

“PEOPLE WITH DISABILITIES PROTECTION ACT”

-Thomas J. Abinanti, 92nd Assembly District

I. GOAL: INDEPENDENT OVERSIGHT

A. Reform means establishing independent oversight from different sources separate from service-provider agencies.

The proposed legislation concentrates oversight in one super agency which also provides services. Combining operational functions (rule-making, training, recordkeeping, reporting of incidents) with oversight institutionalizes a conflict. Concentrating oversight control in the Governor’s office gives the appearance of diminishing prosecutorial independence.

The legislation should include:

1. Career prosecutors not reporting to Executive Branch
Employed and supervised by NYS Attorney General
Local prosecutors with AG support
Special State Police Unit to support local police
2. Inspector General not reporting to Executive Branch
 - a. Employed and supervised by NYS State Comptroller
 - b. Input from family/guardian counsels and ombudsman
3. Non governmental not for profit protection and advocacy (P&A) watchdog agency with guaranteed funding from state and non-state sources empowered to investigate and commence civil litigation for systemic sufficiency.
 - a. Should be established by statute not executive order. Executive Order makes entity dependent on the discretion of Executive Branch over which it is charged with oversight.
 - b. Should have jurisdiction over OPWDD, OMH, and OASAS and also OCFS programs and adult homes.
 - c. Governing Board should consist of a majority of people with disabilities and family members.
 - d. Functions should be restricted to monitoring, investigating and reporting on abuse/neglect. Other functions should be moved to an office of services for people with disabilities.
4. Reinstatement of local board-of-visitors type function.

B. Reform means facilitating immediate notification to most convenient law enforcement for investigation of possible crimes, preservation of evidence and protection of witnesses and victims.

The proposed legislation funnels all abuse/neglect complaints through a new clearinghouse bureaucracy which will cause significant delay of /impediment to immediate notification of law enforcement officials of potential crimes. The proposed legislation appears to delete requirements for certain officials to immediately notify law enforcement of a potential crime yet requires whistleblowers to use dictated channels under criminal penalty even if they are at risk of retaliation.

The legislation should:

1. Clarify that anyone may report a crime directly to law enforcement.
 - a. No limitations on where complaints may be made
 - b. Statewide reporting registry designed as a registry and tracking tool one means of entry into the criminal justice system not a clearing house for complaints.
2. Reward not punish whistleblowers or put them at risk

C. Reform means understandable definitions and standards that reflect Zero Tolerance for criminal behavior.

The proposed legislation raises the bar for referrals to law enforcement.

The legislation should:

1. Standards
 - a. Not raise the threshold from “some credible” evidence to “preponderance of evidence”
 - b. Not raise the threshold from “indicated” to “substantiated” requiring a finding that an individual or facility is responsible.
2. Definitions:
 - a. Advocates and providers have complained about the proposed definitions being imprecise
 - b. Definitions of abuse/neglect appear to wrongly omit accidental injurious physical conduct no matter how often repeated, or how many victims
 - c. Definition of physical injury appears to wrongly require diminution of physical condition not just harm or damage
 - d. Confusion arises by changing Penal Law district attorney definition to include inspector general.
 - e. The act should use accepted language of “people with disabilities” not “people with special needs.”

II. GOAL: ENHANCE THE ROLE OF FAMILIES

A. Reform means enhancing the role of families of people with disabilities who are residing in facilities operated by the state and the private sector.

The proposed legislation adds no meaningful enhancement of the role of families.

The legislation should include:

1. Family Bill of Rights
 - a. Immediate notification of any untoward event
 - b. Access information: learn as if resident could talk
 - c. Freedom to unannounced visits
 - d. Input to health and safety issues
 - e. Regularly scheduled meetings
2. Family/Guardian Councils
 - a. Advise on statewide and local budget
 - b. Review expenditures to ensure financial transparency
3. Ombudsman Program/Advocacy Program
 - a. Paid staff and unpaid family advocates for state and non-profit agencies

B. Reform means total transparency for families to examine the operation, care and finances of the entire system and each individual facility. Protecting the privacy of individual residents should not be used as the excuse to prevent family members to access and understand information as if the person with disabilities were able to explain to them what occurred.

The proposed legislation appears to reinforce present “confidentiality” provisions which have served to cloak care agencies in secrecy and block family access to information. (Example, Why restrict medical examiner’s release of death report to justice center?)

III. GOAL: IMPROVE LIVING CONDITIONS

Reform means improving the living conditions of people with disabilities and preventing abuse and neglect.

The proposed legislation adds no meaningful enhancement of the living conditions of people with disabilities. At most, it instructs existing agencies that have failed to better both living conditions and working conditions to promulgate new regulations to do what they should have been doing all along. It does nothing to implement the recommendations and latest reports to the Governor that there should be increased opportunities for people in residential facilities to have community integrated services and “segregation as last resort”.

The legislation should include:

1. Abuse and neglect prevention
 - a. Establish standards for good appropriate care
 - b. Integrate person centered programs
 - c. Carefully drafted uniform definitions of abuse and neglect of people with disabilities, including intentional and accidental behavior

2. Better care from better working conditions
 - a. Living wage
 - b. Limited overtime
 - c. Appropriate training
 - d. Careful employee vetting
 - e. Standards/Qualifications/Job Descriptions

3. Implementation
 - a. Should establish commission to determine appropriate staffing and costs
 - b. Need budget amendment for finances
 - c. Include family members and, where possible, people with disabilities consumers in planning transition to new system
 - d. There should be no delay in implementing recent reform laws.