

Legislative History for Connecticut Act

SB 515

PA 82-363

House - 6982-7002

Senate - 2600-2622

Judiciary - 997-1004, 1018-1019, 1059-1061,
1095-1096, 1113-1114

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1982

VOL. 25
PART 22
6888-7189

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House of Representatives Monday, May 3, 1982

REP. BRODER: (48th)

Mr. Speaker, I, too, would like to remark on this resolution and endorse it heartily. Maranda happens to be one of my constituents. I knock on her door every two years and intend to do so this November. And I'm very pleased to see that this is being offered.

DEPUTY SPEAKER FRANKEL:

Will you remark further on the adoption of this resolution? If not, all those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRANKEL:

Those opposed, nay.

The ayes have it. The resolution is adopted.

CLERK:

Calendar No. 663, Substitute for Senate Bill No. 515, AN ACT CONCERNING THE INVOLUNTARY PLACEMENT OF MENTALLY RETARDED PERSONS WITH THE DEPARTMENT OF MENTAL RETARDATION, as amended by Senate Amendment Schedule "A". Favorable Report of the Committee on Judiciary.

REP. ONORATO: (97th)

Mr. Speaker.

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DEPUTY SPEAKER FRANKEL:

Rep. Alfred Onorato.

REP. ONORATO: (97th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance and passage in concurrence with the Senate. Will you remark, sir?

REP. ONORATO: (97th)

Mr. Speaker, the Clerk has an amendment, LCO No. 3390. May the amendment be called and may I be given permission to summarize.

DEPUTY SPEAKER FRANKEL:

The Clerk has LCO No. 3390, previously designated Senate Amendment Schedule "A". Would the Clerk please call the amendment only.

CLERK:

LCO No. 3390, designated Senate Amendment Schedule "A" offered by Sen. Owens of the 22nd District.

DEPUTY SPEAKER FRANKEL:

The gentleman seeks permission to summarize this amendment in lieu of Clerk's reading. Is there objection? Hearing none, you may proceed, Rep. Onorato.

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REP. ONORATO: (97th)

Thank you, Mr. Speaker. Briefly, Mr. Speaker, what Senate Amendment "A" does is it clarifies the Department of Mental Retardation must not only place the respondent in the least restrictive environment available, but must, if it becomes necessary, create an appropriate placement for him out of existing department resources.

It also clarifies one of the conditions for involuntary placement is that the respondent must be unwilling to accept voluntary admission. And, further, it requires the Commissioner of the Department of Mental Retardation to make critical placements to those appropriate individuals with placement available.

It reinserts a line which was inadvertently left off in lines number 197. It was left out of the LCO file, which requires, insures that the state gets paid by the parents. I would move adoption of the amendment, sir.

DEPUTY SPEAKER FRANKEL:

The question is on adoption of Senate Amendment Schedule "A". Will you remark on its adoption? Will you remark on the adoption of Senate "A"? Will you remark? If not, all those in favor please indicate by saying aye.

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER FRANKEL:

Those opposed, nay.

REPRESENTATIVES:

Nay.

DEPUTY SPEAKER FRANKEL:

The ayes have it. Senate "A" is adopted.

Will you remark further on this bill as amended
by Senate "A"?

REP. DE ZINNO: (84th)

Thank you, Mr. Speaker. Mr. Speaker, Mr.
Speaker, I have a Point of Order.

DEPUTY SPEAKER FRANKEL:

Rep. DeZinno, what is your Point of Order, sir?

REP. DE ZINNO: (84th)

Thank you, Mr. Speaker. I'm looking at the rules.
It says that the Committee on Public Health, which shall
have cognizance of all matters relating to the Department
of Health Services, Mental Health, and Mental Retardation.
This bill has never been before the Committee on Public
Health, this session here.

DEPUTY SPEAKER FRANKEL:

The Chair will not entertain debate. The gentleman
suggests that this bill has not been before appropriate
committees. The Chair would observe that the Point of

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Order, sir, could have been brought before the Chair in a timely fashion. No member in this Chamber has had or has been denied an opportunity to speak. Indeed, we adopted Senate Amendment Schedule "A" by voice vote. Any objection in connection with this bill must be raised in a timely fashion.

Members may not wait beyond a reasonable period of time from the calling of a bill and from discussion thereon. So, therefore, sir, your Point of Order has not been brought to the attention of the Chair in a timely fashion and will be not be reached on the merits. Your Point of Order, sir, is not well taken.

REP. DE ZINNO: (84th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. DeZinno.

REP. DE ZINNO: (84th)

I appeal the decision of the Chair.

DEPUTY SPEAKER FRANKEL:

The motion is the appeal of the decision of the Chair. Will you remark on the motion to appeal the decision of the Chair.

REP. DE ZINNO: (84th)

Mr. Speaker, yes.

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DEPUTY SPEAKER FRANKEL:

Rep. DeZinno.

REP. DE ZINNO: (84th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

The motion is appeal of the ruling of the Chair.

Is there a second to the motion? Is there is second to
the motion?

REP. DE ZINNO: (84th)

Mr. Speaker, I withdraw the appeal of the decision
of the Chair.

DEPUTY SPEAKER FRANKEL:

Rep. DeZinno has withdrawn his motion to appeal
the ruling of the Chair. Will you remark further on
this bill as amended by Senate "A"?

REP. ONORATO: (97th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Thank you, sir. What this bill does, it makes
a number of changes in the process of which a mentally
retarded person is involuntarily placed with the Department
of Mental Retardation for care and treatment. It limits

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the role of the probate court in determining the most appropriate setting for a mentally retarded person. It allows the department to place a person referred by the probate court on a waiting list unless the court deems immediate placement is necessary.

It reduces the number of probate court hearings from the current two hearings to one hearing in which both the determination and need for placement and the placement itself is made. It also allows the department to make emergency placements followed by probate court approval within 24 hours.

To streamline the process while protecting the rights of respondents, there is due process requirements in the bill that protect the rights of the involuntary individual who is committed. The probate court testified twice before the Judiciary Committee that they are not equipped to handle this process, sir, which is why the change is being made. I move passage of the bill as amended, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Will you remark further by this bill as amended by Senate Amendment Schedule "A"?

REP. DE ZINNO: ((84th)

Yes, Mr. Speaker.

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DEPUTY SPEAKER FRANKEL:

Rep. DeZinno.

REP. DE ZINNO: (84th)

Thank you, Mr. Speaker. Mr. Speaker, the law as it's presently written calls for the involuntary placement of an individual under the jurisdiction of the Department of Mental Retardation to come under the probate court. Everybody should have that right.

I don't think that any state agency should have the right to place a patient, in this particular case a patient, in an institution against that particular patient's will. I think that that particular person should have right to counsel. I think that particular person should have right to an advocacy office if that maybe it. I think he should have all the help he may possibly have when he does not want to be assigned to a particular institution.

And that's what we're talking about here. We're talking about patients that are usually placed in a nursing home and the Commissioner of Mental Retardation, against their will, is going to take that particular person and place them either in Southbury or Mansfield. And, worse than that, Mr. Speaker, --

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DEPUTY SPEAKER FRANKEL:

Will the House please come to order? Will the House please come to order? Would the members please direct your attention to Rep. DeZinno? The Chair would observe that this bill before us is a matter of concern to all. It deals with substantial rights and substantive rights. Rep. DeZinno, you have the floor, sir.

REP. DE ZINNO: (84th)

Thank you, Mr. Speaker. Even worse than that, is when you have a person that's 88 years old who lives in my district and has a son that's 62 years of age that does not want to be moved from a particular institution and is being moved against that person's will, I think that 62 year old individual and his 88 year old mother have a right to go to the probate court or any court in this land to defend what they want for their particular child.

