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Senate 2844-2865 (22)

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1983

VOL. 26
PART 21
7384 - 7720

ACTING SPEAKER SMOKO:

The bill as amended passes.

CLERK:

Please turn to Page 16, Calendar No. 754, Substitute for Senate Bill No. 1104, AN ACT CONCERNING GUARDIANSHIP OF MENTALLY RETARDED PERSONS, as amended by Senate Amendment Schedule "A". Favorable Report of Committee on Judiciary.

REP. ONORATO: (97th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Alfred J. Onorato of the 97th District.

REP. ONORATO: (97th)

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

ACTING SPEAKER SMOKO:

The question is on acceptance in concurrence with the Senate. Will you remark?

REP. ONORATO: (97th)

Thank you, Mr. Speaker. The Clerk has Senate Amendment Schedule "A", designated LCO No. 5579. May the amendment be called and may I be given permission to summarize?

ACTING SPEAKER SMOKO:

The Clerk has LCO No. 5579, designated Senate Amendment Schedule "A". Will the Clerk please call only.

CLERK:

LCO No. 5579, previously designated Senate Amendment Schedule "A" offered by Senator Owens of the 22nd District.

ACTING SPEAKER SMOKO:

The gentleman has requested permission to summarize. Is there objection? Seeing none, would the gentleman please proceed.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, Senate Amendment Schedule "A" takes care of an LCO drafting error in that it provides for the right to notice in probate court review on an annual basis. I move adoption of Senate Amendment Schedule "A".

ACTING SPEAKER SMOKO:

The motion is for adoption of Senate Amendment Schedule "A". Will you remark further? Will you remark? If not, all those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

ACTING SPEAKER SMOKO:

Those opposed. Three to two, the amendment is

adopted. Will you remark further on this bill as amended? Rep. Onorato.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, what this bill would do would allow the probate court as a last resort to appoint employees of the Department of Mental Retardation guardians on a limited basis.

The reason for the bill, which by the way is favored by the probate court and the Department, is that currently there are over 1,000 people who do not have guardians to choose from.

No list of guardians is submitted to the probate court. As a last resort, they may employ employees to act as guardians in a limited purpose.

Now the employee would not be from the same region or the same facility as the guardian, Mr. Speaker.

In addition, the employee would do this voluntarily. On a voluntarily basis and would do it

on their own time.

Mr. Speaker, this bill would greatly alleviate the current problem faced by the Department of Mental Retardation for the need of guardians.

With conversations with Probate Court Administrator, Judge Canerum, yesterday as a matter of fact, he indicated tht there was in fact a need for this type of guardian and that, in the event that no other suitable persons could be appointed guardians that he would like the power to do this.

In no event under the bill could the guardian commit any person to the Department of Mental Retardation.

They would merely act as guardians for limited purposes, whatever those particular purposes were.

I would move passage of the bill, Mr. Speaker, as amended.

ACTING SPEAKER SMOKO:

Senate "A" is ruled technical. Will you remark further on this bill, as amended?

REP. RUDOLF: (139th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Rudolf.

REP. RUDOLF: (139th)

Mr. Speaker, I rise in opposition to this bill. It's not as it sounds as Rep. Onorato would have you believe. This bill definitely presents a conflict.

Mr. Speaker, and members of the General Assembly, the question before us is the rights of the individual. This is a human rights issue. The care and well-being of human beings.

The issue is not public. The issue is not private. The issue personal. A service provider is a potential conflict of interest. He happens to be the guardian. The guardian appointed must be totally objective. And when serving two masters, that's an impossibility.

The bill allows Mental Retardation employees to be appointed guardians for people who rely on that very Department for the needed services. Guardians are required to make many important decisions about the conditions of

their wards' lives and decisions about the kinds of programs the ward participate in, where they live, what kind of medical and other services they receive.

These decisions should be based only on the needs and best interests of the wards, the consumer. It is extremely unrealistic to think that guardians will look only to their wards' best interests, where they have to come into conflict with their employer, the Department of Mental Retardation.

Mr. Speaker, I must make note of the recent consent decree dealing in the Mansfield Case and I quote, in the case of each class member who requires assistance and representation, and who does not have a parent or close relative or guardian available, defendents will actively seek advocate volunteers from recognized advocacy groups, and they are growing in numbers, for such class member. And I refer to class members as human beings for purposes of this decree and not for functions unrelated to this decree, including, for example, emergency medical procedures.

Guardians shall not include employees of DMR or their families. Mr. Speaker, and members of the House, the conflict of interest is clear. Consider the recent stories about the abuse of residents at Mansfield Training School. If a Department employee had been guardian of these people,

it would be unlikely that the employee would have been willing to take the necessary steps to make that abuse known and to stop it. It is important to note that the law creating a need for extra guardians is only seven months old.

During that time, many people, or many private advocacy groups, have worked hard to find available guardians, with no conflict of interest. There are now several lists of possible guardians in different areas of the state. And there will be even more very soon. We should use this method for assuring that there are enough guardians, rather than using people who would, or even might, have a conflict of interest with their wards.

This bill would allow the use of people as guardians who could have a conflict of interest between their wards and their employer, and must be defeated to assure the availability of the independent guardians who would look only to their wards' best interests.

Mr. Speaker, I urge defeat of this bill.

ACTING SPEAKER SMOKO:

Will you remark further on this bill as amended?

REP. ONORATO: (97th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Onorato.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, just to correct some remarks, if I might, from Rep. Rudolf.

While Rep. Rudolf read to you from the consent decreee about the class, I'm sure it was an oversight and that he did not read to you that in the consent decree, it says the class is composed of all persons who have become, or might become, residents of the Mansfield Training School.

So, in short, it applies to the individuals who are currently at Mansfield Training School. That's what the consent -- these Department employees would be excluded from serving as guardians at Mansfield under the consent decree. That's all the consent decree says. If you're from Mansfield, or in danger of going to Mansfield, which is for the severely retarded, then you can't serve as a guardian.

I don't quarrel with that. I think he should have brought it to your attention.

If I may, if you will permit me to draw a parallel to what's already in the law regarding sterilization of the retarded. This statute requires that a panel of

retardation experts evaluate the retarded person and assess certain areas for the court. Many of the courts' experts in fact are employed by the Cepartment of Mental Retardation and work with the courts in their private capacities.

Now, this statute was passed four years ago. There have been no instances of any wrong doing concerning the Department's procedures. There have been no instances of retribution and no instances of conflict of interest concerning the sterilization process that the Department uses in the four years it's been in existence.

Furthermore, Rep. Rudolf makes remarks that the guardianship bill was seven months old, and that's true. I would point out that it took this Chamber two years to pass the guardianship law, which was opposed by the same people who are opposing this bill. And let me tell you that the guardianship bill in Connecticut is used as a model in the United States.

