

Testimony of Kirk W. Lowry
Before the Judiciary Committee
Raised Bill 6692 Regarding Community Service for Fee Waivers
April 15, 2013

The Connecticut Legal Rights Project is a state-wide, non-profit legal services organization serving patients at all state psychiatric inpatient hospitals and low-income people with psychiatric disabilities. I am CLRP's legal director. In order to be eligible for our legal representation a client must have a psychiatric disability and income below 125% of the federal poverty level, which is \$14,362 for one person. Almost all of our clients are eligible for fee waivers under the C.G.S. §52-259b. CLRP is opposed to community service in order to obtain a fee waiver.

The Fourteenth Amendment Due Process Clause of United States Constitution and Article First, Section 20 of the Connecticut Constitution provide for a fundamental right of access to the courts. Connecticut General Statutes §52-259b provides for waiver of fees and payment of costs of service of process for indigent parties. In 1971, the United States Supreme Court, in *Boddie v. Connecticut*, 401 U.S. 371 (1971), struck down a §52-259 as an unconstitutional violation of a class of women's right of access to the courts by denying them divorces because they could not pay the filing fee. Again, in 1981, in *Little v Streater*, 452 U.S. 1 (1981), the Supreme Court struck down a Connecticut statute that required the party requesting a blood test in a paternity action to pay for it violated their due process right of access to the Courts.

Giving the Court discretion to order an indigent person to complete up to twenty hours of community service has a disparate impact on people with disabilities and particularly on people with psychiatric disabilities. The bill requires the Court to consider the person's ability to perform community service. Such a mandatory inquiry will probably often lead to disclosure of a person's disability and psychiatric history, diagnosis, symptoms and medication. Such an inquiry is especially problematic for people with psychiatric disabilities who may appear quite physically able-bodied, but may not be able to perform community service. The long and undeniable history of discrimination against people with psychiatric disabilities and denial of state services, programs and activities should inform us to proceed with great caution. In *Lane v. Tennessee*, 541 U.S. 509, 523-527 (2004), the United States Supreme Court catalogued the long and unfortunate history of discrimination against people with psychiatric disabilities in access to the courts, voting, zoning, involuntary commitment and abuse and neglect in state mental health hospitals.

If the problem is a few people who have significant histories of use of fee waivers and are filing what are claimed to be frivolous, vexatious or malicious cases, that problem should be addressed using the tools available to the opposing party and at the court's disposal: dismissal, orders of costs, and claims for vexatious litigation. This legislative proposal is overbroad because it punishes poor people with valid claims and unduly burdens the constitutional right of access to the courts. The legislation indiscriminately targets all poor people and singles them out for community service, even if their claims and defenses are factually and legally valid.