And this particular bill denies that. No place in the United States of America do we have such a happening. Everybody has a right to the court system, if it be the probate court, so be it. For that reason, sir, I reject the bill.

REP. GIONFRIDDO: (33rd)

Mr. Speaker,

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DEPUTY SPEAKER FRANKEL:

Rep. Paul Gionfriddo.

REP. GIONFRIDDO: (33rd)

Thank you, Mr. Speaker. Mr. Speaker, I rise in support of the bill and beg to differ with a number of things that Rep. DeZinno has said.

In the first place, Mr. Speaker, the persons to whom we refer in this bill are not patients, but they're clients, and it's an important distinction and one that he and I both know and one that we should keep in mind. There are no legal rights being taken away from anyone. People retain all of their legal rights and all of their legal access to the courts under this bill and that wouldn't change, by this legislation.

Furthermore, Rep. DeZinno is concerned, and rightfully so, that the protection that he's looking for would be to stop people from being placed in Mansfield Training School or Southbury Training School, as he mentions, against their will. Perhaps Rep. DeZinno should be made aware of the fact that since we've had this involuntary commitment statute, 19 cases have been resolved. And, of those 19 cases, where placements have been ordered by the probate judges, 12 of them have gone to Southbury or Mansfield Training School.

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So, instead of protecting people from the Training Schools, as Rep. DeZinno says he wants to do, he's encouraging the placement of people in the Training Schools, which is contrary to the policy that he and I have worked on establishing for the Department of Mental Retardation, and the policies that have been endorsed by the House of Representatives.

It's seems, therefore, as if we ought to be, ought to be, supporting this bill. Via, we have adequate legal protections in the law, the probate courts have not been used by people who are attempting to make certain that people who have been places that are not the least restrictive alternative get out of it. In fact, they're being used for the contrary purpose. If you review some of the cases. People trying to get people placed in Mansfield Training School or Southbury Training School when the appropriate placement for those people is not there.

The probate judges don't know the differences, in many instances, between what is the least restrictive environment overall and what may be the least restrictive environment for this person. And, therefore, don't have the capability of qualifications of making the appropriate

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placement. So people go and use this probate procedure the way of circumventing what should be an appropriate placement for an individual who can truly be helped by that appropriate placement.

And, as a result of that, we're circumventing legislative intent in other areas. I think that this bill is an important bill. I think it's a bill that we ought to take a look at seriously, and I think that it's a bill we ought to approve post haste.

REP. MORGAN: (56th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Chester Morgan.

REP. MORGAN: (56th)

Yes, Mr. Speaker. I rise with a great deal of respect for the judgement of Rep. Gionfriddo. But I would ask if he has seen the letter dated 1 May 1982 and maybe help some of us that are in this Chamber that are undecided on this bill because we feel we are being pulled from both sides.

Not being as familiar with the issue as he is, I would ask if he has read the letter dated May 1 from the Office of Protection and Advocacy of the Handicapped and Developmentally Disabled Persons. And, if he can respond

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to that letter.

DEPUTY SPEAKER FRANKEL:

Rep. Gionfriddo, do you care to respond, sir?

REP. GIONFRIDDO: (33rd)

Yes, Mr. Speaker. I have seen the letter from Elliot Dober to which, I believe, Rep. Morgan refers. I have discussed the letter with Elliot Dober. Elliot and I simply disagree. Elliot is looking for an additional protection. I think intellectually and theoretically, one can note that if you provide double layer, you can theoretically provide additional protection.

He is concerned that the system will be misused if you don't have the probate system and I respect his viewpoint. However, the evidence is that the probate system, in fact, is what in our current statute is being misused. And I think when you look at the hard data and I have explained this to Elliot and I think he can respect where I am coming from on this issue, you look at the hard data, he is not accomplishing what he wishes to accomplish.

And this bill, I believe, will accomplish what Elliot wants and what I want. That wasn't satisfactory to Elliot, necessary, although I discussed this with him

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after he distributed the letter. But I think it is simply a reasonable disagreement between two people and I think that he is simply wrong.

DEPUTY SPEAKER FRANKEL:

Rep. Morgan, you have the floor.

REP. MORGAN: (56th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill as amended?

REP. EMMONS: (101st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Linda Emmons.

REP. EMMONS: (101st)

Thank you, Mr. Speaker. Through you a question to Rep. Gionfriddo.

DEPUTY SPEAKER FRANKEL:

State your question, Madame.

REP. EMMONS: (101st)

It is my understanding that when you get into the area of mentally retarded, that senility can be part of the definition. Is that correct?

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DEPUTY SPEAKER FRANKEL:

Rep. Gionfriddo, will you respond?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker. Under the new definition bill that we have passed, senility would not qualify as mental retardation.

DEPUTY SPEAKER FRANKEL:

Rep. Emmons, you have the floor, Madame.

REP. EMMONS: (101st)

Thank you, Mr. Speaker. Then through this particular bill, you are speaking of elderly people who are not quite as swift as they once were would not be commuted by the process that you have outlined.

DEPUTY SPEAKER FRANKEL:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, part of the reason for updating the definition in the definition bill was so abuses of our system which would be similar to that would not occur. So she is correct.

REP. EMMONS: (101st)

All right. Thank you, Mr. Speaker.

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DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill as amended?

REP. DE ZINNO: (84th)

Yes, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Benjamin DeZinno.

REP. DE ZINNO: (84th)

For the second time, sir.

DEPUTY SPEAKER FRANKEL:

Please proceed.

REP. DE ZINNO: (84th)

Mr. Speaker, when I was up before, I alluded to an 88 year old woman and her 62 year old son and I don't think I quite clarified what I wanted to bring out. What I was bringing out was an individual who lives in my district, namely the greater Meriden area, who is 88 years old and her son is 62 years old, under the care and the protection of the Department of Mental Retardation was being placed in a facility other than what the mother wanted.

Why didn't she want that facility? She is an 88 year old person with no other children but this particular lad, had no available means to visit her son that was being placed in a facility 25 miles away from her home. Where he was previous to that, she had the availability to

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use elderly vans so that she could get back and forth to visit her son.

Now that doesn't sound like much. Except when you are in her shoes. Now I want to place myself in her shoes. I want to argue for her and be in her shoes. This is one reason I am so anti this bill. In addition to thinking about the rights of an individual being taken away from them when a probate court or any court is denied them. And a state agency and usually not just the head of that state agency, but when members of that particular agency staff will make the decisions which for that 88 year old woman is a matter of life or death.

The woman pleaded to the Commissioner, wrote letters, that her son not be placed 25 miles away where she could not visit him. Her request was not granted. To this day, I do not know if she has been able to visit her son. He was transferred to Lorraine Manor and from Lorraine Manor, he has been now transferred to Southbury Training School.

And that is one hell of a long distance when you are traveling from Meriden, Connecticut to Southbury Training School. If she had her way, he would be placed in a facility in her own home town or certainly a facility located in the next town.

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Now because of this bill, she will have no recourse, no recourse whatsoever, to fight to keep her youngster, her 62-year old youngster, in her locale. No way to circumvent it. To speak about it, to speak about any of us being denied accessibility to a court when you are talking about an involuntary commitment, an involuntary commitment.

Your rights should be guaranteed not only under the Constitution of the State of Connecticut, but certainly under the Constitution of the United States of America. And this is legally right, we are doing something morally wrong. I hope you reject the bill.

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Richard Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, speaking in support of the bill, I would just like to point out that there may be some misunderstanding that is going on. Although after hearing that an individual placed with the Commissioner of Mental Retardation and they see that as an inappropriate placement, at any time thereafter, within a day or two, they may petition the court for review

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of that hearing and the annual year after, to review where they are placed. And there is substantial due process protections built into this bill to protect involuntary commitment, including the appointment of attorneys including the requirement of disciplinary fees to evaluate, noted provisions including the Office of Advocacy and Protection.

