State of Connecticut
Department of Developmental Services

Dannel P. Malloy
Governor

Peter H. O'Meara
Commissioner

Kathryn du Pree
Deputy Commissioner

TESTIMONY OF THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
TO THE
JUDICIARY COMMITTEE

February 28, 2011

Senator Coleman, Representative Fox and members of the Judiciary Committee. I am Peter O'Meara, Commissioner of Developmental Services. Thank you for the opportunity to submit testimony in support of **H.B. No. 6440 - An Act Concerning Applications for Guardianship of an Adult with Intellectual Disabilities and Statutory Changes Related to Intellectual Disabilities**. I would also like to testify to certain areas of concern our department has with **H.B. No. 6438 - An Act Concerning Probate Court Operations** and **S.B. No. 1058 - An Act Concerning the Applicability of Probate Court Orders to State Agencies.**

The department supports the change in the timing of the guardianship application process proposed in Section 1 of **H.B. No. 6440**. The bill would allow a parent or guardian of a person under the age of 18 to apply for guardianship of that child 180 days prior to that child turning 18. This change would address a problem that parents and guardians of individuals with intellectual disability have faced in continuing to be their child's guardian as they become adults. Currently a child with intellectual disability and his parents must wait until the child turns 18 and then his parents may apply to become guardian of their adult child. This has left a gap in guardianship for some vulnerable adults with intellectual disability.

I would also like to acknowledge the proponents of H.B. No. 6440 efforts to use both respectful language and person first language in reference to individuals with intellectual disability and autism spectrum disorder in their statutes. Our department would suggest that this bill be amended to conform with the terminology DDS has proposed in our agency bills ***H.B. No. 6278 AN Act Concerning The Department Of Developmental Services Division Of Autism Spectrum Disorder Services*** and ***H.B. 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,*** which have been heard in the Public Health Committee. In these bills, we have amended the Department of Developmental Services' statutes that H.B. No. 6440 is also attempting to amend.

Phone: 860 418-6000 ◆ TDD 860 418-6079 ◆ Fax: 860 418-6001
460 Capitol Avenue ◆ Hartford, Connecticut 06106
www.ct.gov/dds ◆ e-mail: ddsct.co@ct.gov

Our proposed changes H.B. No. 6278 and H.B. No. 6279 were based on the recently passed federal legislation "Rosa's Law" which changed the term "mental retardation" to "intellectual disability" in many instances. This change at the federal level, coupled with the proposed changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) by the American Psychiatric Association that are scheduled to take effect in May 2013, made changing the department's statutes to more appropriate and up-to-date terminology necessary.

Because Rosa's Law did not change all federal references of "mental retardation", there are some places in statute where we propose retaining the use of the term for now. For example, there are statutes that refer to "intermediate care facilities for the mentally retarded" (ICFsMR). This is still the federal term and so it must remain that way in state statute. That is why in our agency bill H.B. No. 6279, we retain the term "mental retardation" and add the term "intellectual disability" as an equivalent in the statutory definition in section 1-1g of the Connecticut General Statutes. The bill before the Judiciary Committee would eliminate the term "mental retardation" in the statutory definition and the department opposes this change.

Also in section 33, H.B. No. 6440 would change the term "mental retardation" and other iterations of this term to "intellectual disability" throughout the statutes. In drafting our bills we were careful only to change this terminology in our department's statutes because we could not predict the impact of a change on other agencies. We would suggest that any agency that uses the term "mental retardation" in their statutes assess the impact of a change in terminology before proposing any changes to their statutes. Our department's staff would be happy to work with both the proponents of the bill and the Legislative Commissioners' Office to make changes in the use of these terms in Connecticut statute in a way that does not unintentionally jeopardize the legally established rights of individuals with intellectual disability in our state.

Although we understand and support the general intent of section 3 of **H.B. No. 6438**, the department would like to express some concern with changing the composition of the probate court–appointed panel that assesses an individual's ability to give informed consent to sterilization and the specific aspects of informed consent that the individual lacks. We would like to have a discussion on the qualifications of the "professionals" who would address the 8-point best interest test in the statute. Also, the department worries that some of the "professionals" who are selected may have their own biases, either towards the agency where they work or towards a parent or guardian who is presenting the request to the court. We suggest that it could be helpful if the word "impartial" be left in so that the Court *could* evaluate whether a specific professional being considered for appointment might not be impartial. Although our department does not have many of this type of proceeding, we feel that it is in an individual's best interest to have this life-changing proceeding be conducted to the highest professional standards. DDS has been working with the Probate Courts to draft some changes and is happy to continue this work to come to some mutually agreed upon language that would allay our concerns.

Our department's concerns with **S.B. No. 1058** 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.

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 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 in support of H.B. No. 6440, and to our concerns with H.B. No. 6438 and S.B. No. 1058. Please contact Christine Pollio Cooney, Director of Legislative Affairs at (860) 418-6066, if you have any questions.