



# 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 Public Health Committee

Presented by: James D. McGaughey

Executive Director

February 9, 2011

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

Our Office is also pleased to support Raised Bill No. 6279, AN ACT CONCERNING REVISIONS TO STATUTES RELATING TO THE DEPARTMENT OF DEVELOPMENTAL SERVICES INCLUDING THE UTILIZATION OF RESPECTFUL LANGUAGE WHEN REFERRING TO PERSONS WITH INTELLECTUAL DISABILITY. As many of you are already aware, the term “mental retardation” is viewed with growing resentment by many of those who have grown up being called “retarded”. Resentment over the “R” word is tied not only to the hurtful taunts and put-downs that people have personally experienced, but also to its increasing vernacular use as a term signifying generally deficient, defective or unsatisfactory conditions. Several years ago, the name of the Department of Developmental Services was changed in response to those concerns. So removing references to the term “mental retardation” in the Department’s authorizing legislation, and substituting the generally accepted term “intellectual disability” also makes sense.

However, the DDS statutes do not, by themselves, contain all the statutory references that need to be changed. Connecticut’s system for protecting people with intellectual disabilities from Abuse and Neglect assigns responsibilities to both our Office and to DDS, and directs us to work together to ensure that reporting responsibilities are clear, that suspected abuse and neglect are investigated, and that when needed, protective services are initiated. Because it was thought important that an independent watchdog agency receive reports of suspected abuse and neglect

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and oversee investigation activity, most of the statutory framework defining this joint system is described in our Office's enabling legislation. So, for the sake of uniformity and clarity, as well as for all the values issues referred to above, as this bill amending the DDS statutes goes forward, we need to make a parallel amendment to language in the legislation governing our abuse investigation responsibilities (Sections 46a-11a through 46a-11g). We have, therefore, prepared an amendment for your consideration which would delete references to "mental retardation" in the statute authorizing our abuse investigation program, substituting instead the term "intellectual disability". We have been working with DDS about this, and they are supportive of this amendment.

There is one other feature of this bill that I would call to your attention. Section 13 (beginning at line 451) subtly, but significantly redefines the licensing authority of DDS. Whereas current law prohibits operation of a "residential facility" that serves people with mental retardation or autism without a license from DDS, the bill would only require operators of "community living arrangements" (CLAs) and "community companion homes" (CCHs) to obtain a license. (Community companion homes were formerly known as community training homes.) In practice, these are the only types of facilities for which DDS currently issues licenses. However, things in the developmental services world are ever evolving, and new models are developing. For instance, under the Medicaid waiver program, up to three individuals who receive waiver services can pool their funds, secure housing, hire round-the-clock staff, and have what is known as Continuous Residential Support. The flexibility afforded through this mechanism is to be applauded. But, the distinction between the CRS model and a traditional three-person CLA (e.g. small group home), which has to obtain a license and submit to periodic inspections, seems to be related more to funding mechanisms than the substance of what is being delivered.

Our Office has no objection to this change at this time. However, as program models evolve the question of which types of residential programs warrant licensing should be re-examined periodically.

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

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The Office of Protection and Advocacy for Persons with Disabilities requests the following amendment:

HB 6279 AN ACT CONCERNING REVISIONS TO STATUTES RELATING TO THE DEPARTMENT OF DEVELOPMENTAL SERVICES INCLUDING THE UTILIZATION OF RESPECTFUL LANGUAGE WHEN REFERRING TO PERSONS WITH INTELLECTUAL DISABILITY.

**TO AMEND SECTION 1 OF HB 6279:**

Section 1. Section 1-1g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

ADD "[46a-11a through 46a-11g, inclusive,](#)" to the list of statutes in Section 1, subsection (b) for which "intellectual disability" shall have the same meaning as "mental retardation".

