

CONNECTICUT LEGAL RIGHTS PROJECT

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Housing Committee Public Hearing February 17, 2015 Testimony of Kathleen Flaherty, Associate Executive Director Connecticut Legal Rights Project

**Against: SB 888, HB 6759
Support with concerns: HB 6756, HB 6757**

The Connecticut Legal Rights Project (CLRP) is a legal services organization that advocates for low-income individuals in institutions and in the community throughout the state who have, or are perceived to have, psychiatric disabilities. We support initiatives that integrate individuals into the community.

CLRP opposes SB 888 because, as written, it is based on a premise which is fundamentally unsound and may violate the rights of tenants under the Connecticut Constitution and state and federal fair housing laws. The bill has a worthy purpose: ensuring adequate and safe state-assisted housing for the elderly and younger persons with disabilities. However, the fact that the bill includes language stating that the requested report include “[r]ecommendations concerning the feasibility and means of providing comparable housing to tenants who are displaced due to units being reserved in such housing primarily for either the elderly or younger tenants with disabilities” is problematic. As we have explained in our testimony regarding other proposed bills earlier this session, elderly housing in Connecticut has had as its stated purpose, for more than 50 years, serving the needs of both people with disabilities and older adults. Reserving such housing primarily for either older people or people with disabilities promotes segregation based on age, disability, or both – in violation of rights protected under the state constitution, fair housing laws, and the Americans with Disabilities Act. ¹ **People**

¹ ARTICLE XXI of the Amendments of the Connecticut State Constitution, adopted November 28, 1984, reads as follows:

“Article fifth of the amendments to the constitution is amended to read as follows: No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.”

This language means that people living with physical or mental disabilities are a protected class under the state constitution, and any change to this protection cannot be removed by simply enacting a new statute – a proposal to amend the constitution pursuant to Article XII (as amended by Article VI of the amendments to the Constitution) is required.

of all ages, abilities and family compositions should live in communities with a variety of people and oppose any move to separate or segregate people.

The Commissioners of the Department of Housing and the Department of Mental Health and Addiction Services recently met to discuss how they, in concert, can better address the needs of tenants in such housing.

We note also that the statute already provides authority to conduct a study as suggested in the proposed bill at § 8-68. Probably the only change necessary would be to change Commissioner of Economic and Community Development to Housing, as has been done in many other places in the General Statutes.²

C.G.S. §8-114d covers the ability to award grants to providers of “elderly housing” for resident service coordinators and sets out their responsibilities.³

² **Sec. 8-68. Housing research and studies.** In addition to its other powers, any housing authority, within its area of operation, or the Commissioner of Economic and Community Development may undertake and carry out studies and analyses of the housing needs and of the meeting of such needs, including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sale prices, employment, wages and other factors affecting the local housing needs and the meeting thereof; may make the results of such studies and analyses available to the public and the building, housing and supply industries, and may engage in research and disseminate information on the subject of housing.

³ **Sec. 8-114d. Resident services coordinators.** (a) The Commissioner of Economic and Community Development shall award grants-in-aid to housing authorities, municipal developers, nonprofit corporations and housing partnerships operating elderly housing projects pursuant to this part to hire resident services coordinators to (1) facilitate conflict resolution between residents, including between seniors and younger residents, (2) establish and maintain relationships with community service providers and link residents to appropriate community services, (3) act as a liaison to assist in problem solving, (4) assist residents of such housing to maintain an independent living status, (5) assess the individual needs of residents of such housing for the purpose of establishing and maintaining support services, (6) provide orientation services to new residents and maintain regular contact with residents of such housing, (7) monitor the delivery of support services to residents of such housing, (8) organize resident activities and meetings that promote socialization among all residents, and (9) advocate changes in services sought or required by residents of such housing. The commissioner shall award grants-in-aid based on demonstration of need and availability of matching funds. A joint application made by more than one housing authority, municipal developer, nonprofit corporation or housing partnership shall have the same preference as an application made by one housing authority, municipal developer, nonprofit corporation or housing partnership.

(b) The employment of resident services coordinators by a housing authority, municipal developer, nonprofit corporation or housing partnership operating elderly housing projects pursuant to this part shall be considered an allowable expense.

(c) The Commissioner of Economic and Community Development may convene monthly meetings of the resident services coordinators for in-service training and information sharing. Training topics shall include, but not be limited to, the health care needs of seniors and persons

Subsection (a)(5) of Bill 888 requires a summary of the number of negative incidents between elderly tenants and younger tenants with disabilities from calendar years 2010 to 2014, inclusive and the number of evictions relate to such incidents. In order for the information sought in subsection (a)(5) to be meaningful, a summary of **all** negative incidents should be provided for the same time periods, to determine such incidents are actually an issue.