Frankly, Mr. Speaker, I think that what we are talking about in the bill is the distrust of the administrators. This is good legislation. Legislation should be written about involuntary commitments with lots of due process protections. Those issues have been addressed here. I urge support of the bill.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill as amended by Senate Amendment Schedule "A"?

REP. LA ROSA: (3rd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Paul LaRosa.

REP. LA ROSA: (3rd)

Mr. Speaker, as Chairman of the Public Health in discussing the bill with members of the Judiciary, there were enough safeguards in the bill which would also require

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that the Department of Mental Retardation review or notify them annually of the fact that they want to review the appropriateness of their placement.

And they also would be able to request that the probate court could review it immediately.

Mr. Speaker, it is a good bill and it ought to pass.

Thank you.

DEPUTY SPEAKER FRANKEL:

Will you remark further? Will you remark further on this bill?

If not, would the staff and guests please come to the Well of the House. Would all staff and guests please come to the Well of the House.

Would the members please take their seats.
The machine will be open.

The House of Representatives is now voting by roll. Would the members please return to the Chamber immediately. There is a roll call vote pending in the Hall of the House. Would the members return to the Chamber immediately.

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Have all the members voted? Will the Clerk please announce the tally.

CLERK:

Senate Bill 515 as amended by Senate "A".

Total number voting 147

Necessary for passage 74

Those voting yea 87

Those voting nay 60

Those absent and not voting 4

DEPUTY SPEAKER FRANKEL:

The bill as amended is passed.

CLERK:

Calendar Page 11, Calendar No. 664, Substitute for Senate Bill No. 654, AN ACT PROVIDING THAT CERTAIN PROPERTY IN NORWICH LEASED TO THE STATE AS A COURTHOUSE FACILITY BE EXEMPT FROM PROPERTY TAX AND BE INCLUDED IN DETERMINING GRANTS TO NORWICH RE STATE-OWNED PROPERTY. As amended by Senate Amendment Schedules "A" and "B". Favorable Report of the Committee on Finance, Revenue and Bonding.

REP. SMOKO: (91st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Ronald Smoko.

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Those opposed Nay. The Ayes have it. THE AMENDMENT,
SENATE AMENDMENT A, IS ADOPTED.

Senator O'Leary.

SENATOR O'LEARY:

Mr. President, the bill would permit the community colleges, the state technical colleges, state colleges and the University of Connecticut to purchase library media and equipment without the pre-audit by the Department of Administrative Services, and it would do this for another two-year period of time.

If there is no objection or question, I
would move the bill as amended to the Consent Calendar.

THE PRESIDENT:

Hearing no objection, so ordered.

THE CLERK:

Moving to Page three of the Calendar, Cal. 328,
File 525. Substitute for Senate Bill 515. AN ACT
CONCERNING THE INVOLUNTARY PLACEMENT OF MENTALLY RETARDED
PERSONS WITH THE DEPARTMENT OF MENTAL RETARDATION.
Favorable report of the Committee on Judiciary.

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The Clerk has some amendments.

THE PRESIDENT:

Senator Owens.

SENATOR OWENS: (22nd)

Mr. President, I move acceptance of the Joint Committee's favorable report and passage of this bill.

THE PRESIDENT:

The Clerk please call the first amendment.

THE CLERK:

Senate Amendment Schedule A. LCO 3390 offered
by Senator Owens.

THE PRESIDENT:

Senator Owens.

SENATOR OWENS:

I move adoption of the amendment, Mr. President,
and waive its reading.

THE PRESIDENT:

Without objection, you may proceed.

SENATOR OWENS:

The amendment, in effect, Mr. President, is the
bill. So I would like to comment on it knowing your time

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I will be as brief as possible, but some explanation has to be put into the record.

This provides for the placement of a retarded individual in the least restrictive environment available. And what is done here is on an involuntary petition, this bill would allow that a mentally retarded person be placed with the Department of Mental Retardation which would, and this would be done by the Probate Court in the District where the individual lived, and the Department of Mental Retardation would then arrange for an actual placement in a facility. After the initial petition is filed the Department would arrange for an interdisciplinary team to determine the person's priority needs for programming and the least restrictive environment in which these needs could be met. The interdisciplinary team would include a social worker, psychologist, nurse, residential programmer, educational or vocational programmer and any other appropriate person.

Once the team decides upon a type of facility which could meet the priority needs for programming, the team decides upon a type of facility which would meet the

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priority needs for programming. It would place the person on the waiting list at that facility. While awaiting an opening, if the court were to determine that the person needs immediate placing, it could place him in a setting that is most appropriate to his needs.

What this bill, in effect, does is that it says after the involuntary petition is filed, the study, this interdisciplinary study, is made by the Department of Mental Retardation without a further hearing by the Probate Court.

I should say we have had hearings on this. WE have had lengthy debate on it and it is the feeling of the committee that reported this bill out and it is also my feeling that the Probate Court is not in the position to most capably handle this type of a particular placement and the proper placement belongs with the agency and that's the Department of Mental Retardation.

The bill would require that the court make a finding initially that the person is mentally retarded. It would also require that additionally a finding that the mentally retarded person is unable to obtain adequate,

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appropriate services which would enable him to receive care, treatment and education and is unable to provide for himself in at least one of the following situations: education, habilitation, physical and mental health, medical care, meals, clothing, safe shelter and protection from harm.

Let me say that a great deal of effort has been going in to negotiate a bill that would meet the problems that have been raised initially by various, ah, CARC and also the Office of Protection and Advocacy and the chairmen of the committee along with the co-chairmen of the committee met at length with many of these representatives to come to a solution. And obviously their position was that they didn't want the Department of Mental Retardation to have any say in this matter or to have a minimum of say, that the matter should stay in the Probate Court where we feel it did not properly belong and would be inappropriate. Their claims, and I think that they should be refuted and put on the record, provide that this bill deprives mentally retarded persons of procedural due process rights by removing the Probate Court

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from the power to control placement. This bill, and I set forth very categorically, doesn't remove the power to control placement. It gives the commissioner and the mental retardation professionals who know the department's resources, the initial opportunity, and I point out initial, to decide which the MR facility is the most appropriate and the least restrictive environment for the respondent. By doing this, it abolishes a costly and inefficient routine, second hearing before the Probate Court where, in the great majority of cases, the Court obviously accepts the MR's placement recommendation anyway because DMR is the one that has the expertise in the field. Further, this Senate Bill provides the right to immediate review by the Probate Court if the respondent is dissatisfied with DMR's placement decision. Once such review is requested, the court assumes full control of the ultimate placement decision and if people are dissatisfied with the Probate Court's handling of the matter, they are authorized to appeal. There is an appeal to the courts from this.

As a result of accommodation and working out

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some of the problems with the Office of Protection and Advocacy, placement hearings, we did work out several due process rights that are not in the current law but are in the existing law assuming that we pass this good legislation today.

One, placement hearings must be held within thirty business days of the application and that's the initial application. Two, instead of just giving notice of the hearing to the respondent, his guardian or conservator, other relatives, the commissioner of DMR, the Office of Protection and Advocacy and any other persons or person who has shown an interest in the respondent is also required to be given notice. It also requires specific types of evidence to insure the respondent is mentally retarded and incapable of handling his affairs which I have previously alluded to. It also gives notice of right to annual review by the Probate Court of the appropriateness and adequacy of the placement facility. And it also mandates a five-year full Probate review for the respondent who has not sought an annual review. So if they don't want the annual review, if the respondent

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doesn't want that, then it mandates that the Probate Court review these.

A great deal of effort has gone into this, I should point out to the members of the circle, we do feel, after lengthy hearings in this and exhaustive study that the DMR is the proper agency to decide the placement of these individuals and despite the fact that the Probate Courts have a great deal of expertise in a broad range of matters, I don't think that they claim that their expertise is in this field. As I pointed out, there are adequate rights of review so I ask adoption of the amendment at this time.

