdist Catch-22 for which the mental health bureaucracies have become famous. She was arrested in Connecticut so soon after leaving New York that Connecticut was reluctant to recognize her as a resident. But New York wouldn't take her back. Even after DDS finally accepted Laura as a client, she's remained behind bars because, her advocates say, the state cannot guarantee a suitable bed for her.

Laura's public defender, Thomas Nalband, declined to accept a plea agreement that would have allowed her to be released because he doesn't believe she could survive on the streets. "Nobody is stepping up," says Nalband.

After aging out of New York's notoriously dysfunctional foster care system, Laura spent several years at a group home for mentally-impaired adults. In June, her sister checked Laura out and brought her to Waterbury. Nalband believes her sister was after money, though that couldn't be confirmed. (Laura's guardian, attorney Hillary Horrocks, would only say that Laura's disability checks were "being sent to a party in Waterbury.") Only a week into Laura's stay, her sister called the police, saying Laura had attacked her and threatened her with a knife. Laura was arrested on three counts of breach of peace, threatening and reckless endangerment. Laura's sister could not be reached for comment.

Nalband dismisses Laura's offenses as both unlikely and irrelevant. Even if Laura, who Nalband describes as "like a precocious 8-year-old, on a good day," did fly into hysterics and wield a knife as her sister claimed, her behavior wasn't criminal, says Nalband. It was the behavior of a severely impaired woman, recently displaced from the only stable home she'd known as an adult, acting out. "If this was a violent person, she would have a violent history out of New York," he says. "She wouldn't just come to Connecticut and turn into a knife-wielding maniac at 24 years old."

Assistant State's Attorney Corinne L. Klatt confirms that her office offered a plea agreement in the case that would have freed Laura from jail. But simply dropping the charges and sending Laura on her way isn't an option. For Klatt, it's important that Laura plead guilty, even if she's released. "Someone with mental health issues is going to be a repeat offender," says Klatt. "I have to protect the State of Connecticut." Nalband says the judge in the case won't accept a plea without being assured that Laura has somewhere to go. "You would literally just be dumping someone who's the equivalent of a four- or five-year-old onto the street" when it's 25 degrees outside, says Nalband.

Laura's first application to DDS was rejected. Nalband says that he was asked for a lease or utility bill in Laura's name, to prove her Connecticut residency, but because she's never lived independently, she had neither. Even after Laura's residency and disability were documented through records from New York, DDS was reluctant to get take on Laura's case. Horrocks describes a call to DDS after she was appointed guardian in August as "not a productive conversation." Nalband says he was told, "Just because she's retarded in New York doesn't mean she's retarded in Connecticut." It's common for DDS to be unresponsive to clients who are referred to the agency through the criminal justice system, according to McGaughey. They're overburdened by their existing caseload.

Citing federal medical privacy laws, DDS would not confirm or deny Laura's status as a client, and Barnish would only say that DDS has "a limited statutory role in criminal justice system regarding competency." McGaughey says that DDS views its involvement in the criminal cases of mentally retarded adults in terms of what they are legally required to do. DDS evaluates "whether the department has to provide services or not," says McGaughey, and "if they don't, they won't."

Laura was finally approved as a DDS client in November and, according to Horrocks, was placed on an "emergency" housing placement list.

"They found her eligible for services," says McGaughey, who has followed Laura's case, "but that doesn't guarantee that she's going to get them." As of Sept. 30, there were 51 people on DDS's emergency waiting list, according to Barnish. Generally, she says, emergency applicants are "in immediate risk of serious harm if they do not receive residential support, services or placement."

Placement time "ranges from 'immediate' to several months," writes Barnish, via email.

Because DDS can't guarantee they'll be able to help Laura should her criminal case get resolved, her best hope is being found incompetent to stand trial. Remarkably, the Office of Court Evaluations, the state entity charged with determining one's competency, found Laura competent after her first evaluation. Nalband hired an independent evaluator, who disagreed with the office's findings. Now a three-person panel is assessing Laura again.

On Jan. 17, a judge will hear their testimony and make a decision. If Laura is found incompetent, she will automatically be placed at Connecticut Valley Hospital in Middletown, the state's last remaining mental hospital.

But even that may not be the end of it, says McGaughey. A person found incompetent to stand trial is not necessarily off the hook. Often, their case is simply set aside until they become competent. In the case of mentally retarded adults, this often means they are trained to answer a series of questions about their case and the role of the attorney, the judge and prosecutor. They're no more able to understand their situation, says McGaughey—they simply repeat what they've learned.

"With all this talk of whether we need to build more prisons," says McGaughey, "we really need to focus on moving people out of jail who don't need to be there. Well, here's a group that doesn't need to be there."

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Comments (3)

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This is an outrageous miscarriage of justice. I have been involved first hand with a retarded family member and it was rough going finding her good placement but this poor soul has no one advocating for her. Is there anything I can do or help get her some advocacy? She can't do this alone. this is beyond cruel and unusual. Please let me know.

Posted by marc degregorio on 1.6.08 at 7.07

That's just sad and horrifying :(Couldn't they arrange something at a local shelter, or hotels?

They aren't evil people, they are getting treated as such.

Posted by Karen on 1.9.08 at 11.42

Unfortunately, people don't realize all of the cruel things that happen to other innocent people until one day it happens to them but "if" it does happen to them and when they look for help they will hear that old saying: "Better him than me". In the meantime another suffering day of someone's life goes on without any help in sight. And just because you are in a state facility doesn't mean that your in a better or safer place either. I don't have the answer but I do know that this is a disgrace!

Posted by Joe on 1.16.08 at 1.12

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