

**Testimony before the House Finance Human Services Subcommittee on House Bill 1**

Ohio Legal Rights Service

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Executive Director

Madame Chair, members of the committee:

Thank you for this opportunity to testify today in support of House Bill 1, the biennial budget bill, and specifically with regard to the executive proposals related to the Ohio Legal Rights Service (LRS) and the LRS Commission (commission).

My name is Michael Kirkman and I am the Executive Director of the LRS. The agency was created under state law in 1976, with its statutory charter at section 5123.60 of the Revised Code. By law it is independent of the attorney general, and the departments of MR/DD and mental health.

In 1980, LRS was designated by the Governor to be the federally required protection and advocacy system to protect the legal rights for people with disabilities, otherwise known as the "P&A." In 1998, the Governor also designated LRS as the federal Client Assistance Program, or "CAP". CAP is a sister program to the P&A, and advocates for people with disabilities within the vocational rehabilitation and independent living systems. LRS currently administers eight protection and advocacy programs and the CAP under federal law, and has competitively bid with the Social Security Administration for a grant to assist Ohioans with disabilities in 31 counties with benefit planning necessary to obtain gainful employment.

The agency's governing authority is the Ohio Legal Rights Service Commission, which has seven members. The Chair is appointed by the Chief Justice of the Supreme Court; three members are appointed by the Speaker of the House; three members are appointed by the President of the Senate.

When I last appeared before this body, in March of 2007, my tenure as a new executive director had been a mere six weeks, and that testimony focused on the need to make the agency more accountable to clients, the Commission, and its appointing authorities. The Commission and I have vigorously pursued that goal, and I can report to you today that the agency is in full compliance with controlling statutes, and that all fiscal and administrative concerns raised by the 2002 Program Audit have been resolved. For example, all employees are now working in the correct classification, a process that took almost two years to accomplish and involved OBM, DAS, Office of Collective Bargaining, and negotiations with representatives of the employees' collective bargaining representative.

Most importantly, I can also report to you that our service to clients is more robust than ever. We have developed an improved, professional, intake unit. Short term assistance, including referrals, follow up, information and referral, and legal advice, is being provided to more clients than ever through this new "front door". The unit is now fully staffed, with two bachelor level specialists and a masters level supervisor responsible for initial client interviews and resolution of non-priority matters. Also in that unit are a resource attorney and a special education advocate to provide additional assistance, including some negotiation on behalf of clients whose issues do not otherwise fall into LRS' work priorities. The unit is supervised by the agency's Chief Legal Counsel, Susan Tobin, who has over 25 years of experience in representing LRS and its clients.

**Priorities / case work** -- The priorities I referenced are required by federal law, and are important to efficient management of our work. I am most pleased to report that the current set of priorities (we refer to them as themes) was developed strategically, through a process that was designed to maximize outreach to and input from Ohioans with disabilities and their families. These were developed at a first time ever joint meeting of staff, the Commission, and the PAIMI Advisory Council. The Council, which is mandated by the federal P&A for clients with psychiatric disabilities, is made up of a majority of people who are receiving or have received services. These themes, which are designed to stretch across several years, are reflective of the issues that our clients told us most affect their lives.

For example, the agency's staff is now establishing more of a presence in county jails, after the mental health advisory council and others, including NAMI Ohio, focused our attention on the number of people with psychiatric diagnoses who are in jail, and how often there are problems with obtaining appropriate treatment. To facilitate that work, the agency has now begun a dialogue with the state's sheriff's association to develop a protocol for use in jails when LRS staff seeks to investigate a complaint or visit a client. We appreciate the willingness of the state's sheriffs to work with us to develop this protocol.

There is more, but for that I would refer you to the 2007-2008 annual report that is in your packet. The report captures the diversity of LRS' individual case work. It also demonstrates how effective LRS can be when it seeks to represent its clients' interests at a policy level. In these matters we are sometimes the only voice for our clients, and we strive to be both consistent and persistent in protecting their interests.

A good example is the area of children's Medicaid, referred to as EPSDT and in Ohio as HealthCheck. After years of achieving success in obtaining services that were designed to "correct or ameliorate" conditions by representing individual clients, and after preliminary negotiations with ODJFS officials in the Taft administration, LRS and its Commission agreed that class action litigation was necessary to attempt to resolve structural problems with Ohio's EPSDT program. That case is currently pending in the U.S. District Court for the Southern District of Ohio. It focuses on the fact that notices to parents are inadequate; county staff was not properly trained and were unaware of the proper scope of the program or how to access payment for services; and that state officials had created a system of "prior authorization" where it was, essentially, impossible to obtain services that are required under federal law. The case is now in court ordered mediation, and a settlement may be forthcoming that will directly benefit thousands of children in Ohio who have medical needs.