A bill that the opponents say is bad. It's used as a model in this country. If there are a list available, which the Probate Court says there is not and the Department says there's not, that's okay too. All they have to do is submit the list of those people who are willing to serve as guardians, and the Probate Court under this bill must pick from that list first. And must pick from any

name submitted to it where there are volunteers willing to serve as guardians. The people that we're talking about aren't the 19 year old people who have parents alive or who have relatives alive or who have some kind of family member that may, in all probability, act as guardian.

The individuals that we're talking about are the 45 year old people, the 50 year old people, the 55 year old people, whose parents are dead, who have no family. These are the forgotten people in the Department. They have no guardians. Right now, there's over a thousand of them.

In the perfect world, there would be no need for this bill. The Department wouldn't need this bill. The Probate Court wouldn't need this bill. But this isn't the perfect world. And nobody wants to serve as a guardian. And what the procedure is now, in an emergency the Probate Judge will call up someone, an attorney maybe, and ask them if they would serve as a guardian, an individual that knows very little about the person or why the person is there. That's who the guardians are.

Here we have people who work with the mentally retarded, who do that, I'm sure, not for the money, but for love of what they're doing, who want to be volunteers.

And they can never be volunteers if there are eligible people ready and willing to be guardians. That's all this bill says. This bill would provide an incentive for those adovcates who profess to help the mentally retarded to come up with lists of volunteers, to come up with people to serve as guardians, if their concern is some kind of conflict of interest. But it's been three years that they've promised to come up with lists, and there is no list and we're behind already by over a thousand and will be behind more.

As I said, this is a last resort bill only. The employee could not admit to any state facility any person without judicial approval, without anything, nothing. And, as a matter of fact, in conversations with the Probate Court and in conversations with the Department, between Rep. Casey and myself and others, regulations will be proposed for further safeguards in the bill, requiring the Department to submit a list of volunteers to the Probate Court rather than come up, say, on a willy-nilly basis, just submitting the names.

This will be done by regulations. Mr. Speaker, this bill is badly needed in this state. It's a good piece of legislation. It's a difficult issue, I know. But, because it's difficult does not mean that we should shy away from

the issue. Things have to be done here, and we can do one of two things. We can pass this bill and give them the help that they need, or we can maintain the status quo and let the over a thousand who have no guardians go to 1,500 or perhaps even more.

Mr. Speaker, I would move passage of the bill as amended, sir.

ACTING SPEAKER SMOKO:

Will you remark further?

REP. GOODWIN: (54th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Goodwin.

REP. GOODWIN: (54th)

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

ACTING SPEAKER SMOKO:

Rep. Onorato, prepare yourself for a response, sir. Rep. Goodwin, please pose your question.

REP. GOODWIN: (54th)

For the sake of the record, Rep. Onorato, would you outline what the procedures are for a person who does not have a guardian who faces a major medical emergency, or even a minor medical emergency like a toothache?

ACTING SPEAKER SMOKO:

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

REP. ONORATO: (97th)

Through you, Mr. Speaker. Through the state's informed consent law, if there is a major emergency and there is no guardian, the Superintendent of the facility under our informed consent law has the power to authorize hospitalization or some major kind of treatment. For a minor, for something minor, which is not considered an emergency, a guardian has to be found. Application has to be made to the Probate Court for the appointment of the guardian. All this takes time.

The Probate Court approves the guardian. In the meantime, perhaps the minor problem develops into a major problem. And that's the way it works. And there is nobody available, or nobody wants to act as guardians, and so what we find ourselves in and what we hope will not happen is that the Superintendent when it's a major emergency makes the decisions. That shouldn't be.

REP. GOODWIN: (54th)

Through you, Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Goodwin, you have the floor.

REP. GOODWIN: (54th)

Well, I think I perhaps want to make a comment at this point. I must say I'd hate to have a toothache while all this red tape was unwound, and yet I doubt if one could consider a toothache as a major emergency. A toothache can be pretty painful. So can a broken bone. And yet, they may not be in any sense of the word life-threatening.

Under the seven month old law, which has been referred to, is it now possible for a member of the staff such as the Superintendent to make these decisions when, certainly for the welfare of a client, that the immediate care of such an emergency is warranted? Through you, Mr. Speaker.

ACTING SPEAKER SMOKO:

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

REP. ONORATO: (97th)

Through you, Mr. Speaker. The answer is yes. If for the benefit of the ward, the answer is yes. They can make the decision under the informed consent law. Yes.

REP. GOODWIN: (54th)

Thank you very much.

ACTING SPEAKER SMOKO:

Will you remark further on this bill as amended?

REP. SWENSSON: (13th)

Mr. Speaker.

REP. SWENSSON: (13th)

Thank you. I'd like to speak a little bit against this bill today. I know it's a last resort, but it's like telling the alcoholic, let's throw a bottle of wine at him, but it's no help. But I think a retarded person should have a little more consideration.

I think the guardianship law has only been in effect for seven months. That's the one that we put in last year, and I know they're working on it. I know they do have some people available. It is a terrible situation.

But, I really feel that the placement without judicial supervision, the bill allows guardians of retarded persons to place their wards in residential facilities without prior permission of or supervision of the Probate Court. This circumvents the protections enacted in last year's placement bill, PA 82-363, against the inappropriate warehousing of our retarded citizens.

I'm sorry, but I know we need the help and I cannot support this bill. I don't think it's a good bill. I think it has a lot of problems to it, and I think it needs a little more study. Thank you.

REP. CASEY: (118th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Will you remark further? Rep. Casey.

REP. CASEY: (118th)

Yes, in all due respect to Rep. Swensson, she's been misinformed, Mr. Speaker. Because a DMR employee could not commit. He would have to resign from that position. And then you'd have go through the Probate Court procedure all over again. Before commitment could go any further, the Probate Court would have to assign somebody that was not a part of DMR to be the guardian.

They would have to find somebody at that time before commitment. And I must go further. Each and every resident would have a care plan and that care plan has all the interdisciplinary services that are necessary. Your doctors, your nurses, your social workers, all have to take part in the evaluation of each placement. It's evaluated, that care plan is evaluated whether a DMR employee or whether a private guardian is there, is evaluated every six months to a year.

And each and every one of these clients also has a Probate Court appointed attorney in order to represent their interests. Mr. Speaker, this is a last resort measure. It's been seven months. We're got, Rep. Onorato says a thousand plus. Mansfield Training School being knocked out of there

because of the court decision, you have about 700 of these individuals who have no one to care for them or to assist them at this time.

ACTING SPEAKER SMOKO:

Excuse me, Rep. Casey. Will the House please come to order. The Chair is having a difficult time hearing Rep. Casey. Thank you.

REP. CASEY: (118th)

I think it's important that we know that a DMR employee in the first place, has to be somebody very, very, special. They have to be somebody with a big heart and somebody that cares. That's a tough job and you have to go through a screening process, I'm sure, in order to be employed.

As someone who deals in health care, I know how hard and important it is to make sure that you have somebody that cares, somebody that knows. I do not believe a DMR employee would be the worst one. In my estimation, the majority of the time, they'd be the best because they do care.