**TO BE ADDED TO HB 6279:**

Section 501. Section 46a-11a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

For the purposes of sections 46a-11a to 46a-11g, inclusive:

(1) "Abuse" means the wilful infliction of physical pain or injury or the wilful deprivation by a caretaker of services which are necessary to the person's health or safety;

(2) "Neglect" means a situation where a person with [\[mental retardation\]](#) [an intellectual disability](#) either is living alone and is not able to provide for himself the services which are necessary to maintain his physical and mental health or is not receiving such necessary services from the caretaker;

(3) "Caretaker" means a person who has the responsibility for the care of a person with [\[mental retardation\]](#) [an intellectual disability](#) as a result of a family relationship or who has assumed the responsibility for the care of the person with mental retardation voluntarily, by contract or by order of a court of competent jurisdiction. Neither a guardian nor a conservator need be a caretaker;

(4) "Conservator" means a conservator of the person or of the estate appointed pursuant to

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section 45a-644 to 45a-662, inclusive;

(5) "Director" means the director of the Office of Protection and Advocacy for Persons with Disabilities;

(6) "Facility" means any public or private hospital, nursing home facility, training school, regional facility, group home, community [training] companion home, school or other program serving persons with [mental retardation] [intellectual disabilities](#);

(7) "Guardian" means the guardian or limited guardian of a person with [mental retardation] [an intellectual disability](#) appointed pursuant to sections 45a-669 to 45a-684, inclusive;

(8) "Person with [mental retardation] [an intellectual disability](#) " means a person who: (A) Has [mental retardation] [an intellectual disability](#), as defined in section 1-1g, (B) is at least the age of eighteen and under the age of sixty, except for purposes of subsection (b) of section 46a-11c, is eighteen years of age or older, and (C) is substantially unable to protect himself from abuse and includes all such persons living in residential facilities under the jurisdiction of the Department of Developmental Services;

(9) "Protective services" means services provided by the state or any other governmental or private organization or individual which are necessary to prevent abuse or neglect. Such services may include the provision of medical care for physical and mental health needs; the provision of support services in the facility, including the time limited placement of department staff in such facility; the relocation of a person with [mental retardation] [an intellectual disability](#) to a facility able to offer such care pursuant to section 17a-210, 17a-274 or 17a-277, as applicable; assistance in personal hygiene; food; clothing; adequately heated and ventilated shelter; protection from health and safety hazards; protection from maltreatment, the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment; and transportation necessary to secure any of the above-stated services, except that this term shall not include taking such person into custody without consent; and

(10) "Commissioner" means the Commissioner of Developmental Services.

Section 502. Section 46a-11b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Any physician or surgeon licensed under the provisions of chapter 370, any resident physician or intern in any hospital in this state, whether or not so licensed, any registered nurse, any person paid for caring for persons in any facility and any licensed practical nurse, medical

examiner, dental hygienist, dentist, occupational therapist, optometrist, chiropractor, psychologist, podiatrist, social worker, school teacher, school principal, school guidance counselor, school paraprofessional, mental health professional, physician assistant, licensed or certified substance abuse counselor, licensed marital and family therapist, speech and language pathologist, clergyman, police officer, pharmacist, physical therapist, licensed professional counselor or sexual assault counselor or battered women's counselor, as defined in section 52-146k, who has reasonable cause to suspect or believe that any person with **[mental retardation]** an intellectual disability has been abused or neglected shall, as soon as practicable but not later than seventy-two hours after such person has reasonable cause to suspect or believe that a person with **[mental retardation]** an intellectual disability has been abused or neglected, report such information or cause a report to be made in any reasonable manner to the director or persons the director designates to receive such reports. Such initial report shall be followed up by a written report not later than five calendar days after the initial report was made. Any person required to report under this subsection who fails to make such report shall be fined not more than five hundred dollars.

(b) Such report shall contain the name and address of the allegedly abused or neglected person, a statement from the person making the report indicating his belief that such person **[is mentally retarded]** has an intellectual disability, information supporting the supposition that such person is substantially unable to protect himself from abuse or neglect, information regarding the nature and extent of the abuse or neglect and any other information which the person making such report believes might be helpful in an investigation of the case and the protection of such person with **[mental retardation]** an intellectual disability.

(c) Each facility, as defined in section 46a-11a, shall inform residents of their rights and the staff of their responsibility to report abuse or neglect and shall establish appropriate policies and procedures to facilitate such reporting.

(d) Any other person having reasonable cause to believe that a person with **[mental retardation]** an intellectual disability is being or has been abused or neglected may report such information, in any reasonable manner, to the director or to his designee.

