CONNECTICUT
LEGAL
RIGHTS
PROJECT, INC.

TESTIMONY OF KATHLEEN FLAHERTY, ESQ.
EXECUTIVE DIRECTOR, CT LEGAL RIGHTS PROJECT, INC.
HOUSING COMMITTEE, FEBRUARY 23, 2016

AGAINST: SB 157, HB 5335, HB 5342

FOR: SB 152, SB 154,

SUPPORT, WITH CONCERNS: SB 153, HB 5336, HB 5338

CLRP opposes SB 157 because, as written, it is based on a premise which is fundamentally unsound and may violate the rights of tenants under the Connecticut Constitution and state and federal fair housing laws. People of all ages, abilities and family compositions should live in communities with a variety of people. We oppose any move to separate or segregate people.

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The bill has a worthy purpose: ensuring adequate and safe state-assisted housing for the elderly and younger persons with disabilities. However, the fact that the bill includes language stating that the requested report include "[r]ecommendations concerning the feasibility and means of providing comparable housing to tenants who are displaced due to units being reserved in such housing primarily for either the elderly or younger tenants with disabilities" is problematic. As we have explained in our past testimony regarding similar proposed bills last session, elderly housing in Connecticut has had as its stated purpose, for more than 50 years, serving the needs of both people with disabilities and older adults. Reserving such housing primarily for either older people or people with disabilities would promote segregation based on age, disability, or both – in violation of rights protected under the state constitution, fair housing laws, and the Americans with Disabilities Act.[1] The study, as proposed, is insufficient. Preparing a summary of the

[1] ARTICLE XXI of the Amendments of the Connecticut State Constitution, adopted November 28, 1984, reads as follows:

"Article fifth of the amendments to the constitution is amended to read as follows: No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability." This language means that people living with physical or mental disabilities are a protected class under the state constitution, and any change to this protection cannot be removed by simply enacting a new statute – a proposal to amend the constitution pursuant to Article XII (as amended by Article VI of the amendments to the Constitution) is required. Section 73 of the 2015 implementer (SB 1502, P.A. 15-5) codified this constitutional

number of negative incidents between elderly tenants and younger tenants with disabilities, without context, does nothing other than to support reaching a pre-designated outcome. Without comparison to other relevant numbers – such as the total number of evictions for reasons other than negative incidents between elderly tenants and younger tenants with disabilities, or the number of evictions of elderly tenants – the number of evictions relating to negative incidents between elderly tenants and younger tenants with disabilities should not drive policy decisions. Any study must include consultation with all relevant stakeholders – the state agencies, housing authorities, tenants (both elderly and younger tenants with disabilities), and advocates for tenants.

It is our understanding that the Commissioners of the Department of Housing and the Department of Mental Health and Addiction Services met to discuss how they, in concert, can better address the needs of tenants in such housing.

CLRP opposes HB 5335 An Act Concerning the Rights and Responsibilities of Landlords and Tenants Regarding the Treatment of Bed Bug Infestations.

We appreciate the desire to curb bed bug infestations that affect Connecticut communities. We would support legislation which gives incentives to tenants to report infestations quickly, and to landlords to deal with such infestations quickly. We cannot support legislation that appears to skirt the fair housing laws that provide protection to people with disabilities. It is not clear that legislation is necessary or desirable.

Bed bugs are like the flu. It is almost impossible to say who brought it into the house. You can't see it, don't know that it's there or that you are carrying it until it is too late and you have symptoms. You may have a pretty good guess where you got it, or them, but you don't really know for sure because like the flu, bed bugs are contagious long before there are signs or symptoms, and, like flu germs, they are readily available everywhere. Unfortunately, there is no inoculation to prevent bedbug infestations but fortunately, unlike the flu, bedbugs are not dangerous to your physical health. **One thing is clear: the earlier a bed bug infestation is identified and treated, the easier it is to eliminate. Legislation should promote early detection and prompt effective treatment.**

There are many problems with the statute as written, which are set out later in the testimony, but **CLRP is most concerned about and opposed to the section that permits and promotes the landlord's billing a client with a disability for assistance in preparation for extermination--assistance that should be provided without cost as a reasonable accommodation under antidiscrimination laws:**

Section 1, paragraph (b) (3) (A) of the bill ignores completely the requirements of the Americans with Disabilities Act (42 USC 12101 et seq.), the federal Fair Housing Amendments Act (42

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protection and provides protection for people with mental disabilities from discrimination that is perpetrated by individual actors.

