

**Testimony of the Ohio Legal Rights Service
before the Senate Finance Committee
on Substitute House Bill 153**

Michael Kirkman
Executive Director

May 5, 2011

Chairman Widener, Ranking Member Skindell, members of the committee:

My name is Michael Kirkman and I am the Executive Director of the Ohio Legal Rights Service. Thank you for this opportunity to testify today regarding House Substitute Bill 153, the biennial budget bill, and specifically with regard to the provisions related to the Legal Rights Service (LRS) and the Legal Rights Service Commission (Commission).

The agency was created under state law in 1976, with its statutory charter at section 5123.60 of the Revised Code. The Commission is the agency's governing authority and has seven members. Ohio was ahead of much of the rest of the nation by creating LRS to protect and advocate the rights of people with disabilities. It was not until three years later, in 1978, that the Congress required each state to have a Protection and Advocacy "system" or "P&A" in place to protect the legal rights of people with developmental disabilities (PADD). By that time, LRS attorneys had already filed federal class action law suits alleging unconstitutional conditions at Apple Creek and Orient Developmental Centers; both cases were successfully resolved. This was the beginning of strong and principled client directed advocacy by the agency that continues to this day.

LRS was designated by Governor Rhodes under the federal law to be Ohio's P&A system. Congress has since expanded P&A services to people who are receiving or have received mental health treatment (PAIMI); and people with other disabilities (PAIR). More recently, Congress has created subject matter specific grants related to people with brain injury (PATBI), people who need assistive technology (PAAT), social security beneficiaries who seek to return to work (PABSS), and to assist in protection of voting rights (PAVA). LRS is also the Client Assistance Program (CAP), a companion program for people applying for or receiving services under the Rehabilitation Act; 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 (WIPA), and has recently successfully implemented a contract from the Social Security Administration that authorizes our staff to investigate fiscal exploitation of beneficiaries by representative payees who are also the person's employer. In the last two years, LRS has successfully competed for grants from the Ohio State Bar Foundation (web redesign to enable a juvenile justice / special education web tutorial); the Developmental Disabilities Council (DD Quarterly newsletter collaboration); Easter Seals (legal support for emergency preparedness publications); and Project Vote (training of trainers for self-advocates on voting rights for people with disabilities).

This diversity of funding has allowed LRS to expand its services to clients even as its state funded activities have received reduced funding through the last several biennium budgets. Remaining flexible and managing diverse funding streams is now the hallmark of a good P&A system, but is challenging as a state agency. Other challenges exist, including protecting client confidences and privileges in a public environment, and the federally required independence in personnel matters.

As a response to these challenges, the last biennial budget required the Commission to study the feasibility of transferring the P&A and CAP functions to a non-profit corporation. That study was completed and a report issued in January of 2010. After conducting surveys and focus groups, meeting with staff and interested parties, and reviewing materials from other states where such a transition has taken place (LRS is one of only eight remaining state agency P&As), the Commission concluded that a transition was feasible, but that no compelling reason existed for it to occur at that time. The report also concluded, however, that should a transition be considered "the Commission will diligently work with the Governor's office and federal regulators on the terms and

timing of any transition with the ultimate goal of ensuring that the Ohio P&A and CAP serve clients in as robust a manner as is possible."

As discussion began between LRS and OBM staff on the agency's 2012-2013 budget, it quickly became apparent to us that the conclusion that a transition was "feasible" was central to the new administration's review. LRS staff and members of the Commission provided OBM with information on the federal redesignation process and the importance of maintaining system authority and capacity in any transition, as concluded by the study. The full Commission unanimously passed a resolution (copy provided) that concluded that "it is inevitable that LRS will be transitioned to a non-profit corporation," and approved drafting language and providing other assistance as necessary "to transition LRS to a non-profit corporation in such a way as to protect the clients and employees of LRS and to ensure that LRS has meaningful input in this eventual and ongoing process."

As a result of these conversations, the Executive Budget recommended that LRS effect the transition, and stated that the state will "[s]upport ongoing operations through September 30, 2012 to provide time for the agency to plan a transition to a non-profit organization effective October 1, 2012." The budget bill itself reflected a broader consensus of OBM officials and LRS that included three key requirements, and the bill that will pass the House contains language to effect those requirements.

The bill maintains a strong advocacy agency by preserving the experience and knowledge of the current LRS staff. Because no other existing agency has the system capacity or the experience with managing federal P&A and CAP grants and client work, temporary language is included authorizing the administrator of LRS to create and develop a new non-profit organization that eventually will become the P&A / CAP designee in Ohio, and requiring the Governor to designate this corporation once it meets the requirements of federal law. This allows for preservation of institutional capacity, and in particular the retention of experienced, trained, and dedicated staff, both during and after the transition. It also allows LRS and the non-profit it creates to manage the transition consistently with federal mandates, and in a cooperative manner with the Governor's office and the federal grant authorities.

Second, the bill contains permanent statutory change effective October 1, 2012, establishing the non-profit as Ohio's protection and advocacy system, and preserving key state law authority necessary for the system to function effectively in pursuing its mandate, including critical access to records for investigation of abuse, neglect, or significant rights violations. The language also maintains strong protection for confidentiality of client records.

Other changes appear to remove authority for the P&A, but in fact are tied to out of date activities, such as "best interest" reviews in civil commitments. Other provisions were unique to a governmental agency, such as rule making authority over state hospital rights notification, and are already governed by other provisions in law.

Finally, the bill will make appropriations for the agency's work, including funding near FY 2011 levels for the GRF and OMB line items in FY 2012. It provides authority to use those dollars for transition purposes, necessary because of limitations on the use of federal funds for transition costs. I am very grateful for the willingness of the Executive and the House to allow us the funds to conduct necessary transition activities.

Appropriations for LRS end on September 30, 2012, anticipating that the new P&A / CAP will be fully operational on October 1. (These dates are tied to the federal fiscal year.) This "flip the switch" approach allows LRS to close its doors one day, and the new entity to open the same door

the next with the same mission, vision, and capability that has created such a long and esteemed history, but in a non-profit corporation rather than a state agency.

There are many details that remain to be worked out. We know from recent experience in other states that the federal grant officials will be closely involved in oversight of this process, including board composition, grants management, and fiscal capacity of the new P&A, as well as ultimately approving the formal redesignation by the Governor in 2012.

But, at the end of the day, the transition is not only feasible, but can result in new vigor and independence for the P&A and CAP for Ohioans with disabilities. And while some of us who have a long history with LRS will pause to reflect as it closes its doors, we also see the opportunity that is presented in the prospect of doing this important work as a private entity, outside the fetters of a state bureaucracy. Thus, staff and the Commission are committed to the transition, and to ensuring that the new P&A will be robust and effective for our clients.

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