



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 Human Services Committee

Presented by: James D. McGaughey
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March 2, 2010

Good morning and thank you for the opportunity to testify on several bills on your agenda today. And, especially thank you for raising bill No. 5232, **AAC Transfer or Discharge of Residential Care Home Patients**. The bill would clarify that residents of Residential Care Homes who are notified that they are being discharged can turn for help to various advocacy organizations, including our Office, The Connecticut Legal Rights Project, and the Long Term Care Ombudsman, and that a lay advocate from one of those organizations – or anyone else of the resident’s choosing - can represent them at an administrative hearing to contest the discharge. It would also extend the time limit for requesting the hearing, and require that discharge notices contain contact information for the advocacy organizations.

Our awareness of the need for these changes has grown from our involvement on behalf of a number of residents of these facilities over the past several years. Residential Care Homes used to be called Homes for the Aged, or sometimes by the more generic name of “boarding homes”. These days, many of the residents are people who have psychiatric disabilities. Residential Care Homes are not like nursing homes or group homes in that they do not provide medical care, social services, supervision or programming. Although they are licensed by the Department of Public Health, requirements and oversight are minimal, and they vary considerably in size and character.

The people who live in Residential Care Homes generally have few personal resources and options. Over the past several years our PAIMI program (Protection and Advocacy for Individuals with Mental Illness) has attempted to reach out to the residents of these homes to inform them about their rights and assist in solving problems they may be having accessing services. As a result, we have begun to receive referrals involving pending discharges, usually from a treatment program or professional service provider that operates independently of the residence. The discharge or transfer notice a resident receives is supposed to inform him or her of their right to request a hearing from the Commissioner of Public Health. However, most residents are initially uncertain about the procedure, and are unaware of potential sources of help or that the facility is supposed to assist them in locating other housing. Many are simply resigned to eventual homelessness. The bottom line is that by the time the matter is referred to our Office or some other source of assistance, it is often too late to request a hearing. The current ten day time limit – which includes holidays and weekends – is simply too short to afford a meaningful opportunity to be heard.

The other major need reflected in the bill involves clarifying that a resident has a right to advocacy representation at the DPH administrative hearing. Even though DPH’s decision may not be appealed to court, several years ago DPH determined that only licensed attorneys can represent residents at discharge or transfer hearings. The problem is that there simply are not enough attorneys available to provide representation at this level. Currently, advocates are allowed to accompany a resident to one of

these hearings, but, unless they have factual information about which to testify, the advocate must sit silently while the resident attempts to put on his or her own case. Interestingly, prior to the DPH ruling, advocates from our Office did represent residents at several discharge hearings. Subsequent to the attorney-only rule taking effect we have been able to send attorneys to some of the other hearings. In total we have represented ten residents at discharge hearings over the past two years, and the hearing officers ruled in the resident's favor in nine of them.

It should be noted that these discharge hearing provisions do not apply in emergency situations. The law allows for expedited transfers and discharges (and an after-the-fact hearing) "... where failure to effect an immediate transfer or discharge would endanger the health, safety or welfare of the resident or other residents..."

With budget reductions currently being experienced by legal service and public interest programs, this picture is going to worsen before it gets better. Representation by paralegals and lay advocates is permitted in most administrative forums. I would urge that you assure this same right to residents of Residential Care Homes.

Our Office also supports **Raised Bill No. 315, AAC Sexual Assault of a Developmentally Disabled or Severely Physically Disabled Person.**

This bill would amend those sections of the criminal code dealing with second degree and fourth degree sexual assault by specifically including assaults on persons whose "... ability to resist or consent to such sexual intercourse (or in the case of fourth degree sexual assault, sexual contact) is substantially impaired because of a mental or physical condition or advanced age..."

Our Office supports this concept. We have been involved in investigations of abuse and neglect where individuals with significant disabilities have been victims of sexual assault, but prosecution has been difficult. Recently released statistics from the Bureau of Justice confirm that people with disabilities are more than twice as likely to be sexually assaulted than non-disabled individuals. So providing for some specific penalties when a victim has a sufficiently significant mental or physical disability to preclude resistance or the ability to refuse consent makes sense.

At the same time, we do not want to see a statutory presumption established that all people with significant mental or physical disabilities are incapable of entering into consensual sexual relations. I would therefore suggest that the term "refuse to" be inserted in front of the word "consent" in lines 36 and 61. This would clarify that the effect of the person's disability is to impair his or her ability to "refuse to consent", rather than his or her ability to enter into consensual relations.

My only other suggestion would be to address the arcane language referring to "mentally defective" in lines 7 and 53. The language could read: "...such other person is unable to consent to such sexual intercourse (or contact) due to the extent of such other person's cognitive or psychiatric disability..."

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