I know that there are many in this Chamber that have a real question in terms of that potential conflict. But, as a last resort, ladies and gentlemen, a last resort. Rep. Onorato has stated that the Commissioner and the Probate system, and he and I particular, will work to see

that regulations are promulgated, which will indeed require lists of appropriate DMR employees to be provided to the Probate Court in case that last resort is necessary.

There'll be a list that will be available to the courts, will be available to all the advisory groups, will be available to anybody who would like to look at it and pay attention to who is being appointed as guardians. This bill also requires the Probate Court, in order to come up with a review and an analysis of the program on an annual basis.

Mr. Speaker, this is necessary because the patients need it. The clients need it. And I certainly hope that you would give it your fullest consideration. Thank you, Mr. Speaker.

ACTING SPEAKER SMOKO:

Will you remark further?

REP. TRUGLIA: (145th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Truglia.

REP. TRUGLIA: (145th)

Mr. Speaker, thank you. I'd like to support this bill, Mr. Speaker and members of the House. But I have been called and questioned by some people back in my Stamford

area who are very active in the area mental retardation on the local level. And it seems to me that, yes, there are some horror stories about using people from the Department itself as possible guardians.

So, I'd like to ask a question of the proponent of the bill if I may, just for the record.

ACTING SPEAKER SMOKO:

Please pose your question, sir.

REP. TRUGLIA: (145th)

To relieve the anxiety of the people back home. Thank you. The question is that you had mentioned, Rep. Onorato, in your talk, that there's going to be a list. I wonder if you could expand on that as to where that list is coming from and who will be selecting that list, and will that list really do the job that we hope it will do?

ACTING SPEAKER SMOKO:

Would you care to respond, Rep. Onorato?

REP. ONORATO: (97th)

Through you, Mr. Speaker. Any advocacy group can submit a list to the Probate Court of people that are willing to serve as volunteers. The advocacy groups are in the community, and they have more access to any such list or any such people who would be willing.

So, they could submit the list to the Probate Court, and the Probate Court would keep that list of those individuals who are ready and willing and volunteer to be guardians.

REP. TRUGLIA: (145th)

Thank you. One more question, Mr. Speaker.

ACTING SPEAKER SMOKO:

Please pose your question.

REP. TRUGLIA: (145th)

Rep. Onorato, you said that after the passage of this bill there will be a list. Now, what guarantee is there in this language, if I heard you correctly, that list will eventually be available?

ACTING SPEAKER SMOKO:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker. I think Rep. Truglia misunderstood me. The reason for the bill is because there are no guardians. Hopefully, lists of those individuals who wish to be a guardian will be submitted. In the event that there is no list, that there are no volunteers, then the Probate Court, as a last resort, can go to the employees of the Department.

ACTING SPEAKER SMOKO:

Rep. Truglia, you have the floor, sir.

REP. TRUGLIA: (145th)

Thank you, Mr. Speaker. Thank you, Rep. Onorato. So, at this point, we really don't have a list and this bill will in no way guarantee that there'll be a list.

REP. ONORATO: (97th)

Through you, Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Onorato.

REP. ONORATO: (97th)

The answer is yes. That's why we need the bill.

REP. TRUGLIA: (145th)

All right. Thank you, Mr. Speaker.

REP. MC LAUGHLIN: (68th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. McLaughlin.

REP. MC LAUGHLIN: (68th)

Mr. Speaker, I rise to support this bill, and I'd like to associate myself with the remarks of Rep. Onorato, who has done a remarkable job in presenting a very clear bill. I've had the honor for the last two years of serving on a board at Southbury Training School and have been down there many times and I'd like to invite anybody here in this body to join me to go to the so-called hospital, the

cottage for the severely and profoundly retarded. They, too, feel pain. They feel anquish. Their mangled and tortured bodies sometimes need help for, as Rep. Goodwin said, a toothache. This is a simple bill, a simple concept which will allow them to have a guardian for those small matters that need to be taken care of just like we need care for them.

I would hope that we can pass this. I have no problems with it. Again, this is a last resort. Please support this bill. It is much needed. Thank you, Mr. Speaker.

ACTING SPEAKER SMOKO:

Thank you, sir. Will you remark further? Rep. Murdock.

REP. MURDOCK: (17th)

Very briefly. Most of the comments have been made. I've been associated with a local ARC, Association for the Retarded, for over 20 years. I know that they do not favor this bill, but I also know that the ARC's have not responded, have not developed their own lists. It is a list of last resort and it really will deal with a problem of deprivation. These are people who are being deprived of appropriate care right now and this will address that. Thank you.

ACTING SPEAKER SMOKO:

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

REP. RUDOLF: (139th)

Mr. Speaker, for a second time.

ACTING SPEAKER SMOKO:

Rep. Rudolf for a second time.

REP. RUDOLF: (139th)

Mr. Speaker, and members of the House, finally, the question is are you comfortable with the appointment of a state employee to oversee a ward of the State of Connecticut? If you're comfortable with that and you don't see a conflict, then you vote for the bill, as Mr. McLaughlin said, Rep. McLaughlin said.

If you feel that there's a conflict, for heaven's sakes, protect the ward. Don't put him in this position and vote against the bill.

ACTING SPEAKER SMOKO:

Will you remark further? Will you remark?

REP. SWENSSON: (13th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Swensson.

REP. SWENSSON: (13th)

For the second time.

ACTING SPEAKER SMOKO:

For the second time.

REP. SWENSSON: (13th)

To my good friend, and he did do a good job presenting the bill. Mr. Onorato, Representative. Is it still in the bill, or did I misunderstand, when the person is appointed, it won't be a person from that hospital? It'll be from another hospital?

REP. ONORATO: (97th)

Through you, Mr. Speaker.

ACTING SPEAKER SMOKO:

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

REP. ONORATO: (97th)

The answer is yes. It will not be from the same facility where the ward is.

REP. SWENSSON: (13th)

So, the guardian will be from another place in the state?

ACTING SPEAKER SMOKO:

Rep. Onorato.

REP. SWENSSON: (13th)

I have another question for you, sir.

ACTING SPEAKER SMOKO:

Please proceed.

REP. SWENSSON: (13th)

And how long is this appointment? Is it for -- how long a time will the guardian be appointed?

ACTING SPEAKER SMOKO:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker. The Probate Court can appoint the guardian for a limited purpose, which would give the Probate Court almost exclusive jurisdiction over how long the particular guardian would serve. In any event, the guardian would be subject to an annual review by the Probate Court anyway.

REP. SWENSSON: (13th)

Through you, sir. That is annual? But if they find that this person is not the type of person that should be in charge and be a guardian, can he be replaced?

REP. ONORATO: (97th)

Through you, Mr. Speaker.

ACTING SPEAKER SMOKO:

Yes, sir.

REP. ONORATO: (97th)

Absolutely.

REP. SWENSSON: (97th)

Thank you.

ACTING SPEAKER SMOKO:

Will you remark further on this bill as amended? Will you remark? If not, will all staff and guests please come to the well of the House. The machine will be opened.

