A PRIMER ON THE SO CALLED "FROBERG LAW" RCW.10.060, .070 and .080 (which SB 6623 currently attempts to undermine in an amended section 71A. 10.050 and which SB 6780 begins by repealing)

or

some protection for David fighting Goliath in the matter of outplacements from the RHCs

1) What does "Froberg" do?

"Froberg" requires that the State of Washington give notice to a resident of an RHC, or his representative, of his upcoming outplacement from an RHC. At the same time, the the Secretary of the Department of DSHS must advise the recipient of his right to an adjudicative proceeding to contest such an outplacement, the time limit for filing an application for such an adjudicative review, **AND** notice that if the appellant loses his adjudicative review within DSHS, he has a right to appeal further to Superior Court.

It is this right to appeal to Superior Court that is really important, because it is this right that takes the parent guardian, or guardian **outside** the the same DSHS system that made the decision to place the RHC resident in the community in the first place.

"Froberg" also provides that no movement of the resident may occur from the RHC until the appeals process has been completed. This may take a considerable period of time, if the guardian choses to appeal through the Superior Court level. The ability of the resident to remain in the RHC until all appeals have been exhausted is found in RCW. 71A 10.080; it is this section that SB 6780 begins immediately by repealing. Although there is some funny business in SB 6623 regarding RCW.71A 10.080 not mentioned in my letter to Senator Ed Murray, this particular provision, **by far the most important**, is left in place.

Appealing under "Froberg" allows an RHC resident moved to the community to **RETURN** to the RHC, should the community placement not work out.

2) Who bears the burden of proof under "Froberg?"

The State of Washington must prove that the move to the community is in the "best interest" of the resident. "Best interest" is a higher legal standard than providing "equal or better" services or program, or "meeting the needs of" a resident. That is why the new language that SB 6623 tries to introduce in an amended RCW 71A. 10. 050 is so potentially damaging. A changed .050 would define by statute that "best interest" was in the "most integrated" (read community) setting that "meets the resident's individual needs."

It is the purpose of the adjudicative proceeding **itself** to determine whether or not the resident's best interest is served in the "most integrated setting." To determine this before hand by statute defeats the purpose of "Froberg." Secondly, meeting an individual's "needs" may not be the same as his "best interest" in any venue. And the new 6623 presumptive "best interest" definition excludes from "best interest"

consideration harm caused from the move itself, the effects caused by providers going broke after the original move, and so on.

All of this **before** the adjudicative process has even begun.

3) How should one use “Froberg?

If one uses “Froberg” one should use it aggressively from the beginning. It is an appeals process, and that means that one starts out **at the beginning** loaded for bear with all guns blazing. All facts should be marshaled, and a a crack attorney hired. This is an adversarial process, it is not a negotiation. The appellant needs to establish in the first adjudicative hearing, within DSHS, the facts that he will use all the way through his judicial review in Superior Court.