THE PRESIDENT:

Do you wish to remark further on the amendment? All those in favor of Senate Amendment Schedule A signify by saying Aye. Those opposed Nay. The Ayes have it.

SENATE AMENDMENT A IS ADOPTED.

THE CLERK:

The Clerk has Senate Amendment Schedule B.
LCO 3725 offered by Senator Leonhardt. Copies have been distributed.

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THE PRESIDENT:

Senator Leonhardt.

SENATOR LEONHARDT: (5th)

Thank you, Mr. President. Senator Owens is correct that a great deal of work and study has gone into this difficult area, but I must say that after a great deal of that study and work that I still find myself in friendly disagreement with my good friend the chairman of the Judiciary Committee.

Under this bill, the Probate Court would lose its power to determine in what facility a retarded person who is being committed is placed. This amendment would allow the Probate Court to retain that power. By providing that the court has the power to place in a setting approved by the court, this amendment makes clear that the Probate Court can order placement in a particular facility. It is obviously very important because otherwise the court could not protect the retarded person from placement in an inappropriate or overly-restricted setting.

Now Senator Owens is very correct when he says

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the amendment that he offered has a review mechanism built into it. But the review mechanism only take place on an annual basis and I think really the question here is where is the presumption to be. Is there to be automatic review or selective review. I think we all know that retarded persons have a very special situation in life. They have little ability to fend for themselves. Many do not have the benefit of concerned parents. So I feel and others that I have been working with feel that we should maintain the extra review procedures that are currently in the state law. This amendment would only maintain the standards of current state law. The amendment in the file copy, the amendment offered by Senator Owens, I should say, and just adopted by the Senate would reduce the standards that are currently in state law in terms of review. This amendment would restore the current state law.

I personally can understand where an agency, which is understaffed and underfunded would like to streamline its procedures. This is natural, but I think we have to decide that we do want to protect modern standards.

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And that we do have to make a decision to give the Department of Mental Retardation funds to staff a proper review. What we are really saying with this amendment is that we are going to insist on an automatic review by a second person. DMR would still make the initial recommendation but this amendment would lock-in or guarantee that everyone of these placement cases be, the actual placement itself, reviewed by a second person. I think that's appropriate when you are dealing with a retarded person who has little ability to fend for himself or herself. And for that reason, I urge adoption of the amendment, Mr. President.

THE PRESIDENT:

Senator Rogers.

SENATOR ROGERS: (32nd)

Thank you, Mr. President. I rise to violently oppose this amendment. I cannot agree with Senator Leonard. This amendment is a perhaps not thinly but thickly disguised attempt on the part of CARC to continue to try to control a great part of the activity of the Department of Mental Retardation.

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I think I come with a few credentials, having lived in Southbury across from the Southbury Training School since 1946, having been on the Board of Trustees there for four years and I know what CARC is trying to do. They are trying to keep many of the decisions out of the Department of Mental Retardation and build up their little empire which is falling apart. It is no secret that the CARC attempts to show itself as a big speaker for all the Department of Mental Retardation's patients and inmates of the training schools. It's a lot of hogwash. In Southbury, as a matter of example, over one thousand of the parents have withdrawn from any connection with CARC and most of the member agencies of CARC are now disaffiliating themselves from that body. This is a bad amendment and I urge rejection of it and I would like to have this taken by roll call, please, sir.

THE PRESIDENT:

Will you remark further on this amendment?

Senator Beck.

SENATOR BECK: (29th)

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Mr. President, I just would like to indicate also my opposition to the amendment on the grounds that we should recognize, frankly, that the Probate system, while an important part of the judicial system, nevertheless is composed of people who do run for election and who do not lay claim to substantial amounts of expertise and in fact, also do not have that kind of expertise readily available to them. And they would be judging the decision of the place where, in fact, considerable expertise does reside. And I feel comfortable with the concept presented by Senator Leonhardt that there must be review where it is needed but I think that any department which does not point out that alternative and in fact make available information for that review alternative would be very remiss in carrying out its very important responsibilities and the court system can review them that decision if there is doubt about it. And I would feel much less comfortable giving that initial mandatory right of review to a probate court system where, frankly, I think, the judges themselves would say that the information and the ability has some limitations.

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SENATOR OWENS:

Yes, Mr. President. I rise to oppose the amendment and I would like to call to the attention of the circle, as I pointed out in my initial remarks, Senate Bill 515 provides the right to an immediate review by the Probate Court if the respondent is dissatisfied and I refer specifically to the File Copy, lines 331 and 332; and in addition thereto, even if it is not done, it would have to be done no later than one year upon the request by the respondent and it mandates the review by the Probate Court within five years.

I would also point out that this bill goes a long way to circumvent something that has been occurring in the system for a long time. We have parents and we have people who are responsible for the retarded who have been put on various waiting lists and then all of a sudden those who want to jump over two or three hundred people who are on this list have been going into the Probate Court claiming an involuntary and then ordering a commitment which would jump over the hundreds of Connecticut families who have been waiting patiently for the

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voluntary admission of their child, children or relatives. This is going to circumvent that and put every family in this state who has retarded children on an equal footing.

For those reasons, I oppose the amendment which would, in effect, bring this back to the Probate Court which would be most inappropriate. Thank you, Mr. President.

THE PRESIDENT:

Senator Curry.

SENATOR CURRY: (9th)

I rise in support of the amendment. I wish only to say to the circle that I feel that this is a very delicate and very important issue. Individual freedom is an issue which has received much close, legal, constitutional and ethical scrutiny throughout this society in the last few years. We have come to a growing awareness, the civil rights, and the human rights of the individuals most deeply affected. And I think this is an important amendment to this bill because I think it at least takes a significant step toward status quo in

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which a neutral third party, in a sense, that Probate Court is the decision-making apparatus for deciding the issue for retarded persons. I think it is important because I think the Department has demonstrated a certain institutional bias over the years. I think that it is important that the Probate Court continue to have a heavy involvement in this commitment because in a sense it is like having an effective party participate in the awarding of a judgment. I think that it truly is analagous to that. I think that it is important from the legal vantage point of the individual affected person that that not ever be the case. So I think that as I look at the openness and procedural fairness of the institutions involved of the Probate Court while casting no aspersions upon the Department, I think there are better guarantees built into that system. There is a surer institutional disinterest and I think that I would hesitate to see us move toward a situation which that king of guarantee would not be available. I don't think you can have all the Department employed experts in the world involved and it still becomes a bureaucratic rather

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than a judicial decision. And that really is the key before us. Should this be a bureaucratic decision or should it be a judicial decision, and also should it be a decision made by an uninvolved party or should it be a decision made by a party, the Department with a very long clear history of a certain orientation and a very deep involvement in the question at hand.

I think it should be an uninvolved party. I think it should be a judicial rather than a bureaucratic decision. I think those basic principles are ones which all of us are familiar and I would urge adoption of the amendment.

THE PRESIDENT:

Will you remark further? Senator Owens.

SENATOR OWENS:

Just very briefly, Mr. President. I would like to state that I don't think the Department of Mental Retardation has demonstrated institutional bias. In fact, they were willing some years ago to allow the Probate Courts back in 78 or 79 to take this function over and the Probate Courts have not been overly enthusiastic about

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it and very frankly, they haven't had the, ah, they have conceded that they don't have the expertise and the proper expertise in this field is in the DMR. Sometimes the DMR has been handicapped by lack of funds, although they have tried with it, but to say that they have an institutional bias is certainly an improper characterization at best. I would say it is probably one of the finest agencies we have in the State of Connecticut as is evidenced by the way they have handled placements in the past. And for those reasons, I oppose the amendment that was introduced by Senator Leonhardt.

