

The testimony of civil rights and disability rights advocate, Michael Carey, for the May 20, 2021 Senate Roundtable: To evaluate the State's response to Covid-19 at residential facilities for developmentally and intellectually disabled individuals

The State's Covid -19 response was criminal

One of the New York State laws that I have been able to change since my precious 13-year-old son, Jonathan was killed by his State employed caregivers in 2007 was NYS Penal law 260.25. It took me five years to finally get the same equal protections of laws for people with disabilities that companion pets have. Busters Law, or Aggravated Cruelty to a Companion Pet became a felony in 1999 and because of Jonathan's homicide and my hard work, Endangering the Welfare of Incompetent and Physically Disabled People became a felony crime in 2012. What I have presented to each of you brings to light the massive problem of how New York State values people with developmental and intellectual disabilities.

I am presenting this NYS penal law and the criminality of what has transpired surrounding the Covid-19 OPWDD debacle due to the facts of the gross criminal negligence by Governor Andrew Cuomo, OPWDD Commissioner Kastner and Justice Center Executive Director Denise Miranda.

Here is the language of this extremely important law that is in place to protect our most vulnerable.

§ 260.25 Endangering the welfare of an incompetent or physically disabled person in the first degree. A person is guilty of endangering the welfare of an incompetent or physically disabled person in the first degree when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect. Endangering the welfare of an incompetent or physically disabled person in the first degree is a class E felony.

What is critical now is that there are significant lifesaving and discrimination ending legislation to finally ensure the protection and civil rights of our most vulnerable and that those engaged in committing crimes against them are held

accountable. I have provided extensive information and documents to all New York State legislative leaders and members of Disability and Mental Health Committees regarding this Covid-19 “gross and deliberate indifference” and requested that it would all be part of the impeachment investigations of Governor Cuomo.

I am providing this written testimony as one of the two whistleblowers that did everything imaginable beginning in March of last year to ensure the safety and attempt to protect and save the lives of both residents and staff from premature death from Covid-19. Tragically, OPWDD whistleblower, Jeff Monsour and I were not invited to be speakers for the roundtable. You cannot bring about true reforms if you are unaware of the true facts and if the people that have the genuine information of what really transpired are ignored.

- OPWDD was NOT prepared for Covid-19.
- Commissioner Kastner and other top state officials ignored complaints by well-known NY Times and OPWDD employee whistle-blower Jeff Monsour in February of 2020 saying OPWDD was NOT prepared.
- Mr. Monsour reached out to me due to the negligence of his superiors directly up to Commissioner Kastner and I began advocating feverishly to Governor Cuomo, Commissioner Kastner and Justice Center Executive Director Miranda. Almost all of our whistleblower complaints regarding lack of PPE, the lack of temperature taking of staff and residents, the failure to stop the floating of caregivers, the sending of residents to day programs and other areas of negligence were ignored until it was too late.
- People with developmental and intellectual disabilities were getting Covid-19 from the staff and in many cases not given swift and appropriate medical attention leading to their premature and preventable deaths.
- There was no solid and significant policy from Governor Cuomo and Commissioner Kastner for this specific and special group of people as the Governor was shutting down restaurants and bars and telling everyone publicly how life-threatening Covid-19 was, but he and other top State officials were ignoring our whistleblower complaints and FAILED to protect those within his own agencies, including staff.
- I finally was able to force the Governor to stop the day programs, but again, it was too late.
- I got the NY Times to do a story in April which revealed a much higher death rate within OPWDD of residents dying, and staff deaths.

- I reached out to the unions, both CSEA and PEF for **EMERGENCY HELP** and CSEA looked the other way and never responded. PEF President Wayne Spence was extremely concerned about the gross negligence and sent a letter to Commissioner Kastner dated April 8, 2020 saying - **“We are waiting for Albany to send us guidelines”** and **“We need OPWDD to work with us to implement these changes immediately. We cannot take a “wait and see” approach with this virus.”**
- I made a number of criminal complaints to the Justice Center and my complaints and appeals directly to Denise Miranda were ignored as the deaths within the group homes were mounting up like cord wood.
- April 10th directive was enacted to put Covid positive individuals into group homes with no questions asked. This is similar to the publicly known nursing home death order that once it was uncovered it was reversed, but not so for this deadly group home order which remains in effect to date.
- We got other news outlets engaged and in May of 2020 CBS 6 reporter Anne McCloy directly asked Governor Cuomo about the deadly floating of caregivers from Covid positive group homes to non-positive group homes and he played stupid and then said he would look into it. Governor Cuomo, nor Commissioner Kastner stopped the deadly floating to date.
- Over three hundred whistleblower emails from myself went directly to Governor Cuomo -ALL were never responded to.
- The Justice Center and OPWDD did not regularly document death totals, hiding what was going on behind closed doors from the public. These two State agencies have purposefully withheld death totals and in some cases released fraudulent lowered death numbers to the media similar to the fraudulent and watered down nursing home death totals.
- The end result of the criminal acts committed by Governor Andrew Cuomo, Commissioner Kastner and Executive Director Miranda in which they **“KNOWINGLY”** acted in a manner likely to be injurious, but not only injurious – DEADLY is massive numbers of preventable deaths -hundreds and hundreds of them.

Governor Cuomo must be swiftly impeached and prosecuted for these crimes along with numerous others that everyone is aware of. OPWDD Commissioner Kastner and the corrupt Justice Center’s Executive Director, Denise Miranda MUST also be removed and prosecuted to the full extent of the law. These are federally Medicaid funded facilities and numerous federal regulations requiring a safe living

environment free from abuse and neglect and freedom from human rights violations were ignored and multiple federal crimes have also been committed. I am requesting swift and appropriate actions from the New York State Senate and all Senators state-wide. I am representing and advocating for your constituents with disabilities that in most cases cannot speak or defend themselves and for their families. Justice demands what I have requested, to not hold those responsible accountable and to fail to bring about genuine reforms would be a travesty.

Thank you.

Michael Carey