CLRP supports HB 6756 but has serious concerns. The bill requires that the Commissioner of Housing “establish a pilot program to provide temporary shelter to homeless persons who are recovering from injury or illness.” This is not a bad thing in and of itself, but Connecticut has already set a goal of eliminating homelessness – permanently. That can only happen when people have permanent housing, with available supports. This bill sets up a structure that provides only temporary shelter for those recovering from injury or illness, and seems to run counter to the goal of eliminating homelessness. Connecticut should not establish additional programs that, by their very definition, would allow homelessness to continue or re-occur (since the shelter seems to be provided only during the time of recuperation) – but instead should invest its resources in permanent supportive housing.

CLRP supports the purpose of HB 6757 but has several concerns about the language of the bill. CLRP welcomes the establishment of guidelines and limitations concerning the disclosure of information of Department of Housing program applicants and participants. The proposed language would apply to information held by those agencies and housing authorities. However, many of those agencies and housing authorities also administer housing programs funded under federal law, which are subject to the privacy protections outlined in 5 U.S.C. 552a. Some of the disclosures and information sharing proposed under this bill may be contrary to that allowed under federal law. The federal law also includes requirements regarding accounting for disclosures. Agencies that administer housing programs hold a lot of personal information about each of their program participants. Disclosures of this information should be limited to those people who need to know it, and the exceptions that allow disclosure should be limited in nature. If housing authority staff, in those agencies that administer both state- and federally-funded programs, are tasked with knowing two different sets of rules with regard to when and to whom information can be disclosed – the likelihood of people’s private information being disclosed improperly rises. CLRP suggests that

with disabilities, mediation and conflict resolution, and local and regional service resources.

the language of this bill be modified to more closely track that of the federal privacy law.

CLRP opposes HB 6759 An act concerning the rights and responsibilities of landlords and tenants regarding the treatment of bed bug infestations.

We appreciate the desire to curb bed bug infestations that affect Connecticut communities. We would support legislation which gives incentives to tenants to report infestations quickly, and to landlords to deal with such infestations quickly. We cannot support legislation that appears to skirt the fair housing laws that provide protection to people with disabilities. It is not clear that legislation is necessary or desirable.

Bed bugs are like the flu. It is almost impossible to say who brought it into the house. You can't see it, don't know that it's there or that you are carrying it until it is too late and you have symptoms. You may have a pretty good guess where you got it, or them, but you don't really know for sure because like the flu, they are contagious long before you notice them, and, like flu germs, they are readily available everywhere. Unfortunately, there is no inoculation to prevent bedbug infestations but fortunately, unlike the flu, bedbugs are not dangerous to your physical health. **One thing is clear: the earlier a bed bug infestation is identified and treated, the easier it is to eliminate. Any legislation should promote early detection and prompt effective treatment.**

There are many problems with the statute as written, which are set out later in the testimony, but **CLRP is most concerned about and opposed to the section that permits and promotes the landlord's billing a client with a disability for assistance in preparation for extermination--assistance that should be provided without cost as a reasonable accommodation.**

Section 1, paragraph (b) (3) (A) of the bill ignores completely the requirements of the Americans with Disabilities Act (42 USC 12101 et seq.), the federal Fair Housing Amendments Act (42 USC 3601 et seq., regs: 24 CFR Parts 100 et seq.) and state anti discrimination statues (Conn. Gen. Stat. Secs. 46a-64b and 46a-64c) to provide reasonable accommodations to people with disabilities. These laws require that tenants with disabilities who, in connection with those disabilities, are unable to comply with the (strenuous, extensive and complex) preparations for bed bug extermination are entitled to a reasonable accommodation from the landlord. A reasonable accommodation cannot be billed to the person with the disability.⁴

⁴ Reasonableness is related to the cost, and the reasonableness of a cost depends on the ability of the landlord to pay. As a practical matter, litigating who can afford and who cannot afford the varying costs of extermination preparation does not make sense.

It would be irresponsible for the legislature to enact a statute that prescribes a procedure that violates state and federal anti discrimination statutes.

Although Section (C) of the proposed bill states that nothing in the section shall be construed to preempt or restrict application of the provisions of chapter 814c of the General Statutes or any other state or federal law concerning reasonable accommodations, that sentence is meaningless on the ground. It does not explicitly state that the landlord is responsible for providing reasonable accommodations. A landlord who does not have a lawyer on staff, meaning most landlords, will not know what it refers to or how to apply it. Neither will the tenants, if they see it. It may protect a tenant who gets a lawyer and goes to court but that tenant's lawyer will already know that the statute is in conflict with antidiscrimination laws and that the antidiscrimination statutes would take precedence in all but a very small number of situations. It will not help in small claims court in litigation over the security deposit. **It provides no protection at all for the unaware tenant who just pays an inappropriate bill. We get calls from clients who are terribly upset about being billed for extermination.** We can usually sort that out for them, but for every call we get, how many people who really cannot afford to do so, pay the bill for fear of losing their housing, and go without food, basic supplies or medication instead? **It is the most vulnerable members of the community who will be harmed.**

For those reasons, CLRP opposes all of the sections in the proposed bill that require the tenant to fund the costs of preparation for extermination and that promote billing for assistance, repayment schedules and taking the costs of assistance out of the security deposit.