THE PRESIDENT:

Will you remark further? Senator Curry.

SENATOR CURRY:

Mr. President, I just want to say very quickly that anyone familiar with this issue over the last four years knows that there is absolutely nothing improper about that characterization. Anyone who has remotely followed the raging philosophical battles over these issues knows the department has, in fact, consistently been on a certain tact throughout all of this. And that

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isn't to cast aspersions on the integrity of the Department. It isn't to say that I would be able to feel myself confident to rebut all the presumptions that underly that bias but, in fact, that, call it what you will, institutional bias, institutional proclivity, a philosophical commitment, there is a certain ideology which has evolved there and there is also^{at} the same time a certain institutional interest in terms of the department's justifying its own positions and its own statement that have arisen. I think it is clearly a matter of public record. I think that all of us know it who have been involved in this issue on which ever side and I think that just to return to my original statement, this is an issue of legal commitment. It ought to be a judicial process not a bureaucratic process. It ought to be a process decided by a party not involved as the department is involved. It is a mistake from the (next word unintelligible) go, the very fundamental premise of the idea is misbegotten.

THE PRESIDENT:

Will you remark further? Senator Regina Smith.

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REGINA SMITH: (12th)

Thank you, Mr. President. I would just like to make a couple of points. Number one, I think it is unfortunate that this bill didn't come before the Human Service- Committee nor the Public Health Committee that also deal with these situations involving the Department of Mental Retardation.

Secondly, it really saddens me to hear the on-going battle between the Department and institutionalization or deinstitutionalization because I think there is a certain need for both.

I would just like to point out from my own experiences in dealing with the nursing home investigations and some of these other areas, I do believe that there are times when people are inappropriately placed and I would like to think that and I do think and do believe that the safest option and procedure available to them would be through the judicial process and would urge support of Senator Leonhardt's amendment. Thank you, Mr. President.

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THE PRESIDENT:

Will you remark further on Senate Amendment B.
The Clerk please make an announcement for an immediate
roll call.

THE CLERK:

An immediate roll call has been called for
in the Senate. Will all senators please take their
seats. An immediate rollcall has been called for in the
Senate. Will all senators please be seated.

THE PRESIDENT:

The issue before the chamber is the motion
to adopt Senate Amendment Schedule B. The machine is
open. Please record your vote. Has everyone voted?
The machine is closed. The Clerk please tally the
vote.

Result of the Vote: 7 Yea. 29 Nay. SENATE
AMENDMENT B IS DEFEATED.

THE CLERK:

The Clerk has no further amendments.

THE PRESIDENT:

Senator Owens.

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SENATOR OWENS:

Mr. President, on the bill itself, I think it has been adequately explained with the amendment. I would ask if there is no objection that it be placed on Consent.

THE PRESIDENT:

There is objection. The Clerk please make an announcement for an immediate roll call.

THE CLERK:

An immediate roll call has been called for in the Senate. Will all senators please take their seats. An immediate roll call in the Senate. Will all senators please be seated.

THE PRESIDENT:

Is there anyone who wishes to make remarks on the bill? Sorry. Senator Leonhardt.

SENATOR LEONHARDT:

Mr. President, just extremely briefly. I think the bill at this stage is a serious step backwards. It's an improperly large delegation of authority to a single agency. I think it is unsupervised in any kind of proper

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way in the care of retarded persons and I hope that every member of the circle will vote against the bill.

THE PRESIDENT:

Will you please make another announcement for a roll call.

THE CLERK:

An immediate roll call in the Senate. Will all senators please take their seats. An immediate roll call has been called for in the Senate. Will all senators please be seated.

THE PRESIDENT:

The motion before the chamber is the motion to adopt Cal. 328, Substitute for Senate Bill 515, File 525 as adopted by Amendment Schedule A. The machine is open. Please record your vote. Has everyone voted? The machine is closed. The Clerk please tally the vote.

Result of the Vote: 31 Yea. 5 Nay. THE BILL AS AMENDED IS ADOPTED.

the CLERK:

Moving to Page four - Cal. 413, File 617.

Substitute for Senate Bill ²⁹⁵~~595~~. AN ACT CONCERNING BENEFIT

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 4
906-1119

1982

REP. PARKER: You say that other states (inaudible--not speaking into mike)

MS. BIRDWHISTELL: I can't that I know. I have really no idea. They've been around. Some of them have been around for several years, so I wouldn't be surprise if they have upheld statutory scrutiny. The one in Maine I see was passed in October, 1978. The one in Oregon, was only passed in the 81 regular session and the one in New Hampshire I don't have a ready date, oh, 1979. So they've been around for several years and they're all on the books still.

SEN. OWENS: Yes, Rep. Rybak.

REP. RYBAK: Yes. Do you know if any of these statutes have been tested in light of the (inaudible-not speaking into mike).

MS. BIRDWHISTELL: I just don't know whether they've been tested or not, but as I said, I don't think there's a contradiction particularly in that we are still required, any information that the ombudsmen get that's medical information is the Freedom of Information Act. The state act specifically says, medical records are not to be considered public record, so can't be forced to have disclosure.

REP. RYBAK: The question is, have you examined the Federal Privacy Act to see if there's a (inaudible)

MS. BIRDWHISTELL: No, I have not.

SEN. OWENS: Thank you. Commissioner Gary Thorne, followed by Judge Sponzo.

COMMISSIONER GARETH THORNE: Sen. Owens, members of the committee, I'm Gareth Thorne, Commissioner of the Department of Mental Retardation. I thank you for the opportunity to discuss with you Senate Bill 515: An Act Concerning the Involuntary Placement of Mentally Retarded Persons with the Department of Mental Retardation.

This bill was submitted to the Judiciary Committee by the Department of Mental Retardation with the approval of the probate court administration.

Prior to 1979, the statute governing involuntary commitment

COMM. THORNE: (continued)

or placement as it is referred to in the current statutes, by the probate courts was relatively simple. It required the individual be examined by a psychologist and a court appointed physician and the commitment be approved by the Commissioner of Mental Retardation. It also provided for the discharge of such committed person.

In 1979, Public Act 79-585, which amended this law Section 19-569d, was passed. That act, drafted by advocacy groups for the retarded and opposed, in part, by DMR, substantially modified the statutes in the following ways:

1. It removed all reference to the word "commitment" using instead the word "placement" to lessen the stigma of the process.
2. It required the court to place only in the "least restrictive environment."
3. It provided for the opportunity of an attorney for the person and for notice of hearing.
4. It required the Commissioner of Mental Retardation to provide a report to the court, specifying the placement in the "least restrictive environment".

Current law permits the probate court to order placement in any foster home, group home, regional center or other facility if the court is satisfied that it is the least restrictive environment commensurate with the needs of the respondent".

The current law has not worked out. Between 1979 and 1981 outside advocacy groups and the department have tried to work together to improve the statute. However, the groups were at odds with the Department seeking to regain its decision making authority with regard to placements in its facilities and outside advocates seeking to draft language which would force the Department of Mental Retardation to provide a wider range of services than those in existence and budgeted by the state.

This year, the Department has decided to go it alone and drafted this bill to solve the serious problems inherent

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COMM. THORNE: (continued)
in the current law.

The major changes proposed in Senate Bill 515 are as follows:

1. It would limit the role of the probate court to placing the retarded person with the Department of Mental Retardation and would give the Department the authority to determine the most appropriate setting for that person. This makes sense in that the probate courts do not have the expertise to determine where individuals should be living. This is a determination which should be made by the Department clinical and program staff after carefully assessing the needs of the individual, and also as a matter of reality, take into consideration the availability of resources in the system. Where as the staff of the Department would like to be able to provide the optimal resources and services for all mentally retarded persons in the state, the fact is that we are limited by fiscal constraints and a shortage of resources within our system.