Even as that case was pending, however, it was necessary to return to court to preserve services for children with Autism. U.S. District Judge James Graham agreed with LRS attorneys that Ohio must provide medically necessary services to these children, and issued a preliminary injunction to prevent the state from halting services. The opinion is in your packet. That litigation, *PLEAS v. Lumpkin*, is currently on appeal to the Sixth Circuit U.S. Court of Appeals, where a broad array of national and state legal advocacy groups and health providers filed a friend of the court brief in support of the judge's ruling.

Another area where challenges continue to face our clients is in voting, and the agency ran a very successful 'hotline' during the November election. LRS staff were also successful in obtaining post elections accommodations for voters in Franklin County who needed to verify information on their absentee ballots, and a copy of that opinion order is also in your packet.

Our policy work is also reflected in the most recent newsletter, and the work that the agency has accomplished related to abuse and use restraint on children. We greatly appreciate the Governor's call for a statewide, uniform, policy regarding this issue, and I spoke personally with Director John Martin of MR/DD to offer whatever support and assistance the agency can offer to him in that work. We have strongly encouraged the Governor to eliminate prone restraint or any other restraint that restricts breathing across service platforms.

Our investigative work is accomplished in significant part by the Ombudsman Section, which was created by this body in 1986 to pursue non-legal dispute resolution of rights violations and abuse and neglect of people with developmental and psychiatric disabilities. Even as the section is given a

strong mandate, funding has lagged, and you may note that this year's funding is a small fraction from even the past two biennium. We encourage the House to review this and to determine if additional funding for this critical work can be appropriated.

**Transition study** -- Finally, let me speak to the language in the bill that directs the Commission to conduct a study and make a recommendation to the Governor and leadership in the General Assembly by December 31, 2009, on the proper service model for protection and advocacy and Ombudsman services for people with disabilities in Ohio. LRS and the Commission support the study, which was not part of the original proposal by the Governor's office. We view this as an important opportunity to involve people with disabilities and their families as we evaluate the proposal.

The study will review four areas:

1. the feasibility of a transition to a nonprofit organization;
2. the potential effects on service delivery, including client service and access to required resources, and any other service delivery advantages or disadvantages that might result from the transition to a nonprofit organization;
3. potential organizational effects, including cost savings and non-state funding sources, and any other organizational advantages or disadvantages that might result from the transition to a nonprofit organization; and
4. the approximate amount of time necessary to achieve a transition to nonprofit status.

The proposal also requires the Commission to develop and submit a process plan for the proposed transition. Once complete, the results will be sent to the Governor and the legislative leadership, both majority and minority, in both houses.

The idea of a study grew out of meetings and conversations with the Governor's office and OBM, which had originally proposed a transition that would occur by the end of state fiscal year 2011, and included a transition of the GRF funded Ombudsman to the Office of the Long Term Care Ombudsman at the Ohio Department of Aging. The LRS Commission, concerned that any transition might diminish the agency's authority on behalf of clients, adopted a position supporting the continued existence of the P&A system in state government. Discussion demonstrated that the administration held a genuine concern that any transition should not interfere with representation for the P&A's clients, individually or at a policy level. At the same time, OBM noted that LRS' unique function, providing direct representation to individual clients, as well as the required compliance with federal P&A statutes and regulations, presents potential conflicts in several areas.

Over the last two years, for example, LRS, the Governor's staff and DAS have had several discussions regarding the federal statute mandating independence for the P&A in hiring and management of personnel. Similarly, there has been regular discussion with OBM regarding the OAKS system, and the necessary journal transfers to permit LRS to manage federal cash for payroll. There is also a question, still unresolved, related to confidential storage and management of electronic client records, including emails.

Framed differently, the question is whether the federal P&A mandates can continue to be accommodated in state government, particularly as the Governor seeks to consolidate and streamline commission and board administrative functions at DAS. It is this and other questions that the study will answer.

The agency is convinced that this study must be approached strategically, including involvement of Ohioans with disabilities and their families; relevant constituencies; and the dedicated, knowledgeable, and experienced staff at the LRS. This is consistent with federal law, which requires that there be an opportunity for public comment before a Governor can change the designation of the P&A.

Thank you for your attention, and I will be glad to answer any questions the Committee may have.