The House of Representatives is now voting by roll. Will the members please return to the Chamber immediately. The House of Representatives is now voting by roll. Will the members please return to the Chamber immediately.

Have all the members voted? Apparently not. Have all the members voted? Please check the roll call board to be sure your vote is properly recorded. The machine will be locked and the Clerk will take a tally.

Rep. Joyce.

REP. JOYCE: (25th)

Mr. Speaker, may my vote be recorded in the affirmative, please.

ACTING SPEAKER SMOKO:

Rep. Joyce in the affirmative.

REP. DYSON: (94th)

Mr. Speaker.

ACTING SPEAKER SMOKO:

Rep. Dyson.

REP. DYSON: (94th)

In the affirmative, please.

ACTING SPEAKER SMOKO:

Rep. Dyson in the affirmative.

Rep. Roberti.

REP. ROBERTI: (128th)

In the negative, sir.

ACTING SPEAKER SMOKO:

Rep. Roberti in the negative.

Would the Clerk please announce the tally.

CLERK:

Senate Bill No. 1104, as amended by Senate Amendment Schedule "A".

Total number voting	143
Necessary for passage	72
Those voting yea	107
Those voting nay	33
Those absent and not voting	8

ACTING SPEAKER SMOKO:

The bill, as amended, passes.

REP. GROPPO: (63rd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. John Groppo.

S-212

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1983

VOL. 26
PART 9
2811-3195

SENATOR OWENS:

Basically, this provides an agreement with the Department of Mental Retardation, also the various advocacy groups that worked hard on this particular piece of legislation. It is to provide that persons voluntarily admitted by their guardians to the Department of Mental Retardation pursuant to this statute, as amended, shall have the right to notice and Probate Court review of placement provided under Subsections (b) and (c) of Section 19a-450.

I ask for adoption of the amendment.

THE PRESIDENT:

The question is on the adoption of Senate Amendment A. Do you wish to remark further? If not, all those in favor signify by saying Aye. Those opposed Nay. The Ayes have it. SENATE AMENDMENT A IS ADOPTED.

Senator Owens.

SENATOR OWENS:

I believe that is the only amendment. Isn't that correct?

THE PRESIDENT:

Correct.

SENATOR OWENS:

On the bill itself, Mr. President, this bill would allow in certain limited situations, the appointment of an employee of the Department of Mental Retardation who is not in the particular facility where the individual is located, as the guardian of the mentally retarded person. For instance, you could take someone from the Southbury Training School, who is an employee, and have them the guardian for someone that is at Mansfield.

The Department of Mental Retardation employee could not be appointed guardian to a mentallyretarded person unless that conditon was present and unless the employee worked or/if any other suitable person could be found to serve as a guardian. Any appointment would have to be for a limited time and purpose, the Commissioner of the Department of Mental Retardation would have to search for a suitable nonemployee to replace the employee as a guardian.

It would also require any Department of Mental Retardation employee appointed to exercise judgment for the benefit and best interest of that individual, independent of the Department of Mental Retardation. Obviously, if any conflict was created, this would be a matter appropriately for the Court and the guardian would be removed. The Department of Mental Retardation would be prohibited from taking or threatening to take any action because of the employee's conduct as guardian. So, thus, the Department of Mental Retardation would not be exercising any dominion or control over the particular guardian and the guardian would be able to act freely and in the best interest of the individual who is committed to his care and is his charge.

The bill also specifies that an adult adjudicated mentally incompetent because of mental retardation could not be granted voluntary admission to a DMR facility if a conflict existed between the guardian applying for such voluntary admission and the adult or his/or her next of kin.

A guardian would be prohibited from admitting his or her own mentally retarded ward to a residential facility operated by an organization employing the guardian except under the existing provisions for involuntary commitment pursuant to the Probate Court.

Obviously, this bill is something that the Department of Mental Retardation finds very important. It is supposed to be, I believe, that the fiscal note indicates that there is a substantial cost-saving and I feel that the cost-saving is not ah, does not infringe on the rights of any of the individuals. The problems that have occurred in years gone by are that the Department of Mental Retardation, or in many instances, guardians have not been appointed or people have not been willing to serve in this capacity and it requires constant hearings before the Probate Court, in and out, at great deal of expense to the state on matters that, if you had a guardian who was interested and committed to the individual, the interest of the individual, would obviously not have any difficulty providing and working in the best interest of the individual in the

facility. Obviously, as I pointed out, there is a need for the guardians and a tremendous difficulty in finding people willing to serve. Also, the current guardianship law requires an inappropriate use of costly and time-consuming commitment process. It is estimated that there will probably be a hundred cases per year where there is no conflict concerning admission. Thus, there is a saving of probably three hundred and seventy-five dollars, at least, plus the time involved in this process.

Obviously, as I said previously, the Department of Mental Retardation considers this an important bill. There are some groups of advocates who feel that the rights are not safeguarded. Ah, if I can have just a second here - I thought I might bring to your attention the letter from (name unintelligible) the Secretary of the CCAMR, the Connecticut Congress of Advocates for the Mental Retarded, and all of us have been addressed, and obviously, their position is that the bill is designed to and helps mentally retarded individuals and their families, and is designed to allow Department of Mental Retardation employees to sign

medical and form consent and otherwise act in the best interest of the retarded.

I have looked at this bill very carefully. The Committee on Judiciary has considered this. It has been debated widely. We do feel that there is a strong merit in the position of the Department of Mental Retardation that the savings are there and that no injustice will be done and no constitutional rights or rights involving due process will affect the retarded.

I would ask, if there is no objection, that it be placed on Consent.

THE PRESIDENT:

Senator Regina Smith.

SENATOR REGINA SMITH: (12th)

Thank you, Mr. President. I rise to oppose this bill. It seems strange that we are going to be taking up a bill later on today, or scheduled to, granting constitutional legal rights to the handicapped individuals in the state of connecticut, through a constitutional amendment, and here we are coming up with a bill that will undermine the system that was most

recently put in place just a year ago regarding guardianship of mentally retarded citizens in our institutions.

I would certainly take pause and would urge all the members of the circle to do so when we are considering a bill that will allow the Department of Mental Retardation to appoint its own employees to serve as guardians for these individuals in that institution. It is very difficult to imagine how an employee can serve two masters, so to speak, that individual ward who is counting on his advocacy role and support to be certain that he is acting in his best interest and that of the Department of Mental Retardation, the employer of the employee.

I haven't heard any arguments that would justify making such a move in such a very questionable direction and I can't imagine that I could stand here and justify this measure as a cost-saving measure, when the jeopardy of that ward, that retarded citizen in that institution, is at stake. I think that we ought to leave our situation as it is. Guardians should be appointed from the outside, and they are only appointed under the

Public Act 82-337, for limited reasons, particularly for medical treatment. So that there is no need to have all of these guardians continuously for these individuals, but when the cause arises that they should have one, it certainly should not be an employee from within the Department who would have a very difficult time, I think, not doing what the Department thought best for that individual which may not necessarily be in the best interest of that individual.

So, I would urge that you vote against this measure and I would ask for a roll call vote, Mr. President.