Mandatory placement into situations viewed by the probate court as "optimal" may result in forcing others already receiving care out of the facility or make such services unavailable to those who need and seek services by other means than the probate court system. Outside advocates who often are not professionals in the field of mental retardation at times pressure the probate court into ordering placements which ultimately hurt the client or those around him.

Case in point. The story of Say "Resident A". Resident A is a young woman with mild mental retardation and severe, or serious psychological problems who has had great difficulty in adjusting to the social requirements of community living.

After insisting on securing her discharge from one of the training schools, advocates for Resident A found that they needed to petition the probate court for placement again because her behavior led to several run ins with the police. She was placed in a training school but continuing pressure on the probate court by advocates resulted in an order that she be transferred to a private group home.

COMM. THORNE: (continued)

After a few months at the group home, Resident A had upset other residents so much that they required psychiatric care and medication. Her behavior also threw the immediate community into such an uproar that the continued operation of the facility was placed in jeopardy.

When DMR attempted to transfer Resident A back to the training school, probate hearings were again held and the court's approval sought. This process and the accompanying delays caused grave problems not only for Resident A but for the owner of the group home and its other residents, not to mention the community. Such action presents a dilemma to the court and jeopardizes the department's efforts to provide necessary care to its current residents as well as develop responsible programs in the community which neighbors can support.

We don't blame the probate courts for these placements. They certainly try to do their best, but when confronted with fierce advocates we attest that they know what is program-matically best for their clients, the courts do not often know which way to turn. The court doesn't have the expertise to make specific placement decisions and shouldn't be forced to. In some cases this matter reduces the question to that of due process which in turn does not guarantee the most appropriate remedy in meeting the needs of the individual.

And I must say, just in a general matter of course, we found this problem to be a very severe problem in which the court in attempting to follow the letter of the law is found really in the horns of a dilemma as it were, and many times because it is forced to make a decision, has to decide perhaps to do that which is not most appropriate for the client, because obviously, the court cannot create a treatment environment. It cannot create a facility which might be most appropriate, it obviously has to turn to that which is available, and oftentimes, that which is available, is indeed not the most appropriate environment, but due process has been carried out and the individual ends up in a situation which is not certainly, from our point of view in his best interests.

2. The bill also permits the commissioner to put a person placed to DMR by the court on the department's urgent waiting list, unless the court deems immediate placement necessary.

COMM. THORNE: (continued)

The purpose of this change is to put a stop to the practice of endrinning the normal DMR admission system by utilizing the probate court process.

Because of a shortage of beds, the department now has an urgent waiting list of over 400 persons deemed to be desperately in need of placement. Most must wait for years as their family situation continue to deterioriate. I'm sure that many of the members of this committee have had please for assistance by parents who have been waiting an inordinately long time for the placement of their child.

The basic system as it works now. A person may, a family may elect because they have been waiting for a long time, to go to the probate court to force admission of their child into our system, and again pointing out that maybe our system doesn't have the most appropriate setting for that person at this point. But in any case, that type of action of the court forced to make this type of admission and the department being forced to receive the individual upon the court commitment, has caused people to utilize this system of getting into the department into some type of program, and that in a sense is just leapfrogging over the top of people who have otherwise been waiting for voluntary admission which does not entail a commitment of the individual and does not entail a determination by the court that the individual is incompetent.

I think it's very, very important and I sometimes often overlooked, that the whole process of probating an individual into one of our facilities, into the care and custody of the department, in that sense of the word, is a very, very serious act on the part of the people who advocate it and the people who carry it out, because it is a matter of declaring an individual incompetent, and it is a commitment and from my perspective, denies that person of certain rights which I feel could otherwise be avoided if the voluntary admission system continued to be used.

And what we're saying here, is the probate court in non-emergency situations could carry out their commitment process but the commitment would be to the department's urgent waiting list and thereby the individual would take his rightful spot on that waiting list, not jumping over somebody who may even have

COMM. THORNE: (continued)
more urgent needs than his own.

We have, however, provided wording in our proposed bill which allows the court to order immediate placement, if necessary. For example, if it's an emergency, if it's immediate type of admission where it's absolutely necessary the person get in, there's wording there that would protect that possibility. In addition, the commissioner is required to report back to the court within 60 days of placement and every 30 days thereafter until the person is moved from the waiting list to a facility. The court could order immediate placement at any time it deems that the person's situation has so deteriorated.

3. The bill has a number of other less major features including that it permits any person to make application to the court for placement of a mentally retarded person. Currently such application may only be made by relatives often untraceable, and guardians who these people rarely have, or town selectmen or welfare officials.

It addresses only mentally retarded persons. The current statute's reference to developmentally disabled persons is inappropriate as it is found in the Department's section of the statute, bearing in mind that the definition, developmental disablement is not mental retardation. Mentally retarded persons are included in that definition, but that particular definition covers a whole array of other disabilities including physical disabilities without any mental handicap. And I'm certain it's not the intent of the statute to imply that people who are not mentally retarded, who are physically disabled can be committed to a department which serves mentally retarded persons. That would certainly be a contrary act.

Our proposal requires 1 hearing before the probate court. Current law requires 2. One for the determination for the need for placement and 1 to make the placement. And that certainly is a labor saving device. There's no purpose of having 2. If the proper testing and evaluations are made prior to the court hearing, the need to have 2 hearings is in a sense redundant and it's expensive because it ties up a lot of staff, it ties up the court and I think we could streamline the process.

COMM. THORNE: (continued)

It clearly outlines the process to be followed in the placement proceedings, responsibilities of the probate court, the Department of Mental Retardation, the psychologist and the respondent's attorney.

It permits the Commissioner to make emergency placements to immediately be followed up by Probate Court proceedings. I think that particular part of the act is very important, simply because if an individual requires an emergency admission for whatever reasons it may be, I'll say on a Saturday morning, or late Friday night, this enables that individual to be admitted to the commissioner's care and custody until the following Monday morning when it is officially brought before the court and it allows us to take the proper action.

I can think of a case of an individual who was living at home with her mother. They were elderly people. The mother was, and the daughter was living with her at home and the mother died. And there wasn't any way that that person could legally be admitted anywhere because there wasn't any provision in the act to allow for that, and this particular provision would allow us to admit people on an emergency basis, and of course it would protect the individual by making certain that it goes through a court process within a few hours and that the protection and advocacy organization is notified.

And finally, our recommended bill allows the provision for the commissioner to discharge residents as was permitted up until 1979 with notice to the person, his parent or guardian and the court.

It is indeed, unfortunate that that was struck from the act because what it does is unnecessarily delay the possibility of the person's discharge from his commitment to the department because there's no provision by which we can do that.

And the current law provides only that within a year's time, the individual may go back to the probate court and have his commitment reviewed. That may work against the individual's best interests and freedoms. So basically, what we're suggesting here, to give you one quick synopsis. We've worked the current law for 2 years. The current law has many flaws. The flaws are technical in some aspects, perhaps philosophical

COMM. THORNE: (continued)

or process wise in other aspects and they work, really, against the appropriate service to the handicapped individual. We feel this will allow the individual to be protected, to receive appropriate programs and for the court to be in a sense the last method, the last recourse for individuals getting into our system rather than becoming the primary source. That completes my testimony, Senator.

SEN. OWENS: Thank you. Any questions of Commissioner Thorne. You have written testimony. If you do, will you leave it with the clerk.

COMM. THORNE: I have left ample copies.

SEN. OWENS: Judge Sponzo. To be followed by David Hemund and then by Faith Mandell.

JUDGE SPONZO: Good afternoon Senator. I am Maurice J. Sponzo, Chief Court Administrator. I'm here to talk on several bills. I hope I will not be lengthy on any one of them.

SEN. OWENS: That's not your reputation.

