

**Testimony before the Senate Finance and Financial Institutions Committee
on Substitute House Bill 1**

Ohio Legal Rights Service

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Executive Director

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Chairman Carey, Ranking member Miller, members of the committee:

Thank you for this opportunity to testify today in support of Amended Substitute House Bill 1, the biennial budget bill. My name is Michael Kirkman and I am the Executive Director of the Legal Rights Service.

As you know, the Legal Rights Service is charged by both state and federal law to protect and advocate for the civil and human rights of people with disabilities. In partnership with its clients, people with disabilities, the Legal Rights Service meets this charge by providing direct legal representation of clients, investigating abuse or neglect in both institutions and in the community, and by systems advocacy, including review and comment on both administrative rules and legislation.

The Legal Rights Service currently administers eight federal "protection and advocacy" or "P&A" programs along with the Client Assistance Program or "CAP" under federal law. It also has competitively bid with the Social Security Administration for a grant to assist Ohioans with disabilities in 31 counties to assist them with benefit planning necessary to obtain gainful employment. It also manages a state funded Ombudsman unit, charged by law with non-legal resolution of significant rights violations and complaints related to abuse or neglect of people with developmental disabilities or mental illness.

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. We also are guided in our work by the Protection and Advocacy for Individuals with Mental Illness or "PAIMI" Advisory Council. As required by federal law, these two groups participate in and approve the programs' priority development each year.

Since my appointment in February of 2007, the Commission and I have vigorously pursued the goal to make the agency more accountable to clients, the Commission, and its appointing authorities. 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.

Improved client service -- Most importantly, I can also report to you that our service to clients is more robust than ever. Under priorities that were developed in strategic collaboration with people with disabilities and their advocates, we now have focused our work in six thematic areas that take our staff of lawyers, advocates, and Ombuds where our clients live. Thus, we continue to maintain a presence in the state's developmental centers and psychiatric hospitals. But we are just as likely to be investigating a case at a state prison or county jail where, sadly, many people with disabilities are now confined, often without needed services or accommodations. This change resulted directly from input from clients and, in particular, the PAIMI Advisory Council.

Also, again in collaboration with our client communities, we have reinvigorated our work in

- employment, particularly cases involving return to work;

- education of children and adults with disabilities; and
- community integration of people with disabilities.

It is important to note that Ohio continues to illegally segregate thousands of individuals who want to and could be served more appropriately in an integrated setting. After the settlement of the long running *Nancy Martin v Strickland* litigation, we have now turned our focus in this area to the several thousand individuals with brain injury, or physical or psychiatric disabilities who have been placed, inappropriately and in violation of federal law, in the state's nursing facilities.

The agency's structure is now more "customer friendly." A dedicated, professional, intake unit provides short term assistance, including referrals, follow up, information and referral, and legal advice. This new "front door" includes 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 the agency's priority themes. The unit is supervised by the agency's Chief Legal Counsel, Susan Tobin, who has over 25 years of experience in representing people with disabilities.

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 the agency's individual case work. It also demonstrates how effective the agency 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 in federal law as EPSDT and in Ohio as HealthCheck. Children with disabilities rely on this program for needed health care and related services, such as physical and occupational therapy. After preliminary negotiations with ODJFS officials, our office brought a class action case to address structural deficiencies in the program. The case focuses on the fact that notices to parents are inadequate; county staff is not properly trained and is often unaware of the proper scope of the program or how to access payment for services; and that state officials have created a system of "prior authorization" where it is, essentially, impossible to obtain services that are required under federal law. The case is now in court ordered mediation, and we are hopeful for an outcome that will directly benefit thousands of children with disabilities 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 Legal Rights Service attorneys that Ohio must provide medically necessary services to children with the most significant behavioral needs and issued a preliminary injunction to prevent the state from halting services. The opinion is in your packet. The state appealed that order, and the case was argued a week ago at the Sixth Circuit U.S. Court of Appeals. 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 our clients face continuing challenges is in voting. The agency ran a very successful 'hotline' during the November election, assisting over twenty voters in

resolving on the ground difficulties and providing information and referral to many others. Legal Rights Service attorneys were 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.

We have learned over the years that vigilance is always necessary, and that some problems never truly mitigate. The restraint related death of a child with a disability at a Youth Services licensee has prompted a state wide review of the use of restraint, and particularly prone restraints or restraints that block the airway. We applaud that review, and welcome the inclusion of the Department of Education, which has ignored this issue for many years. The Ombuds / Abuse and Neglect Unit is monitoring the progress of this task force.

Our investigative work is accomplished in significant part by the Ombudsman Section, which was created by this body in 1986. Even as that 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 Senate to review this and to determine if additional funding for this critical work can be appropriated.

The agency must also be a good steward of the federal program dollars, and this occasionally results in receipt of attorneys' fees reimbursed to the agency when one of our clients is a prevailing party in a case. This money is managed in the 5MO line item. Because of the increased number of cases where we anticipate a fees award or settlement involving receipt of fees and costs, I am asking that the appropriation in this line be increased to \$200,000 in order to create sufficient spending authority for these federal dollars.

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, within six months, on the proper service model for protection and advocacy and Ombudsman services for people with disabilities in Ohio.

The proposed 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 any transition. Once complete, the results will be sent to the Governor and the legislative leadership, both majority and minority, in both houses.

This proposal, which originated in the Governor's office and with OBM, reflects ongoing discussions between the Legal Rights Service and the administration. OBM has noted that the unique function of the P&A, i.e. providing direct representation to individual clients, as well as the required compliance with federal P&A statutes and regulations, presents potential conflicts with the administration's practices in several areas. For example, the federal statute mandating independence for the P&A in hiring and management of personnel has been a source of conflict with the periodic hiring freezes imposed by the administration. Other administrative restrictions, such as the recent freeze on contractors, would violate federal law if applied to the federal P&A function. OBM also pointed to interactions with the OAKS system, such as the regular journal transfers necessary to manage federal cash for payroll. Another area of potential conflict, still unresolved, is the disagreement between OIT and the agency related to confidential storage and management of electronic client records, including client communication in the form of emails.

Ohio is one of only a handful of states that place the P&A in state government -- almost all other states and territories designate non-profits. 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 IT and other "back door" functions at DAS. It is this and other questions that a study will answer.

The Legal Rights Service Commission, concerned that any transition might diminish the agency's authority on behalf of clients, has adopted a position supporting the continued existence of the P&A system in state government. The Commission has also taken the position that any transition must provide for the well-being of the experienced and dedicated Legal Rights Service staff.

Any study must address these very questions. The study must also seek out the views of Ohioans with disabilities and their families; relevant constituencies; and the knowledgeable staff at the agency. 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. Thus, the Commission is seeking additional time to conduct the study, a full year rather than six months.

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