THE PRESIDENT:

Will you remark further? Senator Rogers.

SENATOR ROGERS: (32nd)

Thank you, Mr. President. I rise to support this piece of legislation very, very strongly. First of all, I question Senator Smith's statement that DMR is appointing guardians. They are not. You still have to go to the Probate Court.

Let's first take a look at who is behind the

opposition to this bill. Unfortunately, the misguided Office of Protection Advocacy, but mainly, it is by the CARC, Connecticut Association of Retarded Citizens, who are becoming more every day discrediting. I would say some reasons for that would be evidenced when you find that all eleven hundred parents of the patients at Southbury Training School have withdrawn from association with CARC. The Stamford Association has withdrawn. The Bridgeport Association has withdrawn. And they want no association whatsoever with this association which about three years ago, and now approximating three million dollars, sued the State of Connecticut, that is Commissioner Thorne, and the Mansfield Training School saying, tear it down, brick by brick.

SENATOR REGINA SMITH:

Mr. President, a point of order, please.

THE PRESIDENT:

State your point of order, Senator Smith.

SENATOR REGINA SMITH:

I have not done this before, but I don't think

the issue here are the individual groups and association that support or don't support a bill. What we are here to debate is the merits, pro and con, of the bill, and not hear the history or organizations and associations.

THE PRESIDENT:

Well, we will grant certain latitude in debate, so you may continue Senator Rogers. I think that you can, at some point, bring it back to the relevant issue.

SENATOR ROGERS:

Thank you, sir. THE CARC suit is still going on. As I stated, to the extent of about three million dollars, and it is interesting to know that, over the years, these same principals in CARC have been involved in real estate. Now if they, as they say, are successful in this suit, and to take four hundred new group homes into existence, can you imagine what that cost would be. But the part of that guardianship, I'll get down to the point, I speak, I think, with a little credibility. I was for four years a member of the Board of Trustees of

the Southbury Training School, and currently a member of the Home and School Association, as well as the Southbury Training School Foundation. We have been belabored by CARC. We ask them please find us guardianships for these members of the Southbury Training School who need it, three years ago. Were they done? Zero. They've had the opportunity to bring in their guardians. They did not do so. We say, you are needing guardianships and those profoundly retarded patients at the Southbury Training School who cannot cope for themselves, far, far from it, and if there is some physical disability that shows up or some medical attention needed, and they have no guardian who can speak for them and approve this medical procedure, what happens? You waste very precious time going and getting the O.K. from a Probate Court. Is that what CARC wants? The delay of two or three days? It could be fatal.

This is a good bill. We, in the Southbury Training School Foundation are working hard to get guardianships for those at Southbury who do not have them as yet. They are necessary. I can see, we heard this

morning from Elaine Coleman of DMR saying that we could obtain about forty guardianships a year, yes. You can understand why. Some of these cases, forty years old, and bedridden. The Hospital, the Training School - two feet long, covered with black hair, have to be turned over in bed every two hours. It takes a great person to accept the guardianship for something like that.

This bill is GOOD. It is needed. I implore you to support it. Thank you, sir.

THE PRESIDENT:

Will you remark further? Senator Larson.

SENATOR LARSON: (3rd)

Thank you, Mr. President. I rise to oppose this bill. With all due respect to Chairman, Howard Owens, whom I have great respect for, particularly his scholarly approach to handling all items that come out of the Judiciary Committee, and to Senator Rogers, whom I also respect.

I think the question before us and it appears to be somewhat of a (next word unintelligible) battle

that is going on between the Department of Mental Retardation and the various advocacy groups. My concern is that in the process of that particular battle is it reasonable to assume that over the one thousand mentally retarded persons who are in need of guardians, is it reasonable to assume that one of them might not be granted their due process; that there may exist a conflict of interest and they would not be afforded the rights that all of us around this circle have been afforded under the Constitution of the United States. And it is my feeling, Mr. President, after reviewing and listening to both sides of the argument, that yes, there is a reasonable chance that a person, that an individual, mentally retarded person, would be denied their due process, and yes, there is a reasonable chance that there could be a conflict of interest, and that's why I am opposing this particular bill.

THE PRESIDENT:

Do you wish to remark further? Senator Owens.

SENATOR OWENS:

Yes, very briefly. I wanted to clarify a couple

of things that were raised. One thing that was raised, one issue that was raised by Senator Regina Smith that ah, it was stated that the Department of Mental Retardation would appoint the guardians. I think that the bill clearly sets forth that the Probate Court would be required to pick the guardians from the employees. I think that there was an oversight and I want to clarify that.

I think also the issue was raised with respect to conflict of interest on this. If there is any conflict, the Department of Mental Retardation must refer the guardian to the Probate Court for a commitment hearing and the employees of the Department of Mental Retardation, who act as guardians, are directed by our bill to exercise independent judgment concerning the best interest and obviously, there can be no retribution. Also in the bill, it prohibits DMR from taking any action against the employee or guardian who works to further the interest of his ward. I think it is important to keep in mind, so that the conflict doesn't arise, is that you take the individual

or the guardian would be from a separate facility or a separate area. So it seems to me that you don't have the problem of a conflict. I think that's probably not the strongest argument. It seems to me that the conflict situation doesn't exist, does not exist and if it does, then it would go to Court and let the Court resolve it. But I think it is important to allow agencies, such as Commissioner Thorne, to use his own judgment in these things. I don't think that there is anyone here that says he is not sensitive to the rights of the retarded. He has worked with the groups on the thing, but he has to expedite the process, so as long as due process isn't affected so that the individuals can get the necessary attention and as Senator Rogers very capably put it, doesn't have to run to the Probate Court every time some minor thing arises and so forth.

You know, I haven't always been on the same side of issues with Senator Rogers and I say in all sincerity, I found him to be a person that is very concerned with the rights of individuals. We all know the bills

that we have debated here in the Senate, and I have been on opposite sides and on some sides with him, but I think that everyone knows that he has a sensitivity in this particular area. He certainly is an expert and has spent an awful lot of time in this area, the Southbury Training School comes from within his district. He is very, very involved with the process. He is there. I really ask you to consider his judgment in this matter, as well as the Committee on Judiciary because we have a lot of respect for him also. Thank you very much.

THE PRESIDENT:

Will you remark further? Senator Gunther.

SENATOR GUNTHER: (21st)

Mr. President, very briefly, I rise to oppose the bill. I think there is darn good reason to have some suspicion about this. I found it a little difficult to have the advocacy groups in the State of Connecticut reflected on here. It is not (next word unintelligible) what they are talking about or opposing this and not having a good basis for it. I, as an individual, take

a look at the bill and find that we have employees, even though we are not in the same region and we are not in the same facility, but we work for the same boss in the State of Connecticut. I would have great reservations to put people in the Department itself in the position of being the guardian over elderly people who are interned in these homes.