There are other practical problems with the bill as written. If the sections on costs of preparation are eliminated, these would still need to be addressed:

- Sec (b)(2)(B) appears to extend the right to inspect beyond what is necessary to identify an infestation, referencing personal belongings.
- Section (b) (1) allows the landlord to treat the infestation.⁵ Landlords should not be treating a bedbug infestation—it is usually ineffective, can be dangerous, and delays effective treatment. Delay allows the infestation to spread and makes everything more costly. This does not even touch on the real trauma that

⁵ First it says, “take reasonable measures, as determined by such qualified inspector, to effectively treat the bed bug infestation, including treating or retaining the services of a pest control agent to treat the” Then, at the end of the sentence about the treatment it adds, “except the landlord may first attempt to treat such infestation.” It also requires the landlord to first vacuum the areas to be treated. It may require the landlord to treat the infestation “as determined by the qualified inspector,” but it may mean that the landlord may first attempt to treat the infestation before s/he even obtains the inspection. It is ambiguous, but either interpretation is not a good rule.

many tenants experience from bedbug infestation.

- There is already a fair amount of law in Connecticut regarding the issues addressed in this statute. Unfortunately, the statute does not clarify things.
 1. State statutes and local ordinances require landlords to deal with infestations.
 - a. Some Connecticut municipalities have ordinances (predating the bedbug resurgence), which provide that when an infestation is confined to one unit, the occupant is responsible for extermination, but when two or more units are affected, the landlord is. An example of such an ordinance is attached. This is not good policy because it discourages early detection and extermination.
 - b. Other municipalities have ordinances specific to bedbugs which require the landlord to follow integrated pest management. A copy of one of those is attached.
 - c. Section (b)(1) makes the landlord responsible for all costs (except as indicated—the preparation). Does that overrule municipal ordinances that require certain tenants to exterminate? If so, It should be explicit.
 2. We already have statutes, referenced in the proposed legislation, that
 - a. allow a landlord to enter a unit with notice for inspections (§47a-16)
 - b. permit a landlord to get a court order to enter a unit if a tenant is not cooperating with inspection or extermination (§47a-18).

A bedbug statute that simply references those provisions might be helpful for landlords who need that information. A pamphlet could do that and could emphasize the importance of not doing it yourself.

- Section 1, paragraph (b)(2)(C). Is this to prevent infested furniture being disposed of in ways that spreads the infestation, or is it protecting tenants from the wholesale destruction of the property? It needs to be clarified. It is not a decision for the landlord, but for a qualified inspector.
- The final paragraph of the proposed bill, Section 3, says the CT Agricultural Experiment Station in consultation with the DPH and DEEP and within available appropriations shall develop and publish best practices and guidelines.....**They have done this, it is on line and it contradicts the requirements of this bill regarding self treatment and on the importance of speedy identification and treatment.** The bill permits and encourages landlords to do it themselves. This contradicts the advice of the CT DPH.⁶

⁶ “A Word of Caution For Do-It Yourselfers For those who want to self-treat for bed bugs, you

The proposed bill is a fee shifting statute. It aims to shift some of the cost of bed bug control to the tenant. It illegally shifts the costs to some tenants with disabilities, who are entitled to reasonable accommodations and it shifts it to tenants who may not be able to afford the cost, thus making control of infestations more difficult. If all aspects of extermination were clearly stated as a landlord's financial responsibility, the landlords could incorporate extermination into the cost of doing business and reflect it in the rent for all tenants. They do that with other extermination as well as other maintenance. For tenants who are recipients of rent subsidies, the costs of this aspect of their housing will be figured into their total rent and covered by their subsidies, not taken out of their income which does not cover their basic expenses as it is. For people on fixed incomes, unanticipated expenses like these are impossible to cover. While the bill aims to protect physically disabled tenants from eviction for nonpayment of some of those expenses (which they should not have been charged for in the first place), it does not protect tenants from eviction for being unable to comply with the financial requirements of preparation for extermination: purchase of mattress covers, of plastic bags or tubs. In fact, they can be evicted for failure to comply and at best, if the landlord pays for it, leaves them with an unpaid bill which will haunt the tenant who applies for subsidized housing or other housing. (Landlord references routinely ask if the tenant owes them money.) A bill that can never be paid is not any help to the landlord, either.

should know that most consumer products do not work. A recent study of consumer "bug bombs" by researchers at Ohio State University showed that the bug bombs do not work for bed bug infestations. One of the main reasons is that the bombs do not penetrate cracks and crevices where bed bugs hide. Besides wasting money, delaying effective treatment can lead to further resistance and significantly higher populations that are difficult to control." (from the CT DPH website)

"If bed bugs are confirmed, tenants should notify landlords; property owners should contact pest control professionals with experience. Delays in treatment can make control harder. Self treatments don't work." (from DPH Website, excerpted from pamphlet by Gale Ridge, CAES.)

There is also a link on the DPH website to a CDC study of the dangers of the use of outdoor pesticides indoors to treat bedbugs.