(e) Any person who makes any report pursuant to sections 46a-11a to 46a-11g, inclusive, or who testifies in any administrative or judicial proceeding arising from such report shall be immune from any civil or criminal liability on account of such report or testimony, except for liability for perjury, unless such person acted in bad faith or with malicious purpose. Any person who obstructs, hinders or endangers any person reporting or investigating abuse or neglect or providing protective services or who makes a report in bad faith or with malicious purpose and who is not subject to any other penalty shall be fined not more than five hundred dollars. No resident or employee of a facility, as defined in section 46a-11a, shall be subject to reprisal or

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discharge because of his actions in reporting pursuant to sections 46a-11a to 46a-11g, inclusive.

(f) For purposes of said sections, the treatment of any person with [mental retardation] an intellectual disability by a Christian Science practitioner, in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute grounds for the implementation of protective services.

(g) When the director of the Office of Protection and Advocacy for Persons with Disabilities or persons designated by such director are required to investigate or monitor abuse or neglect reports that are referred to the Office of Protection and Advocacy for Persons with Disabilities from another agency, all provisions of this section shall apply to any investigation or monitoring of such case or report.

Section 503. Section 46a-11c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The director, upon receiving a report that a person with [mental retardation] an intellectual disability allegedly is being or has been abused or neglected, shall make an initial determination whether such person has [mental retardation] an intellectual disability, shall determine if the report warrants investigation and shall cause, in cases that so warrant, a prompt, thorough evaluation to be made to determine whether the person has [mental retardation] an intellectual disability and has been abused or neglected. For the purposes of sections 46a-11a to 46a-11g, inclusive, the determination of [mental retardation] an intellectual disability may be made by means of a review of records and shall not require the director to conduct a full psychological examination of the person. Any delay in making such determination of [mental retardation] an intellectual disability shall not delay the investigation of abuse or neglect or recommendation of provision of protective services. The evaluation shall include a visit to the named person with [mental retardation] an intellectual disability and consultation with those individuals having knowledge of the facts of the particular case. All state, local and private agencies shall have a duty to cooperate with any investigation conducted by the Office of Protection and Advocacy for Persons with Disabilities under this section, including the release of complete client records for review, inspection and copying, except where the person with [mental retardation] an intellectual disability refuses to permit his or her record to be released. The director shall have subpoena powers to compel any information related to such investigation. All client records shall be kept confidential by said office. Upon completion of the evaluation of each case, written findings shall be prepared which shall include a determination of whether abuse or neglect has occurred and recommendations as to whether protective services are needed. The director, except in cases where the parent or guardian is the alleged perpetrator of abuse or is residing with the alleged perpetrator, shall notify the parents or guardian, if any, of

the person with [**mental retardation**] an intellectual disability if a report of abuse or neglect is made which the director determines warrants investigation. The director shall provide the parents or guardians who the director determines are entitled to such information with further information upon request. The person filing the report of abuse or neglect shall be notified of the findings upon request.

(b) In cases where there is a death of a person with [**mental retardation**] an intellectual disability for whom the Department of Developmental Services has direct or oversight responsibility for medical care, and there is reasonable cause to suspect or believe that such death may be due to abuse or neglect, the Commissioner of Developmental Services shall notify the director or the director's designee not later than twenty-four hours after the commissioner determines that there is reasonable cause to suspect or believe that such death may be due to abuse or neglect and the director shall conduct an investigation to determine whether abuse or neglect occurred, except as may be otherwise required by court order. The director, in consultation with the Commissioner of Developmental Services, shall establish protocols for conducting such investigations.

(c) The director shall maintain a state-wide registry of the reports received, the evaluation and findings and actions recommended.

(d) Neither the original report nor the evaluation report of the investigator which includes findings and recommendations shall be deemed a public record for purposes of section 1-210. The name of the person making the original report shall not be disclosed to any person unless the person making the original report consents to such disclosure or unless a judicial proceeding results therefrom.

Section 504. Section 46a-11d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) If it is determined that a person with [**mental retardation**] an intellectual disability has been abused or neglected, the director shall refer the case to the Department of Developmental Services for the development and implementation of a plan of protective services. Said referral shall be accompanied by a copy of the evaluation report. The name of the person making the report of abuse or neglect shall not be disclosed without his consent.