USC 3601 et seq, regs: 24 CFR Parts 100 et seq) and state anti discrimination statues (Conn. Gen. Stat. Secs. 46a-64b and 46a-64c) to provide reasonable accommodations to people with disabilities. These laws entitle tenants with disabilities who, in connection with those disabilities, are unable to comply with the (strenuous, extensive and complex) preparations for bed bug extermination to a reasonable accommodation (assistance) from the landlord. A reasonable accommodation cannot be billed to the person with the disability.[2]

It would be irresponsible for the legislature to enact a statute that prescribes a procedure that violates state and federal anti discrimination statutes.

Although Section (C) of the proposed bill states that "nothing in the section shall be construed to preempt or restrict application of the provisions of chapter 814c of the General Statutes or any other state or federal law concerning reasonable accommodations," that sentence is meaningless in practice. It does not explicitly state that the landlord is responsible for providing reasonable accommodations. Landlord who do not have a lawyer on staff (most landlords) will not know what it refers to or how to apply it. Neither will the tenants, if they even see it. The clause may protect a tenant who gets a lawyer and goes to court but that tenant's lawyer should already know that the statute is in conflict with antidiscrimination laws and that the antidiscrimination statutes would take precedence in almost all situations. The clause will not help in small claims court in litigation over the security deposit. **The statute provides no protection at all for the unaware tenant who is compelled to pay an inappropriate bill. CLRP receives calls from clients who are upset about being billed for extermination.** We can usually sort that out for them, but for every call we get, how many people who really cannot afford to do so, pay the bill for fear of losing their housing, and go without food, basic supplies or medication instead? **It is the most vulnerable members of the community who will be harmed by this bill.**

For those reasons, CLRP opposes all of the sections in the proposed bill that require the tenant to fund the costs of preparation for extermination and that promote billing for assistance, repayment schedules and taking the costs of assistance out of the security deposit.

There are other practical problems with the bill. If the sections on costs of preparation are eliminated, these will still need to be addressed:

- Section (b)(2)(B) appears to extend the right to inspect beyond what is necessary to identify an infestation, referencing personal belongings. *
- Section (b)(1) allows the landlord to treat the infestation. [3] Landlords should not be treating

[2] Reasonableness is related to the cost, and the reasonableness of a cost depends on the ability of the landlord to pay. As a practical matter, litigating who can afford and who cannot afford the varying costs of extermination preparation does not make sense.

[3] First it says, "take reasonable measures, as determined by such qualified inspector, to effectively treat the bed bug infestation, including treating or retaining the services of a pest control agent to treat the ……" Then, at the end of the sentence about the treatment it adds, "except the landlord may first attempt to treat such infestation." It also requires the landlord to first vacuum the areas to be treated. It may require the landlord to treat the infestation "as determined by the qualified inspector," but it may mean that the landlord may first attempt to

a bedbug infestation—it is usually ineffective, can be dangerous, and delays and even interferes with effective treatment (by forcing the bugs into hiding). Delay allows the infestation to spread and makes extermination more costly. **This does not even touch on the real trauma that many tenants experience from bedbug infestation.**

- **There are already Connecticut statutes regarding the issues addressed in this bill. Unfortunately, the bill does not clarify these.**

  1. Both state statutes and local ordinances require landlords to deal with infestations:
     a. Some Connecticut municipalities have ordinances (predating the bedbug resurgence), which provide that when an infestation is confined to one unit, the occupant is responsible for extermination, but when two or more units are affected, the landlord is. An example of such an ordinance is attached[4]. **This is not good policy because it discourages early detection and extermination.**
     b. Other municipalities have ordinances specific to bedbugs which require the landlord to follow integrated pest management. A copy of one of those is attached[5].
     c. Section (b)(1) makes the landlord responsible for all costs (except as indicated—the preparation). Does that overrule municipal ordinances that require certain tenants to exterminate? If so, it should be explicit. Instead, it seems to defer to local ordinances. ("The remedies in this section shall be in addition to any other remedies available at law or in equity to any person." Section 1 (d)(3).) Does that means landlords can choose the law that favors them?

