



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
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Testimony of the Office of Protection and Advocacy for Persons with Disabilities Before the Appropriations Committee

Presented by: James D. McGaughey
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Good afternoon, and thank you for this opportunity to comment on the budget proposal for our agency.

As you know, the Governor's budget proposes to zero out funding for the Office of Protection and Advocacy for Persons with Disabilities (OPA), and to consolidate our agency with the Commission on Human Rights and Opportunities (CHRO), forming a new agency to be called the Department of Human Rights, Protection and Advocacy. The details of the consolidation are described in implementing language in sections 74 through 82 in H.B. 5016, which has been referred to your Committee along with the budget itself. For a number of reasons I believe this proposal is ill considered, and that it will significantly weaken safeguarding protections for people with disabilities in Connecticut. These reasons are:

- 1. The proposed consolidation misunderstands the fundamentally different roles and identities of the two agencies, and would foster confusion about their respective missions.** OPA and CHRO exist for different reasons, are charged with different duties and perform very different functions. CHRO is primarily a civil rights law enforcement agency. It impartially investigates and adjudicates claims of discrimination based on membership in a variety of protected classes, and it has the authority to impose remedies. It also enforces a variety of legal requirements that apply to state agencies (e.g. affirmative action, minority contracting set-asides, etc.) On the other hand, OPA exists as a safeguard - a vigilant presence capable of actively interceding in situations of abuse and neglect, and where the rights of people with disabilities are at risk. In contrast to CHRO's investigatory neutrality, we are unabashed advocates for the values espoused by the disability rights movement: respect, dignity, inclusion, personal choice, autonomy and empowerment. We were created because, after numerous scandals, disappointments and repeated systems failures, policymakers realized that good intentions and well meaning reform efforts were not sufficient: that the rights of people with disabilities are too often disregarded, that circumstances often conspire to render people with disabilities vulnerable to abuse and neglect, and that even the most altruistic, best led programs and services can and sometimes do fail. We are what is sometimes described as an "intentional safeguard" against the inherent fallibility of complex human systems. Our operational flexibility and wide-ranging authority contribute to our effectiveness, but our clear identity as independent advocates is

equally important. Families and people with disabilities need to know that we understand their experience and will faithfully pursue their interests even if doing so brings us into conflict with others. People who report abuse and neglect to us need to know that our investigations will not be compromised by conflicting loyalties. Consolidating us with an entity that is defined around different issues and fulfills very different functions will cloud our identity as independent disability rights advocates and create confusion about the type of responses people can expect from us.

2. **In addition to fostering confusion, the proposed new agency would also create conflicts of interest.** Not infrequently, OPA represents people with disabilities who pursue complaints of discrimination before the CHRO. I am not sure how the landlords, employers, providers of public accommodations, municipal agencies and others that must respond to those complaints - and against whom sanctions can be imposed by CHRO - are going to feel about having both the "prosecution" and the "judges" all be from the same agency. Nor is it clear what would happen if CHRO dismisses a complaint of disability discrimination brought by one of our clients, but OPA feels obliged to appeal that decision to court. That could put the CHRO part of the proposed new agency in the defendant role, while the OPA part of the agency represents the plaintiff. There are other conflict-of-interest scenarios as well: What if someone wants to file a CHRO complaint against OPA? What if OPA needs to pursue advocacy action against the CHRO side of the new Department in order to secure reasonable accommodations or modifications for a complainant with a disability? Situations like these do actually occur from time to time. So long as we are two separate agencies, we can each do our job. But in a consolidated agency, these scenarios create unavoidable conflicts of interest. And, while trying to figure out what to do about such conflicts would be a real headache, the perception of an internally conflicted agency would be quite damaging to our credibility. At the end of the day, our credibility is one of our most precious assets. People have to trust that we will give them our undivided loyalty, and that we will be faithful to our mandate and assigned role as an independent, zealous advocate for their rights.
3. **Placing OPA into the proposed Department risks the loss of critically needed federal P&A funds and the unique safeguarding authority conferred by federal law. It also puts federal funding for other disability programs at risk.** Federal law requires states to designate an entity as its Protection & Advocacy (P&A) system, which must be structurally independent from service agencies and authorized to perform certain enumerated advocacy and safeguarding functions. Once it has designated an entity to serve as its P&A, a state may only designate a different entity for "good cause". Even when there is "good cause" for redesignation, strict procedural requirements must be followed. There must be clear notice, a 60 day comment period, a public hearing, and reviews by federal oversight agencies. Most importantly there must be opportunities for deliberation and input from the disability community.