I am also concerned with the fact that the Probate Court right now will not take and assign these people and I have great reservations about it and I find that I don't always listen to the Probate Judges and the lawyers around here but sometimes they make sense. I think possibly we ought to listen to what the Probate Courts and that have to say about this particular attitude. I have just been told by the Chairman of the Judiciary Committee, I ought to listen to him, but he is not a Probate Judge this week.

All I have to say is that in discussion on this, I find out that there is only about a maximum of forty people that could be involved out of a thousand or more people that are involved in the entire state and that's a very low number and I know that Senator

Owens has made mention about a hundred people being involved. Forty people being involved in this particular problem that we have. It does seem to me that it behooves even the parents that have promised to take and set up a guardianship program and get the names of people, but that's not an inordinate number of people, that they could go out there and do.

Now I think we should reject this bill. Tell the advocacy groups and the parent groups and that that they ought to get on the ball and get down to business and get those forty or so guardians on line instead of passing a bill such as this that I think we would have some real questions on my mind as to whether I want to put a person in a Department in as a guardian and say have him serving under that master.

THE PRESIDENT:

Senator Owens.

SENATOR OWENS:

With leave, may I speak for the third time on this particular bill?

THE PRESIDENT:

With leave from the Senate, you may proceed.

SENATOR OWENS:

Thank you. I want to address a comment that Senator Gunther pointed out. I would just ask that on the File 757, it provides, and not that these Notes are always the best, but most of the time they are, the Department of Mental Retardation estimates that there would be a hundred admissions annually which will no longer require action by the Probate Court. This would save, I believe, three hundred and seventy dollars for each case requiring court action and this is comprised in an estimate of one hundred and seventy-five dollars in attorney's fees, one hundred fifty dollars for psychological exams and so forth with a savings of twenty-eight thousand one twenty-five results for the fiscal year '83-84 with thirty-seven five saved annually thereafter. So that was the basis for the hundred admissions, Senator Gunther. Thank you.

THE PRESIDENT:

Senator Gunther.

SENATOR GUNTHER:

For the second time, just to try to clarify what was just clarified for you. Has anybody read the note recently on the fiscal note that we have, the Department of Fiscal Analysis has to rely very heavily on the Department itself and let's not kid ourselves, the people that are very heavy advocates for this are the Department itself. We, at noon, today, had people from the Department sitting in at our caucus discussing this. We asked them quite succinctly how many people they think are going to be involved and they said that the maximum would be forty. All I say is that I just talked to the horse's head at noon. I don't know where those notes came from.

THE PRESIDENT:

Will you remark further? The Clerk will 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.

1983 GENERAL ASSEMBLY

SENATE

TUESDAY
MAY 17, 1983

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

THE PRESIDENT:

The question before the chamber is the motion to adopt Cal. 543, Substitute for Senate Bill 1104, File 757, as amended by Senate 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: 24 Yea. 12 Nay. THE BILL IS ADOPTED.

THE CLERK:

Cal. 544. File 760. Substitute for Senate Bill No. 1146. AN ACT ADOPTING THE REVISOR'S TECHNICAL CORRECTIONS TO THE GENERAL STATUTES. Favorable report of the Committee on Judiciary. The Clerk has an amendment.

THE PRESIDENT:

Senator Owens.

SENATOR OWENS: (22nd)

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 5
1522-1819

1983

MR. SHORTALL: (continued)
portions of it. I am, of course, in favor of the bill. I think we need an immediate appellate court. I think we handle about half of the criminal appeal and we know how long the backlog is and how long it takes for a case to be decided.

I do think we'd be missing, the legislature would be missing a terrific opportunity, however, if we let this bill go through without shifting to it responsibility of sentence review. Right now, there effectively is no law of sentencing in this state. The sentence review division is a group of three judges of the trial bench who sit one day a month reviewing the sentences imposed by their colleagues. I think that is an inherently ineffective system for establishing a law of sentencing. It has no precendential value. There is no publishing of opinions, and neither the judges the lawyers, nor the public knows what the sentence review division has decided.

I think putting into the appellate court, a real appellate court, the opportunity to review sentences and promulgate a law of sentencing for the use of the bar and the public would be a great step forward to control sentence disparity and sentence inequity in this state.

The volume of business before the sentence review division is not great. There are approximately, as I understand it, the figures 200 or 250 cases heard by the Sentence Review Division each year and I think with certainly with an intermediate court of seven judges and even with a court of four or five judges, that caseload could be easily absorbed, so I would strongly urge you to adopt the bar association's position, which is to place into the intermediate appellate court the review of sentences. Thank you very much.

SEN. OWENS: Thank you. I have one minute left before eleven. Miss Coleman. You wanted to say a few words. You get one minute, not two, you're down to one. If it's going to be long, you might want to wait, whatever you prefer.

MS. LORRAINE COLEMAN: My name is Lorraine Coleman. Thank you. Goodbye. I'm going to speak to one of the two bills that the Department of Mental Retardation has asked this committee to consider this year and that is Senate Bill 1104 concerning guardianship of mentally retarded persons.

MS. COLEMAN: (continued)
Basically, this bill does two things, and addresses two problems that we have been dealing with since the guardianship bill was passed last year.

First of all, we have been unable to find people willing to act as guardians.

SEN. OWENS: 1104.

MS. COLEMAN: 1104.

SEN. OWENS: Go ahead. See if you can find this 1104 there somplace, please.

MS. COLEMAN: The probate court and the department have had a great deal of trouble finding people willing to act as guardians for those persons who need them and so the first part of this proposal would allow DMR employees acting in their personal capacity to become guardians of persons who reside in regions other than the ones in which they work.

The second part of the proposal, the second part of the proposal would allow guardians to use DMR's voluntary admission process, unless there's a conflict concerning the admission between the ward and the guardian, or the guardian and the ward's next of kin. And the reason for this is that at this point, all guardians have to use the commitment process and most of the time, there's absolutely no conflict.

The court rubber stamps the commitment and the guardian has to pay upwards of $300 to the court to get this done and while we are sensitive to the need to protect people's due
Cass. 3 process rights, we think that were there is not a conflict that the provision of such a hearing is not necessary. I think that's all I'll say on that bill.

I would also say that the Department is also supporting House Bill 7227, An Act Concerning Sexual Assault Involving Mentally Defective or Mentally Incapacitated Persons.

REP. TULISANO: So nobody misunderstands that, can you tell the basic reason for that?

MS. COLEMAN: Yes, under the statutes right now, it is a crime to have sexual relations with somebody that's mentally

MS. SYLVIA DICKINSON: I'm Sylvia Dickinson from Torrington speaking in favor of bill 1104. I am the parent of a young adult retarded child who has been accepted and will be placed shortly in their regional center in Torrington. In order for my son to be placed in the center, it was necessary for my husband and I to appear before the probate court of our district to be appointed legal guardians over our son. I was appointed as legal guardian and my husband was appointed as stand-by guardian. It was necessary for us to expense hundreds of dollars to have this guardianship completed. We now have been advised again that we cannot, even though appointed by the court, make a decision for our son as legal guardians to place him in the regional center. It is now our understanding that we must again go back into the probate court to have an attorney represent our son, who will represent our son, and will be able to make a decision as to whether or not our son should be placed.

