STATE OF CONNECTICUT

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PERSONS WITH DISABILITIES
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Testimony of the Office of Protection and Advocacy for Persons with Disabilities
For the Committee on Public Health
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Submitted by James D. McGaughey
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Thank you for this opportunity to comment on **Raised Bill No. 1068, AN ACT CONCERNING PATIENT RIGHTS AT WHITING FORENSIC DIVISION.** This bill would amend the part of the General Statutes commonly referred to as the Patient's Bill of Rights. Specifically, it would permit the director of the Whiting Forensic Division of the Department of Mental Health and Addiction Services (DMHAS) to establish policies limiting the availability of certain rights for patients in that division's maximum security facility. The director could issue such policies if he or she "deems it necessary in order to control contraband, maintain maximum security conditions, or protect the safety and security of patients, staff and visitors…". The bill would require that those policies be reviewed by DMHAS' medical director and the director of forensic services.

Our office opposes this measure for the following reasons:

1. The very section of the statutes that this bill seeks to amend already recognizes an exception for Whiting Division patients that should address any concerns about contraband material. (See Section 17a-548(a), which recognizes an exception to the general right to keep and use personal possessions, including toilet articles.)
2. The same statutory section also permits the superintendent or director of any facility to limit or deny individual rights if it is determined that it is medically harmful to the patient to allow him or her to exercise those rights. Between these two existing exceptions, the director has ample authority to maintain maximum security conditions and protect the safety and security of patients, staff and visitors.
3. Even when they may reflect legitimate concerns about some individuals served in a particular setting, restrictive policies that will necessarily apply to all of the people served in that setting raise significant human rights concerns. Before being issued, any such policies should be considered and vigorously discussed by a human rights committee similar to those used in various other program settings. Such committees usually include knowledgeable client advocates, attorneys and others concerned with ethical treatment. However, the bill does not call for the creation of a human rights committee or for recourse to any other external safeguard that could limit possible administrative overreaching.
4. The proposed internal review process is inadequate. Policies that would restrict the exercise of fundamental rights that are available to other patients in the DMHAS system ought to be subject to review by the DMHAS commissioner. The medical director and the forensic director may contribute insight in the review process, but the commissioner

has clear authority over Whiting, and is in the best position to weigh the impact of any proposed restrictive policies on the system as a whole.

5. Whiting is a DMHAS hospital, not a prison. While some of its patients are referred from correctional facilities, and some are subject to supervision by the Psychiatric Security Review Board, there are others who have never been accused of a crime, much less convicted (or found not guilty of crimes by reason of mental illness). This later group is comprised of people who are committed to DMHAS' care but are thought to need a high level of security. No matter how they get there, however, all are considered to be hospital patients, not prison inmates. And, to the maximum extent possible, the Patients' Bill of Rights ought to apply to them.

The Patients' Bill of Rights protects the basic civil and human rights of people with psychiatric disabilities in treatment programs and facilities. It also helps to hold those facilities to acceptable standards of decent, respectful and humane treatment. Indeed, without an explicit expression of patient rights that reminds us of our common humanity, and sets some limits on the extent to which a facility may intrude on personal rights, conditions in psychiatric facilities could eventually deteriorate to the unacceptable levels that used to characterize the "back wards" of old state mental hospitals. This risk would seem to be especially high in a "maximum security" forensic facility, where patients are surrounded by powerful myths and images of dangerousness, and few "outsiders" come for tours or visits. I urge you to be conscious of this risk as you consider this bill, and that you not authorize any one person to essentially suspend important provisions of the Bill of Rights for the patients at Whiting.

Thank you for considering these comments. If there are any questions, I will try to answer them promptly.