(b) If the caretaker of a person with [**mental retardation**] an intellectual disability who has consented to the receipt of protective services refuses to allow the provision of such services to such person, the commissioner may petition the Superior Court for an order enjoining the caretaker from interfering with the provision of protective services to the person with [**mental retardation**] an intellectual disability. The petition shall allege specific facts sufficient to

show that the person with [**mental retardation**] [an intellectual disability](#) is in need of protective services and consents to their provision and that the caretaker refuses to allow the provision of such services. If the court finds that the person with [**mental retardation**] [an intellectual disability](#) is in need of such services and has been prevented by the caretaker from receiving the same, the court may issue an order enjoining the caretaker from interfering with the provision of protective services to the person with mental retardation.

Section 505. Section 46a-11e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) If a person with [**mental retardation**] [an intellectual disability](#) does not consent to the receipt of protective services, or if such person withdraws his consent, such services shall not be provided or continued, except that if the commissioner has reason to believe that such person with [**mental retardation**] [an intellectual disability](#) lacks capacity to consent to or refuse such services, he may petition the Probate Court for the appointment of a guardian. If any guardian, appointed pursuant to the provisions of this section, does not consent to the provision of such services, the commissioner may petition the Probate Court for the removal and replacement of said guardian.

(b) The commissioner, within fifteen calendar days of the referral of any case for the provision of protective services, shall furnish the director with a written plan of services. The director may comment on the proposed plan and recommend modifications. The commissioner shall cooperate with the director in resolving disagreements concerning the plan. Any comments made by the director shall be placed on file with the commissioner and the director.

(c) If the director commences an investigation and finds that the person with [**mental retardation**] [an intellectual disability](#) is seriously in need of immediate protective services, he shall report the facts of the case to the commissioner and the commissioner shall not delay the commencement of protective services pending the full evaluation report. If the commissioner's proposed action involves the removal from his home of a person with [**mental retardation**] [an intellectual disability](#) under guardianship or of a person with [**mental retardation**] [an intellectual disability](#) who is competent and does not voluntarily consent to his removal, the commissioner shall follow the procedures mandated in section 17a-274.

Section 506. Section 46a-11f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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(a) Concurrent with the implementation of any protective services for which payment is required, an evaluation shall be undertaken by the commissioner regarding the ability of the person with **[mental retardation]** [an intellectual disability](#) to pay for the protective services. If the person is so able, procedures for reimbursement for the cost of providing the services shall be initiated. If it is determined that the person is not capable of paying for such services, the services shall be provided in accordance with policies and procedures established by the Commissioner of Developmental Services.

(b) Subsequent to the initial provision of protective services, the Department of Developmental Services shall review each case, including meeting with the person with **[mental retardation]** [an intellectual disability](#) at least once every six months, to determine whether continuation or modification of the services is warranted. Said department shall advise the director relative to the continuation of protective services for each such person with **[mental retardation]** [an intellectual disability](#). The commissioner may terminate protective services upon the request of the person with **[mental retardation]** [an intellectual disability](#) or his guardian, pursuant to section 46a-11e, or upon agreement by the commissioner and the director that such services are no longer required.

(c) In performing the duties set forth in sections 46a-11c to 46a-11g, inclusive, the director may request the assistance of the staffs and resources of all appropriate state departments, agencies, commissions and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and may be available.

Section 507. Section 46a-11g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

If, as a result of any investigation initiated under the provisions of sections 46a-11a to 46a-11f, inclusive, a determination is made that a caretaker or other person has abused a person with **[mental retardation]** [an intellectual disability](#), the director shall refer such information in writing to the appropriate office of the state's attorney, which shall conduct such further investigation as may be deemed necessary and shall determine whether criminal proceedings should be initiated against such caretaker or other person, in accordance with applicable state law. If any initial investigation by the director discloses evidence of an immediate and serious threat to the health or life of a person with **[mental retardation]** [an intellectual disability](#), said office shall immediately refer the matter to state or local police, as appropriate, who shall immediately investigate the matter.