Inasmuch as my son is retarded, I cannot see why I cannot make this very important decision as my son's legal guardian. I cannot understand how someone other than the parent and legal guardian can make this very important decision, when the child cannot actually make the decision for himself. If my child were able to make the decision, I could see the necessity of having someone appointed to represent him because the child would be able to discuss his decisions with his attorney but in the case of a retarded child, I feel that no one other than the parent should be able to decide what the best interests of their child is and whether this child should be placed in a regional center or not. I do believe in lieu of all of the above, that I do not feel that the probate proceedings are just and fair and feel that the Department of Mental Retardation should be given the opportunity to place the children if it is the expressed desire of the guardians of the retarded child to do so without the expense of going through the probate proceedings which I do not believe are fair in this matter.

REP. TULISANO: Thank you. Any questions? Thank you. Henry Naruk and Alex Lloyd and Frederick Adams.

SB 1120

MR. HENRY NARUK: Mr. Chairmen, members of the Judiciary Committee, my name is Henry Naruk and I'm President-Elect of the Connecticut Bar Association and I am here to speak on behalf of the Bar Association as well as myself

MR. LLOYD: (continued)
it is our hope, and we respectfully request, that the legislature not take final action on this bill during this session so that the Task Force that I've described can proceed to complete its work and to deliver its recommendations. I apologize - I can tell even by the big clock that I went over two minutes. If there are any questions, I'd be happy to answer them.

REP. TULISANO: Thank you. Mr. Adams and then Alvin Pudlin and then Stanley Crane.

MR. FREDERICK ADAMS: Rep. Tulisano, members of the committee, my name is Frederick Adams and I am from Cheshire, Connecticut and I'm here to speak in favor of Senate Bill 1104, An Act Concerning Guardianship of Mentally Retarded Persons. At the present time, the Department of Mental Retardation is obtaining - having difficulty in obtaining guardianships for the adult retardees who are now housed in facilities throughout the state.

1104 would assist in alleviating this problem by allowing employees of DMR to act as guardians in their individual capacity for DMR clients placed in facilities other than the facility which the guradian is employed in. In addition, Senate Bill 1104 would permit guardians to use the voluntary admissions process if there is no conflict between the guardian and his or her ward and the next of kin. The Department of Mental Retardation would require that it be determined if there is a conflict concerning an admission into a residential facility.

There is a high cost attached to the probate court commitment. At the present time it is necessary to go to probate court to become a guardian and then to go back a second time for admission to a facility. The cost is estimated at $300 which is really unnecessary and useless if their is no conflict between the guardian, the ward and the next of kin concerning the admission. I would urge this committee to give a favorable report on Senate Bill 1104 and thank you for allowing me to appear here.

HB 6227

REP. TULISANO: Thank you. Alvin Pudlin, Stanley Crane and then Sherry Haller. Once again, I will remind everybody to please be courtious to those following so everybody has an opportunity. We've been accused of trying to cut people off and I guess we can't do it anymore.

MR. LARSON: If children are there it should be.

REP. TULISANO: That's already the law. You can't --

MR. LARSON: I see constantly kids in trunks of cars going into the Berlin Drive-In. They do in my yard. The law is not being enforced.

REP. TULISANO: I understand. Do I understand what the real issue is that there are certain items which may be harmful while we use the word obscene (speaker inaudible). That you feel that it is being forced on you on Deming Road. I know the area.

MR. LARSON: Yes, you know the area.

REP. TULISANO: But that because of that is the real issue. And if that were imposed, you'd hear if I went there or not as long as ---

MR. LARSON: No you have a right to see what you want. But I don't want to see it. I've been --

REP. TULISANO: I'm still waiting for some help from somebody to help me write that bill that does that. Which I think is possible, but nobody's every wanted to do it.

MR. LARSON: Well I really feel that the law should state that it should not be shown publically and it doesn't.

REP. TULISANO: Okay, maybe that's all we have to do. That's a real simple law and it might work. It might work. Thank you sir. Mr. Podolsky then Mr. Mokriski, then Goodgion then Anthony Nania. And may I remind you too Raphael that -- Thank you.

MR. RAPHAEL PODOLSKY: My name is Raphael Podolsky -- yes consideration for the others -- my name is Raphael Podolsky from the Legal Services Training and Advocacy Project. I want to focus on one bill and then mention three other bills briefly.

The bill I would like to focus on is Senate Bill No. 1104, An Act Concerning Guardianship of Mentally Retarded Persons. I would urge that you reject the bill. For three reasons. The three reasons, it seems to me, standing separately, are reasons to reject it, but this bill is written so that the

MR. PODOLSKY: (continued)
three reasons interplay with each other. And they make the bill even worse. The first is that allows employees of the Department of Mental Retardation to be guardian. The point of a guardian is to make independent decisions and have an independent judgement. The decisions of a guardian of a retarded person makes are essentially decisions as to whether or not to allow the Department of Mental Retardation to do or not do something connected with the ward.

To have an employee of the Department, even he works at a different building, be making those decisions for the ward, absolutely guarantees a conflict of interest.

REP. TULISANO: How about different institution, not building?

MR. PODOLSKY: Well no a different -- a different institution doesn't solve the problem. It is the same employer. Your job can be threatened and you know -- I mean nobody has to threaten you specifically, the fact is that when you work for the person and you're being asked to make a decision that might say we won't do what DMR wants, and you work for DMR, you got to know that you could be in trouble. And it is clearly conflict. Under any normal system that would be a conflict.

REP. TULISANO: I haven't found that such sutlties are true any longer.

MR. PODOLSKY: Well I'm not sure how sutle these things are, but second of all it deprives the retarded person of the right to petition the Probate Court for review of placement. And it essentially undoes a compromise that I would call to your attention was one that you specifically worked out last year. The compromise --

REP. TULISANO: (speaker inaudible) for everything.

MR. PODOLSKY: Well it was true and it was an important part of it. Last year we passed legislation that said that when someone -- that when someone is committed to the Probate Court, through the Probate Court, the Probated Court judge could not review where he is put. It merely says -- but merely commits him to DMR. However, on a subsequent petition for review, the Probate Court can retain the power that it used to have, to overrule the MR and say what is an appropriate placement.

MR. PODOLSKY: (continued)
However, unless you are committed, none of this applies. Including the right to petition for review. Last year's bill specifically said that a person with a guardian must go through the commitment procedures. That is to say if you have a guardian we treat it as involuntary.

This bill says that if there is no "conflict" then it can be done as a voluntary. And if it is done as a voluntary it doesn't go through the commitment procedure, you lose your right to petition for review. That is a major, major change. It undercuts last year's compromise.

REP. TULISANO: We could rewrite that to allow review even in that situation --

MR. PODOLSKY: You could rewrite the bill to allow even the voluntary patient to have review. I believe, however, that the Department would have strong objections to your doing that. But you could certainly do that. The third thing is the problem -- it triggers all this on the question of is there a conflict between the guardian and the ward or the guardian and the next of kin? Who's going to make that determination? The ward by definition has already been found to be in need of a guardian and therefore less than full capacity. The guardian is going to decide it.

