



State of Connecticut
Department of Developmental Services

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

March 21, 2018

Senators Doyle and Kissel, Representatives Tong and Rebimbas and members of the Judiciary Committee. I am Jordan A. Scheff, Commissioner of the Department of Developmental Services (DDS). Thank you for the opportunity to submit testimony in opposition to **H.B. No. 5552 AN ACT CONCERNING COURT REVIEW OF AN AGENCY DECISION UNDER THE UNIFORM ADMINISTRATIVE PROCEDURES ACT.**

The Uniform Administrative Procedures Act (UAPA) codifies the procedure for adjudications by Administrative Agencies. Administrative law is predicated upon the designation to administrative agencies which have the expertise, often unique to that agency, to adjudicate issues related to the purpose of the agency. At DDS, independent hearing officers, who are attorneys and not employees of the State, perform that task, adjudicating cases that require a high level of expertise, experience and access to specific information. Such cases include interpretation of matters involving individuals with intellectual disability supported by DDS, including the ability to ascertain the reliability of reports of abuse and neglect, including those made by individuals supported by DDS. Cases also include interpretations of individual behavior plans, the use of restraints, and other matters which require a high degree of skill and the ability to actually observe witnesses to determine their credibility, reliability, and ability to observe. The bill, as written, transfers these very important determinations to a court, so as to require that the court become expert in all areas of administrative law for all administrative agencies in the Connecticut. The court would be required to determine preponderance of the evidence, which requires both weighing of the evidence and credibility determinations. This bill, if enacted, would undermine the long history of administrative law that ensures that state agencies apply the requisite expertise and experience to administrative hearing decisions.

DDS currently holds UAPA hearings for (1) eligibility determinations, (2) priority status, (3) referral to the DDS Abuse and Neglect Registry, (4) Medicaid waiver determinations, (5) objections to transfers, and (6) community companion home licensing decisions.

Specifically, in DDS cases involving allegations of abuse or neglect that have proceeded to an administrative hearing already involve several months from the time the incident has been reported until a final decision is made by the agency, which may give rise to opportunities for more incidents of abuse or neglect of the individual. Encouraging the filing of appeals by a respondent seeking a second bite at the apple would result in longer delays while a case is processed through the court. This prolonged

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court process would result in employees who have abused or neglected individuals continuing to work in the field pending a final court resolution. Such delay will unnecessarily place DDS-supported individuals at risk.

It is worth noting that there is already a comprehensive appeal process for all administrative agencies. Those appeals are filed in the Superior Court. The standards that the courts have applied, in conformity with the UAPA, afford the courts the necessary discretion to review the decisions of the administrative agencies and issue whatever orders are appropriate, including remand. If the bill were to become law, the courts would have the unenviable task of reweighing the evidence in every appeal filed. Currently, when an appeal is filed, and while a case is pending, a respondent who has already been determined to have abused or neglected an individual with intellectual disability typically seeks to have the court issue a “stay” order whereby the employee’s name must be removed from the DDS Abuse and Neglect Registry pending the appeal’s final determination. A final determination may take months after the appeal is filed with the court due to the court’s calendar, process, and attorneys requesting continuances and extensions.

While the current appeals process in certain cases can lead to delays in placing a person’s name on the DDS Abuse and Neglect Registry, the proposed language of the bill, if enacted, would increase the number of appeals brought before the court because now a court would be permitted, even required, to reverse an agency’s decision if the reviewing court determined that the agency’s factual findings were erroneous by a “preponderance of the evidence.” The current standard for an appeal is, if the hearing officer’s factual findings are “clearly erroneous”, or that the administrative decision is “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” The revised standard for seeking an appeal would increase the number of employees who appealed and would prolong the appeals process and thereby substantially increase the time a person, who already has been substantiated for abuse or neglect, can continue to work with vulnerable individuals.

Thank you again for the opportunity to offer testimony on [H.B. No. 5552](#) **AN ACT CONCERNING COURT REVIEW OF AN AGENCY DECISION UNDER THE UNIFORM ADMINISTRATIVE PROCEDURES ACT**. If you have any questions, please contact Christine Pollio Cooney, DDS Director of Legislative and Executive Affairs at (860) 418-6066.