  2. We already have statutes, referenced in the proposed legislation, that
     a. allow a landlord to enter a unit with notice for inspections(§47a-16)
     b. permit a landlord to get a court order to enter a unit if a tenant is not cooperating with inspection or extermination (§47a-18).

     A bedbug statute that simply references those provisions might be helpful for landlords who need that information. **A pamphlet could do that and could emphasize the importance of not doing it yourself.** ** Section 1, paragraph (b)(2)(C) is problematic. This is the section that says Is this to prevent infested furniture being disposed of in ways that spreads the infestation, or is it protecting tenants from the wholesale destruction of the property? It needs to be clarified. It is not a decision for the landlord, but for a qualified inspector.

- The final paragraph of the proposed bill, Section 3, says the CT Agricultural Experiment Station in consultation with the DPH and DEEP and within available appropriations shall develop and publish best practices and guidelines.....**They have done this, it is on line and**

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treat the infestation before s/he even obtains the inspection. It is ambiguous, but either interpretation is not a good rule.

[4] Please see Ordinance, City of New Britain on Page 10 of this document

[5] Please see Ordinance, City of Hartford on Page 9 of this document

it contradicts the requirements of this bill regarding self treatment and on the importance of speedy identification and treatment. The bill permits and encourages landlords to do it themselves. This contradicts the advice of the CT DPH.[6]

The proposed bill is a fee shifting statute. It aims to shift some of the cost of bed bug control to the tenant. **It illegally shifts the costs to some tenants with disabilities, who are entitled to reasonable accommodations and it shifts it to tenants who may not be able to afford the cost, thus making control of infestations more difficult.** If all aspects of extermination were clearly stated as a landlord's financial responsibility, the landlords could incorporate extermination into the cost of doing business and reflect it in the rent for all tenants. They do that with other extermination as well as other maintenance. For tenants who are recipients of rent subsidies, the costs of this aspect of their housing will be figured into their total rent and covered by their subsidies, not taken out of their limited incomes which do not cover their basic expenses as it is. **For people on fixed incomes, unanticipated expenses like these are impossible to cover.** While the bill aims to protect physically disabled tenants from eviction for nonpayment of some of those expenses (which they should not have been charged for in the first place), it does not protect tenants from eviction for being unable to comply with the financial requirements of preparation for extermination: purchase of mattress covers, of plastic bags or tubs. In fact, they can be evicted for failure to comply and at best, if the landlord pays for it, leaves them with an unpaid bill which will haunt the tenant who applies for subsidized housing or other housing. (Landlord references routinely ask if the tenant owes them money.) A bill that can never be paid is not any help to the landlord, either.

CLRP opposes HB 5342 This bill is deceptively named. It has nothing to do with appeals to Fair Housing procedures. It is about complaints for violations of fair housing statutes and its purpose is to gut state law Fair Housing protections in Connecticut. In a few lines, the bill takes

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[6] "A Word of Caution For Do-It Yourselfers For those who want to self-treat for bed bugs, you should know that most consumer products do not work. A recent study of consumer "bug bombs" by researchers at Ohio State University showed that the bug bombs do not work for bed bug infestations. One of the main reasons is that the bombs do not penetrate cracks and crevices where bed bugs hide. Besides wasting money, delaying effective treatment can lead to further resistance and significantly higher populations that are difficult to control." (from the CT DPH website)

"If bed bugs are confirmed, tenants should notify landlords; property owners should contact pest control professionals with experience. Delays in treatment can make control harder. Self treatments don't work." (from DPH Website, excerpted from pamphlet by Gale Ridge, CAES. http://www.ct.gov/caes/lib/caes/documents/bed_bugs/2012/how_to_deal_english.pdf)

There is also a link on the DPH website to a CDC study of the dangers and ineffectiveness of the use of outdoor pesticides indoors to treat bedbugs.

away protections provided by Connecticut's anti-discrimination statutes and puts Connecticut law at odds with the federal Fair Housing Act and Fair Housing Act Amendments.

