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Department of Developmental Services

DDS

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**DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY
BEFORE THE JUDICIARY COMMITTEE**

February 24, 2016

Senator Coleman, Representative Tong and members of the Judiciary Committee. I am Morna A. Murray, J.D., Commissioner of the Department of Developmental Services. Thank you for the opportunity to submit testimony with the department's concerns on **S.B. No. 143 AN ACT CONCERNING STATE AGENCY COMPLIANCE WITH PROBATE COURT.**

Our department's concerns with **S.B. No. 143** center on provisions in section 1 that would enable the Probate Courts to require any state agency to follow a Probate Court's order or decree applicable to state agencies even though the Courts of Probate are courts of limited jurisdiction. We believe that this new provision could invite orders which exceed the Probate Courts' statutory authority. For instance, with an order from the court to fund an individual for services, or provide services to an individual, our agency's only recourse would be a Superior Court appeal. An appeal to the Superior Court should not be the only recourse for agencies in such situations. In addition, an order finding a person to have intellectual disability for purposes of the appointment of a guardian, could usurp the "contested case" UAPA rights for department eligibility determinations.

The Probate Courts already have the authority to enforce orders by convening a contempt "show cause" hearing if it is alleged that an agency has not complied with an order. The agency would have the opportunity to address the possible exercise of authority beyond what is conferred by statute, and if the Probate Court still maintained its order, hold the agency in contempt, which could then be appealed to Superior Court. In *Bellonio v. Richardson*, 2 Conn. Rpter 789, 1990 WL 274581 (1990), the Superior Court ruled that the alleged failure of a state agency (DMR) to comply with an order within the limited jurisdiction of the Probate Court should be left to the Probate Courts' contempt authority for enforcement.

Thank you for the opportunity to testify to DDS's concerns with **S.B. No. 143**. Please contact Christine Pollio Cooney, Director of Legislative and Executive Affairs at (860) 418-6066, if you have any questions.

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Raised Bill No. 142

This Bill has two distinct parts.

1. UPOAA revisions

This is a CBA Estates and Probate section bill. It corrects errors in last session's UPOAA law to make the effective dates consistent.

It also adds authority to execute a document directing disposition of the principal's remains upon their death and designating who shall have custody and control of them. This was in our prior Statutory Short Form Power of Attorney (1-52 subsection (14)).

This would be effective July 1, 2016.

2. Uniform Recognition of Substitute Decision-Making Documents Act - This is new.

Applies to documents conferring authority on a "decision maker" to act on behalf of an individual with respect to "property, health care or personal care".

Makes out of State "substitute decision-making documents" that are validly executed out of state valid in CT, or if executed in accord with the law of CT, valid in CT.

Attempts to enforce acceptance of these documents by people who are asked to accept the decision-making of the "decision maker" by

- using provisions similar to UPOAA (e.g. person may ask decision-maker to provide opinion of counsel),
- requiring acceptance within a "reasonable time",
- prohibiting the person from requiring "an additional or different form of document for authority granted in the document presented" and
- making a person who refuses to accept the document subject to a court order mandating acceptance as well as liability for attorney's fees and costs.

This would be effective October 1, 2016.