JUDGE SPONZO: I have the first bill is 569, An Act Concerning Judicial Department Records. While this may seem as if it's an innocuous bill, it means quite a bit to the judicial department.

We would like to have the authority not only to destroy records, but to transfer them to either a state or federal agency, and what we are specifically talking about are naturalization records, amongst others, and secondly, in this bill, we would like to have the authority to not only destroy, but transfer to a state or federal agency, not only court records but any other records such as letters, books, documents that may have been in possession of the old circuit court as well as the court of common pleas.

Our staff is afraid to dispose of these records because of the fact that under section 2, they could be subjected to penal penalties.

The next bill I'd like to talk on is 570, An Act Concerning Filing Fees for Post Judgment Modification. As you know in

SEN. OWENS: Thank you for your comments. Richard Rockwell, to be followed by Raphael Podolsky, to be followed by Richard Goodman.

MR. RICHARD ROCKWELL: I'm Attorney Richard Rockwell, 1 Constitution Plaza, Hartford. I'm an attorney at the firm of Day, Berry & Howard and a member of the Executive Committee of the Connecticut Bar Association.

I appear here today as to Raised Committee Bill No. 574, which would endeavor to track the several sections of our law giving access or freedom of information if you will as to vital statistics records, explicitly to attorneys and title examiners in 2 additional sections where it is very much needed. Section 741a and 751a, where the right is already clear in section 7-51. It's as simple as that, and I, because of that, have not brought anything setting out my position. I would be pleased to answer any questions that any of you might have, or I'd be glad to submit a further statement setting it down in writing if that would be helpful.

SEN. OWENS: Thank you for your comments.

MR. ROCKWELL: Thank you.

SEN. OWENS: Okay, Mr. Goodman? Oh, you're here, I didn't see you, that's all, I'm sorry. Good afternoon Ray.

MR. RAPHAEL PODOLSKY: My name is Raphael Podolsky. I'm a lawyer with the Legal Services Training and Advocacy Project. There are, I believe, 4 bills that I want to speak on. I'll try to be as brief as I can on these.

The first one is Senate Bill No. 515, Senate Bill 515, which is An Act That Concerns Commitment of the Retarded. I'd like to urge you to reject this bill. You heard at great length you heard testimony from the commissioner of the Department of Mental Retardation on this bill. What it does is, it makes very substantial changes in the procedure by which a person who is alleged to be mentally retarded is committed or involuntarily placed within the control of the Department of Mental Retardation. I've prepared some written testimony that itemizes in detail some of these changes, but I just want to illustrate a few of the kinds of changes that are made.

MR. PODOLSKY: (continued)

First of all, it basically eliminates a large chunk of judicial review of the placement process. And Commissioner Thorne testified that that was one of its purposes. Under the existing law, the probate court must not only determine, must not only determine the need for a commitment, but is able to control the ultimate type of commitment that takes place. The department's view is that there should be no control outside the department of the sort of placement that a person receives. The present statutory test is the least restrictive environment, and that's really there to prevent the warehousing of people, to prevent a situation in which someone is put in a much more restrictive environment than is needed for their development.

The bill changes that by eliminating that capacity of the probate court to exercise review, and at the same time, it redefines the whole concept of least restrictive environment with a phrase that refers to within budget constraints, and it appears to me what that essentially says is, that if the department says it doesn't have the space to put somebody, it no longer has an obligation to put them in a less restrictive environment. Essentially, it restores the legal status quo prior to the reform act of 1979.

There are some other things that I would call that are less important, but I'd mention them to you. There's in the existing law there's a right to an independent psychologist that is removed by this bill. In the existing law there's supposed to be a psychological exam that takes place after the commitment petition is filed which means it has to be pretty recent. As I read this bill, it says you only need one during the last year. The existing law says a committed person or his attorney can petition for review. This one takes out the reference to his representative petitioning for review. It seems to me there are a lot of problems with the bill and I would think that this is such a substantial change and not a desirable change at all, but I would hope that you would reject it.

The second bill I would speak to is Senate Bill No. 573, which deals with the termination, the procedure for terminating parental rights. This is another bill that seeks to cut back on protections that we've established and built into the law to make sure the children are not improperly taken away from the parent. This is almost like 2 completely different

MS. RIOUX: (continued)
we have no way of knowing if it's correct anyway. It's under oath. It's fair on its face to me. It's under oath, but I don't know that in fact, it's correct.

REP. BRODER: Then why do you send it back?

MS. RIOUX: We have to. The statute says it has to comply with the law, and right now, the statute requires.

REP. BRODER: You mean they don't fill it in.

MS. RIOUX: That's correct, at all, or incorrectly.

REP. BRODER: I see. Thank you.

MS. RIOUX: You're welcome.

REP. TULISANO: Mr. Kosloski.

MR. STAN KOSLOSKI: My name is, for the record, my name is Stan Kosloski, and I'm the Assistant Director for the Office of Protection and Advocacy for the Handicapped and Developmentally Disabled Persons.

And I will only keep you a minute. I'm here to speak in opposition to Senate Bill 515, An Act Concerning the Involuntary Placement of Mentally Retarded Persons with the Department of Mental Retardation and I wanted to, I made a point of coming back this afternoon because I was concerned about some of the statements that Comm. Thorne made earlier in the day.

Since the law outlining the probate court procedures relating to the placement of mentally retarded people by probate court was enacted in 1979, DMR has sought to amend it claiming that it was unworkable. Last year our staff and my office devoted a considerable amount of time working with DMR and the probate court administrators to draft amendments to the existing law that would meet the department's objections and for a variety of reasons the amendments were not enacted by the legislature last year.

This year, the department seeks not merely to amend the law, in the fashion previously developed, but to essentially repeal it and its many procedural and substantive protections.

MR. KOSLOSKI: (continued)

Senate Bill 515 as currently drafted would remove from the probate courts the power to place persons found by the courts to be mentally retarded and unable to provide for themselves in appropriate DMR facilities which meet their habilitative and developmental needs.

The bill would instead require the court once it finds the person meets the criteria for placement in a facility to simply refer the person to the department for a determination of the person's "priority for placement". The person's name would be put on a waiting list and she/he would be placed in accordance with their given priority in the least restrictive placement available within the department's budget constraints.

The placement of mentally retarded persons in DMR facilities by probate court, however benignly intended, is nonetheless a restriction on the individual's liberty identical of the commitment to a mental health facility. Any person who's liberty has been restricted in this fashion, has a constitutional right upheld by numerous and federal state courts to be placed in a facility that can meet their needs in a least restrictive fashion.

That is exactly what is required by the current law. To allow the department to place mentally retarded citizens referred them by probate court in any available facility, regardless of its ability to meet the person's needs, would be to deny that person rights secured to them by the U. S. Constitution.

The department opposes the current law because it allow judicial oversight over the placement of retarded persons in DMR facilities. Yet, under the current law, the probate courts refer all persons found to meet the criteria for placement in a DMR facility to the department for evaluation and report on possible placements before any actual placement decision is made. This report is currently giving great weight by the probate courts in making a final decision, and in our experience, the probate courts make every effort to accommodate the Department when an appropriate placement does not have a readily available spot.

Our office was involved with 2 probate court cases where we represented the person on whose behalf placement was sought. In both cases, both cases involved mentally retarded

MR. KOSLOSKI: (continued)
persons with behavioral problems who had been inappropriately placed in mental institutions. In both cases, the mental hospitals felt strongly that the persons belonged in a DMR facility and had sought unsuccessfully prior to the initiation of probate court proceedings, to obtain placement in an appropriate DMR facility.

In each case, placement was ordered by the probate court judge allowing the client's release from the mental hospital. Senate Bill 515, if enacted, would allow the department to keep such clients on a waiting list indefinitely forcing the client to remain inappropriately in a mental hospital. The existing law is not only adequate, but is constitutionally sound.