Combining OPA and CHRO into a new agency may constitute a “redesignation” of the P&A system for Connecticut, particularly because, under the proposal, our governance structure and operational autonomy would change significantly. More specifically, the director of the P&A would be appointed by, and presumably report to the executive director of the new Department. The implementing language in H.B. 5016 further provides that the P&A director would no longer have independent control over hiring decisions, budgeting processes and expenditures, including contracting and funding for litigation and investigations – key areas of P&A system authority. These changes in governance and authority present a markedly different picture of the P&A’s operating autonomy than has been the case since 1977, when OPA was first established and designated as Connecticut’s P&A system.

I do not know for sure that our federal oversight agencies will see this “consolidation” as a redesignation. I do know they are aware of it and are pursuing the matter with the Office of Policy and Management (OPM). If they find it to be an illegal redesignation, or if, as a result of a subsequent compliance review, those federal oversight agencies determine that OPA no longer conforms to the legal requirements for independence and governance established in the federal statutes and regulations that define P&A systems, the State would risk losing OPA’s federal funding. That funding – which amounts to almost \$1.5 million per year - supports 11 staff positions in our agency, as well as several contracts with advocacy groups. And, because having a designated, conforming P&A system is a prerequisite for a state’s receiving certain other federal funds under the Developmental Disabilities Act, funding for the Connecticut Council on Developmental Disabilities (\$724,000 per year) and UCONN’s Center for Excellence in Developmental Disabilities (\$550,000 per year) would also be imperiled.

Just as importantly, Connecticut residents with disabilities could lose the safeguarding and advocacy authority conferred by federal P&A statutes (PADD, PAIMI, PAIR, etc.) If that happens, OPA would no longer be able to conduct abuse/neglect investigations, pursue legal and administrative remedies, educate policy makers and reach out to traditionally underserved populations under the authority conferred by federal P&A statutes – authority that affords us access to people living in institutions and other facilities, and, under certain circumstances, to information that can otherwise be hidden behind a cloak of confidentiality.

Virtually all standards for disability advocacy organizations that provide individual representation and safeguarding, including the National Disability Rights Network standards for Protection and Advocacy agencies, stress that structural and administrative independence are essential prerequisites for a credible advocacy program. This emphasis on independence derives partly from the history of human services, which is replete with examples of internal watchdog programs that compromised or were cowed in the face of organizational and political pressures. But it also reflects a reality that many people with disabilities and their families face. People seek out assistance from P&A because they are falling through the cracks or are up against some kind of power structure that isn’t listening. They may need

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useful, empowering information, or some more concrete form of help "fighting city hall". Or they may need to have immediate attention paid to a neglectful or abusive situation. People with disabilities and their families need a P&A system that carries the full authority of federal law, that is free from conflicts of interest, and that sends a clear message about its identity and role as an independent advocate. I believe that we effectively meet that need as we are currently configured, but that we will not if we are consolidated (acquired?) by the proposed new Department.

I also believe that the investment the State makes in funding us is well justified in terms of the systems changes and improvements that result from our efforts. I know there is no time today to discuss our RBA efforts, but if you have a chance to look at our report cards, I think you can see we are "turning some curves". Our annual report also cites examples of how our safeguarding activities have reduced deaths of service system clients due to choking, drowning, poor healthcare coordination and unrecognized medical risks, just as our administrative attention to reducing the risk and repeat victimization to neglect and abuse is, in fact, reducing that risk. All the "back office" functions of both OPA and CHRO have already been consolidated within the Department of Administrative Services, and both agencies have already been stripped of all but the most essential management positions. I think OPA has a good reputation for running a responsible, fiscally disciplined operation. So, there are no real savings to be had from this consolidation. But there is a real risk that people with disabilities in Connecticut will lose a precious resource.

Accordingly, I urge you to delete the sections of H.B. 5016 that refer to this consolidation, and that you appropriate funding for OPA to continue as an independent agency. Thank you for your attention. If there are any questions, I will try to answer them.