The guardian under this bill can be an employee of the Department of Mental Retardation. You've got this whole circle in which a Department employee decides whether or not there is or isn't a conflict, therefore whether or not you are even going to go to probate court in the first place.

REP. TULISANO: Okay, I'll toak to you after the meeting okay?

MR. PODOLSKY: Okay. The other -- bill No. 5319 is the bill implementing the jurisdiction of -- implementing the appellate court. The bill provides for rotating panels of three judges. It seems to me that when you have seven judges with a rotating panel of three, you are inviting a series of inconsistant decisions when you operate on that basis.

I think it would be better either to have panels of five or have a five judge appellate court and have them hear

CONN. DEPARTMENT OF MENTAL RETARDATION
NORTHWEST REGIONAL CENTER
4/06/83

4/7/83

1683

S.B. 1104 Guardianship of M.R. Persons

Mr. Chairman, Committee members, my name is Richard Knierim, and I am Director of Social Services at Northwest Regional Center, Department of Mental Retardation. I am speaking in favor of this this Bill as I feel it will not only benefit mentally retarded persons, but their families as well.

As for the first part of this Bill which would allow DMR employees from other regions to act as guardians, I offer two arguments. Past practice would show us that the courts traditionally appoint family as guardians unless there is a preponderence of evidence indicating that this is not in the retarded persons best interests. There is no reason to believe that this practice would change, and therefore, DMR employees would only be likely to serve in this capacity in the absence of family. Secondly, as DMR employees would not represent retarded persons living in their regions, they would not normally deal with their wards in their job capacities, nor derive any special benefits from their guardianship status. In other words, there would be no conflict of interest. In the absence of a conflict, DMR employees should not be viewed any differently than any other potential guardian.

The second part of this Bill would allow legal guardians to sign voluntary admission papers unless there was a conflict between the guardian and his ward or the wards next of kin. This provision would relieve parents and their adult retarded children of a long, complicated, and often expensive process. Clients and families must now attend at least two court appearances, submit to multiple evaluations, and expend significant sums of money, often for a non-adversary situation which could easily be handled on a voluntary basis. Additionally, due process is protected by the conflict provision if the ward or next of kin (which in most cases is the guardian)disagrees with the admission plan.

In the next few months we shall be opening our new Regional Center facility, and approximately 25% of the beds will be filled with clients coming from the community, from homes urgently needing to have their adult children placed in comprehensive residential programs. It seems a shame that each of these families will have to endure multiple court appearances when they have each documented their long standing requests for placement, some for years, and the MR professionals at the Regional Center agree that their requests are valid and appropriate.

This Bill will allow these families to place their children in a reasonable rational way, while still protecting those other families or retarded persons who are in conflict.

Thank you,

Richard J. Knierim

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

783

1684

TESTIMONY: Public Hearing
Judiciary Committee
Thursday, April 7, 1983
10:00 a.m. - Judiciary Room

My name is Deborah Robinson. I am the Staff Attorney for the Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons. I am here today to express strong opposition to Raised Committee Bill No. 1104 - AN ACT CONCERNING GUARDIANSHIP OF MENTALLY RETARDED PERSONS.

The possibility of allowing employees of the Department of Mental Retardation to act as guardians for persons residing in department facilities creates a clear conflict of interest and should not be considered by this Committee. A person having an interest in the policies of the department is very unlikely to be able to separate that interest from his duties in making decisions on behalf of a mentally retarded ward.

Under existing guardianship law, probate courts can assign various duties to a person appointed guardian, including assuring that the ward lives in the least restrictive setting consistent with safety, assuring that all necessary services are received by the ward, and assuring the ward's care and comfort. This can frequently mean coming into conflict with DMR over the placement and/or programmatic needs of wards. While many DMR employees have the capacity to be excellent guardians, we feel that is is highly unrealistic to expect an employee to enter into conflict with his/her employer over the best interest of a ward. And it should be kept in mind that, in all likelihood, the use of a DMR employee as guardian would occur only where there is no family member or other interested person to oversee the activities of the guardian and ensure

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that the ward's rights are enforced.

The thrust of this bill appears to be in line with the Department's current policy of seeking full guardianships for all of its residents. The effect of this policy is to deny the possibility that the mentally retarded individuals involved may be capable of making some, if not all, decisions regarding their care, and therefore subverts the purpose of the existing guardianship law. Of further concern is the fact that parties who may not be totally independent from the Department are currently being used as guardians. The Department should be discouraged from following this policy, and should certainly not be permitted to extend it as proposed in this Bill.

If there is a need, as there may well be, to find a new vehicle for making guardians available for mentally retarded individuals with no families, Protection and Advocacy would be happy to assist this Committee next session in creating such a vehicle, such as an Office of Public Guardian as found in several other states. But the Bill before you today should be opposed.

1730

4/7/83

ASSOCIATION FOR RETARDED CITIZENS • CONNECTICUT

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Western Connecticut Association for the Handicapped and Retarded
Parents, Friends and Staff of the North Central Region
Association for Retarded Citizens in State Institutions

TESTIMONY IN OPPOSITION TO RCB 1104 - Guardianship of Retarded Persons

April 7, 1983 Committee on Judiciary

I am Barry Bosworth of East Hartford, Chairperson of the Governmental Affairs Committee of the Connecticut Association for Retarded Citizens, and the parent of a mentally retarded daughter.

I am here today to testify in opposition to Raised Committee Bill 1104, "An Act Concerning Guardianship of Mentally Retarded Persons".

This bill would amend a law passed only last year by this Committee. The amendments were drafted by the Department of Mental Retardation last January when the new law had been in effect only three months -- far too short a time, we submit, to determine if changes are needed in a complex measure that had taken several years to develop.

The major change proposed in the bill is to allow employees of the Department of Mental Retardation to serve as guardians or limited guardians of retarded persons residing in DMR facilities, as long as the employee works in a different facility than the one in which the retarded person lives.

We maintain that this is a clear cut conflict of interest. It does not matter if the employee works in a different facility. He is still employed by the same Department that has jurisdiction over the ward. In matters of guardianship, the needs and rights of the ward must be paramount -- but a DMR employee is of necessity bound by the philosophy, policies and by the budget and other constraints of the Department. It does not matter which DMR facility he works in, the departmental constraints are the same throughout the state.

This bill is a result of DMR's totally unnecessary and probably illegal campaign to obtain guardians for all of its residents -- just on the off chance that a resident might require a temporary limited guardian sometime in the future to authorize an elective medical procedure.

cont.

For the first few months that this new law was in effect, there may have been some problems getting temporary guardians, but that problem is easing. For example, the Hartford ARC has adopted a policy on this issue for use by its staff and members, and other ARC's will be following suit. Other options are or can be made available if the need continues.

In the meantime, we urge you not to support an option that clearly presents a conflict of interest.

Thank you.