I urge this committee not to amend it in the unconstitutional fashion proposed by Senate Bill 515.

REP. TULISANO: Isn't that being litigated now before the United States Supreme Court in some of the issues you just said were constitutional or unconstitutional? Aren't we just really waiting for that decision?

MR. KOSLOSKI: I think that they are in terms of whether a person has a constitutional right to treatment, or constitutional right to anything more than custodial care. But this deals with the, as I understand it, not being an attorney, this deals with the placement of the commitment aspect of it, and I don't know whether the Supreme Court is dealing with that or not.

REP. TULISANO: Thank you.

MR. KOSLOSKI: I left copies earlier, but I wanted to come back.

REP. TULISANO: Anybody else want to speak? Since no one wants to speak, I'm going to quickly call this to a close. Closed.

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1095

The legislative advocacy office for legal services clients in Connecticut

March 15, 1982

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Attorney at Law

TESTIMONY OF RAPHAEL L. PODOLSKY

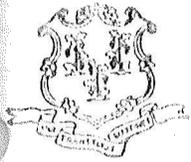
S.B. 515 -- Involuntary placement of the retarded

Recommended Committee action: BOX

This bill makes a number of changes in the law concerning the process by which the probate court commits persons to the Department of Mental Retardation. Their effect is to significantly weaken some of the protections against improper commitment which were written into the law in 1979 and 1980. I urge the Committee to reject the bill. In particular, the following changes are undesirable:

1. It appears to take away from the probate court the power to control the placement of the retarded person. Under existing law, the probate court, after receiving an evaluative report from the Department of Mental Retardation (DMR), orders placement in a foster home, group home, regional center, or other facility [see 1. 138-142A]. Under the bill, the probate court merely orders placement "with the Department of Mental Retardation," which apparently determines on its own thereafter what placement is appropriate. If DMR feels that it cannot find an appropriate placement, it must file reports with the court; but it appears that final authority under the bill is with DMR and not with the court [see 1. 163-178A, 1. 23-24, 1. 230-239].
2. It lowers the standard for commitment, thereby making it much easier to authorize an involuntary placement. The bill, by changing "all" to "at least one" [1. 32 and 1. 36], expands the pool of persons potentially subject to involuntary commitment.
3. While making it easier to commit, the bill greatly reduces DMR's obligation to place the retarded person in an appropriate setting. Existing law requires that DMR find placements in "the least restrictive setting commensurate with the needs of the respondent" [1. 142-142A]. The bill merely requires placement in the least restrictive environment "available to the commissioner within budget constraints" [1. 166-167A]. Indeed, the bill would not even require the commissioner to identify the most appropriate setting without regard to budget constraints [1. 171-173]. Furthermore, it defines the placement, not in terms of least restrictive environment, but rather as any placement which meets priority needs (which may or may not be the least restrictive); and it seems to anticipate long stays on waiting lists even to receive such a minimally acceptable placement [1.173-178A].

4. It repeals the respondent's right to examination by a psychologist of his own choosing [l. 80A-84]. The only pre-commitment psychological examination to which he is entitled is by the court-appointed psychologist [l. 119-122].
5. It appears to repeal the requirement that the psychological exam be current. Existing law requires an evaluative exam after the notice of hearing has been given [l. 85-86]. The bill seems to require only that there have been a psychological assessment during the past year [l. 128-129].
6. It creates a new procedure for emergency commitments which imposes on DMR only the duty to place in "any" setting which "minimally" meets critical needs [l. 182-183]. In light of the delays apparently anticipated in finding a more appropriate setting, such temporary settings could continue for substantial periods of time.
7. It appears to limit who can seek annual review of a commitment order. Existing law permits the request to be made by the retarded person or "any other person acting on his behalf" [l. 247-248]. The bill limits the right to request to the retarded person himself [l. 260-261].
8. It requires mandatory probate court review only after five years [l. 263]. In some sense, this is an improvement over existing law, which contains no mandatory review at all. Five years, however, is an excessively long period of time. Mandatory review ought to occur after no longer than a three-year period of commitment.



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR HANDICAPPED
AND DEVELOPMENTALLY DISABLED PERSONS

TESTIMONY: Judiciary Committee
Monday, March 15, 1982
1:30 p.m.

1113

My name is Stan Kosloski. I am the Assistant Director for the Department of Protection and Advocacy for Handicapped and Developmentally Disabled Persons. I am here today to speak in opposition to S.B. 515, AAC The Involuntary Placement of Mentally Retarded Persons with the Department of Mental Retardation.

Since the law outlining probate court procedures for the placement of mentally retarded persons in Department of Mental Retardation facilities was enacted in 1979, the Department has sought to amend it claiming that it is "unworkable". Last year, our office devoted considerable time and effort working on a committee with representatives of the DMR and the Probate Court Administrator's Office to draft amendments to the existing law that would meet the Department's objections. Such amendments were drafted, but, for various reasons, were not enacted by the legislature during the last session.

This year the Department seeks not merely to amend the existing law in the fashion previously developed by our office and the Probate Court Administrator's Office, but to essentially repeal the law and its many procedural and substantive protections. Specifically, S.B. 515, as currently drafted, would remove from the probate courts, the power to place persons, found by the probate courts to be mentally retarded and unable to provide for themselves, in appropriate DMR facilities which meet their habilitative and developmental needs. S.B. 515 would instead require the probate court, once it finds that person meets the criteria for placement in a DMR facility, to simply refer the person to the Department for a determination on the person's "priority" for placement. The person's name would be put on a waiting list and she or he would be placed, in accordance with their given "priority", in the least restrictive placement 'available' within the Department's 'budget constraints'.

The placement of mentally retarded persons in DMR facilities by a probate court, however benignly intended, is nevertheless a restriction on that individual's liberty identical to commitment to a mental health facility. Any person whose liberty has been restricted in this fashion has a constitutional right, upheld by numerous federal and state courts, to be placed in a facility that can meet that person's needs in the least restrictive fashion.

Testimony: Judiciary Committee
Monday, March 15, 1982

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SB 515

See for Example: Shelton v. Tucker 364 US 479 (1960). **1114**
Wyatt v. Stickney 325 F Supp. 781 (MD Ala, 1971)
aff'd Sub Nom Wyatt v. Aderholt 503 F2d 1305 (5th Cir 1974);
Welsh v. Likens 373 F Supp 487; Lessard v. Schmidt 349 F Supp 1096.

This is what is required by the current state law (CT Gen. St. § 19-569d). To allow the Department to place retarded persons referred to them by probate court order in any available facility, regardless of its ability to meet that person's needs, would be to deny to that person rights secured to them by the U.S. Constitution.

The Department opposes the current law because it allows judicial oversight over the placement of retarded persons in DMR facilities. Yet under the current law the Probate Courts refer all persons, found to meet the criteria for placement in a DMR facility, to the Department for evaluation and a report on possible placements before any actual placement decision is made. This report is given great weight by the probate courts in making a final decision and, in our experience, the probate courts make every effort to accommodate the Department when an appropriate placement does not have a readily available spot.

Both of the probate court cases, in which our office was appointed to represent the person on whose behalf placement was sought, involved retarded clients with behavioral problems who had been inappropriately placed in mental hospitals. In both cases the mental hospitals felt strongly that the persons belonged in a DMR facility and had sought unsuccessfully, prior to the initiation of the probate court proceedings, to obtain placement in an appropriate DMR facility. In each case, placement was ordered by the probate court judge allowing the client's release from the mental hospital. SB 515, if enacted, would allow the Department to keep such clients on a waiting list indefinitely forcing the client to remain inappropriately in a mental hospital.

The existing law is not only adequate but is constitutionally sound. I urge this Committee not to amend it in the unconstitutional fashion proposed by SB 515.

RECOMMENDED ACTION: Box