



# DDS

## State of Connecticut Department of Developmental Services

Dannel P. Malloy  
Governor

Jordan A. Scheff  
Commissioner

Peter Mason  
Deputy Commissioner

### DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY BEFORE THE PUBLIC HEALTH COMMITTEE

February 28, 2018

Senators Gerratana and Somers, Representatives Steinberg and Betts and members of the Public Health Committee. I am Jordan A. Scheff, Commissioner of the Department of Developmental Services (DDS). Thank you for the opportunity to testify on **H.B. No. 5216 AN ACT CONCERNING COMMUNICATION BETWEEN THE DISABILITY RIGHTS ORGANIZATION AND THE DEPARTMENT OF DEVELOPMENTAL SERVICES REGARDING ABUSE OR NEGLECT OF PERSONS WITH DISABILITIES.**

The proposal would require DDS, upon receiving notification of an allegation of abuse or neglect of a person with disabilities by a provider of state-funded services, to provide such person and such person's parent, guardian or other legal representative with information regarding Disability Rights Connecticut (DRCT) which is the nonprofit entity designated by the Governor as the Connecticut protection and advocacy system in accordance with section 46a-10b of the general statutes. Additionally, it requires that DDS shall notify the disability rights organization when it is investigating an allegation of abuse or neglect of a person with disabilities by a provider of state-funded services.

DDS supports the notion that an external monitor is a healthy and productive part of an overall system protecting the rights of individuals with intellectual disability. However, DDS does have some technical concerns with the proposal, and would like to highlight a potential fiscal impact to the designated protection and advocacy agency, and potentially to DDS.

The successful implementation of such law would require a Memorandum of Understanding (MOU) between DDS and DRCT. The MOU would need to address issues of privacy, information sharing, and specific information technology (IT)-related issues. DDS would need to see a number of these issues successfully addressed in order to support this legislation. Potentially, the manner in which this information would lawfully be shared could result in an increased workload for DDS employees. The potential fiscal impact could include a need for clerical support within the DDS Abuse Investigation Division and related IT infrastructure costs.

Individuals supported by DDS and their legal representatives, if applicable, have certain rights, that the proposed bill may unintentionally violate. As to notification, there are many individuals with intellectual disability who do not have a guardian or legal representative (they make their own decisions). It would be unlawful to require that information be shared with anyone not legally authorized to have the information as the proposed bill currently states.

Phone: 860 418-6000 ♦ TDD 860 418-6079 ♦ Fax: 860 418-6001  
460 Capitol Avenue ♦ Hartford, Connecticut 06106  
[www.ct.gov/dds](http://www.ct.gov/dds) ♦ e-mail: [ddsct.co@ct.gov](mailto:ddsct.co@ct.gov)  
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Statutorily, the lead agency for reporting abuse and neglect of individuals with intellectual disability, ages 18 through 59, is DDS. For individuals under 18, the Department of Children and Families (DCF) is responsible. For individuals 60 and older, the responsible agency is the Department of Social Services (DSS). The bill, as currently drafted, is unclear as to the responsibilities of these other state agencies for the reporting of allegations of abuse and neglect to DRCT of an individual with intellectual disability under 18 (DCF) or over 59 (DSS).

DDS does not believe there is an issue with notifying guardians or other persons supporting individuals that DRCT exists and is available to them. Currently, DDS notifies guardians or other legal representatives of an individual with intellectual disability of any allegation of abuse or neglect and then refers them to the appropriate DDS Abuse and Neglect Liaison during the course of the investigation. We also can agree to provide information regarding DRCT to the individual at the same time that this other information is given.

However, subsection (c) of the bill runs up against the privacy and confidentiality provisions established in section 46a-11c CGS, which restricts access to the information in an investigation of abuse or neglect of a person with intellectual disability to the individual and, if applicable, to the individual's legal representative. These confidentiality protections are important so that the individual and any witnesses can come forward without fear of retribution and that the accused can receive a fair and unbiased investigation into the allegations. It is important to note that on average for the past three fiscal years, the substantiation rate for abuse and neglect allegations is approximately 50%.

There also are other privacy and confidentiality considerations to be taken into account including an accused employee's right to challenge the release of information either through interagency agreement or through a Freedom of Information Act (FOIA) request. Even employees who are disciplined for violations have the right to appeal release of confidential personnel information under FOIA. This is because it could be an invasion of their privacy. Under FOIA, you cannot get records of the accused, only substantiated allegations.

It also should be noted that when DDS received a request through the FOIA, for guardians' names and addresses, the department's decision not to provide this information was upheld by the Freedom of Information Commission. In their ruling FIC 2014-547 Families Can't Wait, the Commission stated that disclosure of information about guardians, addresses and the names of those individuals under guardianship violated § 45a-670 CGS. Additionally, the Probate Court Administration has maintained that guardians' addresses and information regarding the individual, for whom they are guardian, are confidential. As currently drafted, this bill would take away family and individuals' rights as to what information is kept confidential.

An additional concern of notifying the DRCT of all investigations of abuse or neglect is that while there are laws that require DDS to keep certain information confidential, DCRT, a private provider agency, does not have any of the same requirements and, therefore, could potentially share otherwise confidential information for advocacy purposes.

Thank you again for the opportunity to offer testimony on [\*\*H.B. No. 5216 AN ACT CONCERNING COMMUNICATION BETWEEN THE DISABILITY RIGHTS ORGANIZATION AND THE DEPARTMENT OF DEVELOPMENTAL SERVICES REGARDING ABUSE OR NEGLECT OF PERSONS WITH DISABILITIES.\*\*](#) I would be happy to answer any questions you have at this time. You may also contact Christine Pollio Cooney, DDS Director of Legislative and Executive Affairs at (860) 418-6066 with additional questions.