The bill would change the provisions of the Connecticut anti-discrimination statute that protects people against discrimination in housing on the bases of race, creed, color, national origin, ancestry, sex, gender identity or expression, sexual orientation, or civil union status, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability. CLRP specifically represents people with psychiatric disabilities, but this is a very long list of people whose protections will be decimated.* **Because there is testimony from the Commission on Human Rights and Opportunities, the Connecticut Fair Housing Center, and the Fair Housing Association of CT, I will focus on the effect this bill would have on our clients, people with psychiatric disabilities.**

1. **The bill proposes to limit the damages available to victims of housing discrimination to actual economic damages—no punitive damages, no physical or emotional damages.** The purpose of the antidiscrimination statutes is to discourage and prevent such discrimination from occurring. Putting this kind of limit on the damages available to victims drastically changes the calculation for the discriminating landlord in favor of continuing his/her discriminatory practices.

   Our clients are frequently able to access or maintain their safe affordable housing only by requesting **reasonable accommodations.** Reasonable accommodations are changes in policies or procedures that allow a person with a disability to access or maintain housing. Under the statutes, the failure to grant a request for a reasonable accommodation is per se discrimination. The kinds of accommodations a person might request and receive are a designated parking place closing to his or her unit, overlooking past credit or legal problems that were disability related, or a move to a quieter apartment. In such cases, a landlord need not automatically grant the accommodation requested, but is obligated under the law to engage in an interactive process with the tenant or applicant to find an accommodation that will remove the disability related barrier. Some landlords ignore these requests. Others, those who know the law, respond and avoid litigation. The financial damages of denying the reasonable accommodation of a parking place next to the unit of a person with a mobility impairment may be slight, the personal and physical costs incalculable. Similarly, denial of a move to an apartment that does not interfere with a person's recovery might not have provable economic damages, but have a very steep emotional cost. **This statute completely discounts that (non economic) harm and takes away any incentive a landlord might have to comply with the law that mandates the accommodation of people with disabilities.**

   Economic costs to our clients, who must be indigent to be our clients, will always be small—which gives landlords little incentive to follow the law. Yet the actual costs to victims of housing discrimination are great, and must continue to be compensated, just as such discrimination must be punished. **There is nothing wrong with punitive damages for discriminatory housing practices. Our public policy is against such discrimination and the availability of punitive damages promotes that public policy.**

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2. This bill also provides that a complainant, a victim of discrimination, can only file one complaint for each incident of or set of related discriminatory practices. We are not sure exactly what that means. If a person applies each year and is turned down repeatedly or year after year for housing or for a reasonable accommodation, does s/he get just one complaint against that landlord in his/her lifetime? If a large number of people in one agency or housing complex perpetrate discriminatory practices, must a victim file a complaint against only one of them? **This section is both unclear and unfair.**

This bill is designed to defeat the intention of the fair housing laws and to protect the perpetrators of housing discrimination, not the victims.

CLRP supports SB 152 An Act Concerning the Disclosure of Housing Discrimination and Fair Housing Laws and SB 154 This statute provides that the CHRO will develop a leaflet setting out the responsibilities of landlords in fair housing law and requires that it be distributed by sellers to buyers of rental property. This is a simple way to ensure that more landlords are aware of the law. Anything that would result in an increase in knowledge about Connecticut's fair housing laws would benefit both tenants and landlords. SB 154 increases tenant choice with regard to the payment of yearly interest on security deposits, rather than allowing the landlord to make the decision as to whether to issue a check or a credit toward the next month's rental payment.

CLRP supports SB 153 with a minor concern. CLRP appreciates explicit statutory permission for security deposits for elderly tenants and younger tenants with disabilities to be paid on an installment basis. However, tenants residing in such housing often maintain their tenancies for many years. To the extent that there are tenants who have been residing in their apartments prior to January 1, 2013, when the statute was amended to lower the interest rate that applied to the return of their security deposit, the higher interest rate for these security deposits (4 percent per annum vs. the rate set for other security deposits by the Department of Banking) should be maintained.

