



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
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April 8, 2011

Thank you for this opportunity to comment on two of the bills on your agenda today: Raised Bill No. 6647, An Act Concerning the Appointment of Guardians Ad Litem to Assist Disabled Individuals in Court; and Raised Bill No. 6648, An Act Concerning a Clinical Assessment of First-Time Offenders.

Raised Bill No. 6647 would amend statutes allowing appointment of a guardian ad litem by a Probate or Superior Court, to specifically permit appointment of a GAL for a person with a disability. The bill defines the term "person with a disability" as having the same meaning as that term has for purposes of our Office's enabling legislation:

For the purposes of this chapter the term "person with a disability" means any person who has a physical, mental, emotional or other disability or dysfunction which constitutes a significant obstacle to such person's ability to function normally in society and includes those persons defined as developmentally disabled under Public Law 94-103 and any subsequent amendments thereto. (C.G.S. Sec. 46a-8.)

This is a very inclusive definition, one that is intended to ensure that people with all types of disabilities can access the services of our Office. It is quite different from the commonly understood meaning of "legal disability" – a term traditionally applied to minors and to people who are unable to act in their own interests due to illness, prolonged absence or mental or cognitive status – people for whom appointment of a GAL would normally be considered.

Given that expansive definition, the effect of the bill would be to permit appointment of GALs for any person with any kind of a disability, irrespective of how competent that person may be. Although I suspect it to be an unintended consequence, the bill would essentially create a statutory presumption that having a disability is, in and of itself, sufficient reason for a court to appoint someone to advise it on the person's "best interests". The presumption in law is, and should remain, that, absent a specific finding to the contrary, a person with a disability is no less competent and or able to make decisions about his or her own best interests than any other person.

Bill No. 6648 would require police officers to bring first-time arrestees for clinical assessments whenever they have reasonable cause to believe that the person being placed under arrest has a psychiatric disability. This requirement would evidently arise whether or not the individual being placed under arrest is manifesting any signs or symptoms of mental illness, or whether or not the arrest results in custodial detention.

The phenomenon of “criminalization” of mental illness is a huge and costly problem. It is a problem for people who have mental illnesses and those who care about them; for the various elements of the criminal justice system, including police agencies and the correction system; and, for the mental health service system as well. Keeping people with psychiatric disabilities out of the criminal justice system and helping to connect them with supports and services is a worthy goal. As you may be aware, various state agencies have been working collaboratively on this issue. The State Department of Mental Health and Addiction Services (DMHAS) operates a jail diversion programs in each of the Geographic Area courts, and has also invested resources in a highly effective program of Crisis Intervention Training (CIT) training for police officers who then partner with community mental health agencies. The net effect of both of these initiatives is to divert many people away from the criminal justice system, and into treatment.

Both of these efforts have had measurable, positive effects, and are generally regarded as successful policy initiatives. So are the Court Support Services Division’s Jail Re-Interview program, DOC/DMHAS cooperative discharge planning, and various options for halfway programs and enhanced parole and probation. There is little question, however, that all these efforts could be much more effective if additional resources were to be invested to ensure that the long-term services people need – including supportive housing, combined mental health and drug and alcohol treatment programs, and intensive case management – were more readily available. In my view it would be preferable to invest whatever additional public resources may be available in these proven initiatives. Bringing all first-time arrestees who may have a mental illness for clinical assessments could add to the strain on hospital emergency departments, and, may also violate the Americans with Disabilities Act. (Title II of the ADA prohibits governmental entities from categorically treating people with disabilities differently than people without disabilities. While a public entity such as a police agency could offer a special service to people who identify themselves as having disabilities, it cannot force people to accept those special services.)

Thank you for this opportunity to comment on these bills. If there are any questions, I will try to answer them.