



STATE OF CONNECTICUT
DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
A Healthcare Service Agency

M. Jodi Rell
Governor

Patricia A. Rehmer, MSN
Commissioner

Memorandum:

TO: Judiciary Committee

FROM: Michael Norko, MD
Director of Forensic Services

DATE: March 15, 2010

SUBJECT: **S.B. 447, An Act Concerning the Appointment of a Guardian Ad Litem for an Adult Who is Subject to a Conservatorship or a Conservatorship Proceeding**

Sen. Mc Donald, Rep. Lawlor and distinguished members of the Judiciary Committee, thank you for the opportunity to submit written testimony on **S.B. 447, An Act Concerning the Appointment of a Guardian Ad Litem for an Adult Who is Subject to a Conservatorship or a Conservatorship Proceeding**. DMHAS has some concerns regarding the proposed legislation before you.

DMHAS clients are occasionally subject to civil proceedings for termination of parental rights. Often when that occurs, the family court requests an evaluation of the parent's competence to participate in the proceedings. The ability to "express a preference" to the attorney representing the parent (as addressed in this bill) is only one of several factors that must be considered. An individual may be able to express a preference, but not truly have the cognitive or emotional ability to appreciate the nature of the proceedings. For example, someone may have delusional beliefs about the proceedings and therefore misunderstand the gravity of their situation. The person's thought processes may be impaired by mental illness. The person may not be motivated to fully pursue legal arguments due to depression.

In the mental health field, we consider the ability to express a preference as the lowest possible threshold for competence, to make treatment decisions. We use progressively higher standards as the potential risks to the individual increase; ability to understand the relevant information about the situation; ability to appreciate the relevant information as it applies to the individual; and finally ability to engage in a rational decision-making process in reaching a decision. Termination of parental rights is a serious matter warranting a standard higher than the absolute minimum.

In circumstances where the individual is not competent to participate in termination proceedings, the court may allow the individual to pursue treatment to restore his/her full ability to participate, or it may appoint a guardian ad litem to represent the individual's interests by proxy. Although we recognize that there may be times in which the interaction between a GAL and an attorney may be duplicative or even contentious, reducing the standard in the way this bill anticipates creates the real possibility that significant limitations in competence to fully understand and appreciate the legal proceedings will go unchecked. The result may be that, in some cases, the individual with psychiatric or developmental disabilities may not have their rights as fully protected as they are now in the current system.

We therefore urge the committee's caution about proceeding with this bill as currently articulated. It may be fruitful to have more discussion about these risks (including a mental health advocacy perspective) before enacting legislation that would change the way we try to safeguard the rights of individuals with psychiatric disabilities in family court at the present. The current procedures may not be ideal, but we would ask that you consider the risk of losing valuable protections by moving to a system based on ability to express preferences alone. The current system allows judges to make determinations on a case by case basis of the best interests of the incompetent person. This bill may tie the courts' hands when the individual is able to express a preference but has other significant limitations that impede full participation in significant legal proceedings.

Thank you for the opportunity to submit testimony to the Committee on this bill.