CLRP supports HB 5336 but has serious concerns. The bill requires that the Commissioner of Housing "establish a pilot program to provide temporary shelter to homeless persons who are recovering from injury or illness." This is not a bad thing in and of itself, but Connecticut has already set a goal of eliminating homelessness – permanently. That can only happen when people have permanent housing, with available supports. This bill sets up a structure that provides only temporary shelter for those recovering from injury or illness, and seems to run counter to the goal of eliminating homelessness. Connecticut should not establish additional programs that, by their very definition, would allow homelessness to continue or re-occur (since the shelter seems to be provided only during the time of recuperation) – but instead should invest its resources in permanent supportive housing. Connecticut must invest the resources necessary to meet the Zero: 2016 goal of ending chronic homelessness.

CLRP supports the purpose of HB 5338 but continues to have concerns about the language of the bill. CLRP welcomes the establishment of guidelines and limitations concerning the disclosure of information of Department of Housing program applicants and participants. The proposed language would apply to information held by those agencies and housing authorities. CLRP appreciates that section 2 contains a specific recognition that privacy protections outlined in federal law may prevent the disclosure of certain information to law enforcement personnel. Many of the agencies and housing authorities administer housing programs funded under both state and federal funding sources; those funded under federal law are subject to the privacy protections outlined in 5 U.S.C. 552a. Some of the disclosures and information sharing proposed under this bill may be contrary to that allowed under federal law. Federal law also includes requirements regarding accounting for disclosures. Agencies that administer housing programs hold a lot of personal information about each of their program participants. Disclosures of this information should be limited to those people who need to know it, and the exceptions that allow disclosure should be limited in nature. If housing authority staff members, in those agencies that administer both state- and federally-funded programs, are tasked with knowing two different sets of rules with regard to when and to whom information can be disclosed – the likelihood of people's private information being disclosed improperly rises. CLRP again suggests that the language of this bill be modified to more closely track that of the federal privacy law.

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City of Hartford Ordinance

- **Sec. 18-140. - Pest extermination.**

(a) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises. Every occupant of a dwelling unit in a dwelling containing more than one (1) dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infected. Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two (2) or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two (2) or more dwelling units, extermination thereof shall be the responsibility of the owner.

(b) For the purposes of Bed Bugs (Cimex lectularius), the owner of the dwelling unit shall be responsible for the extermination of any infestation. Only Certified Applicators, as defined in G.S. § 22a-54, shall apply pesticides. The abatement shall consist of an Integrated Pest Management Plan as approved by the Director of Health, Director of Licenses and Inspections, or their authorized agent(s). The Integrated Pest Management Plan shall include an inspection of, and, if necessary, treatment of all peripheral dwelling units and areas.

(1) Unless otherwise indicated by the Director of Health, any occupant of a dwelling unit, who creates a condition or by inaction contributes to a condition which constitutes a violation(s) of the provisions of Chapter 18 of the this Code, may be penalized for such violation(s) in accordance with Section 18-12 of this Code if the occupant fails to remedy the condition within three (3) weeks after receiving notice of such violation. Additionally, any occupant who so creates or contributes to said condition which constitutes a violation and through his/her action or inaction prevents owner from abating such violation(s) and/or conducting such extermination may be penalized in accordance to Section 18-12 of this Code.

(2) Whenever the furniture, clothing, equipment or personal property of the occupants or of such dwelling is found to be vermin- or insect-infested, the same shall not be moved from such quarters unless approval is received from the Director of Health, Director of Licenses and Inspections, or their authorized agent.

(3) In addition to the penalty provided in Section 18-12 of this Code, the City of Hartford may recover all expenses and/or administrative charges incurred by it as a result of any inspection and/or abatement action.

(Code 1977, § 18-121; Ord. No. 03-12, 3-12-12)

- **Sec. 13-84. - Extermination of insects and rodents.**

(a) *Responsibilities of occupants.* Every occupant of a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises. Every occupant of a dwelling unit, in a dwelling containing more than one unit, shall be responsible for such extermination whenever his dwelling unit is the only one infested.

(b) *Responsibilities of owners.* Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two (2) or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two (2) or more dwelling units, extermination shall be the responsibility of the owner.

(Code 1970, § 13-3.09; Ord. of 4-82)