



DISABILITY RIGHTS NEW YORK

New York's Protection & Advocacy System and Client Assistance Program

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Testimony of:

Disability Rights New York
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Testimony Before the Senate Committee on Mental Health and Developmental Disabilities
Hearing on Sheltered Workshops

Mr. Chairman and Members of the Committee:

Good evening. I am pleased to be here today to speak on behalf of Disability Rights New York (DRNY) and to discuss segregated employment and wage discrimination for people with disabilities. DRNY is the State of New York's Protection and Advocacy System and Client Assistance Program. DRNY represents thousands of New Yorkers with disabilities and is empowered by Congress to investigate abuse and neglect of and monitor the programs and services to New Yorker's with disabilities.

My name is Jennifer Monthie and I am the Statewide Director of the Protection and Advocacy for Individuals with Intellectual and Developmental Disabilities Program (PADD) at DRNY. The PADD Program has 10 staff attorneys located in three offices across New York State providing free protection, advocacy and legal representation to New Yorkers with Intellectual and Developmental Disabilities. I am honored to be here on behalf of DRNY.

Sheltered employment refers to a range of pre-vocational and vocational programs including sheltered workshops, work centers, and day services which are delivered in segregated settings. These types of segregated programs have been operating for decades under an assumption that people with intellectual and developmental disabilities must participate in intensive segregated pre-employment training to be employable. Yet, the sheltered workshop model has not

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transitioned individuals with disabilities to integrated employment. Numerous studies including from the U.S. Department of Labor have consistently found that segregated programs do little to assist people in learning the skills needed for employment.¹ Individuals served in sheltered workshops do not have a higher rate of employment compared to those who had supported employment without ever being in sheltered workshops.² In fact, those in sheltered workshops had higher support costs and lower wages when compared with individuals who had never been in sheltered workshops.³

In New York, sheltered workshops generally congregate and segregate people in production or warehouse-like facilities to complete sub-contract work. Pay is typically based on individual productivity which results in low compensation, far below the federal minimum wage. According to Governor Andrew Cuomo, only 7,800 individuals with ID/DD had jobs which paid at least minimum wage.⁴ As of 2001, there were 5,600 employers, nationwide, that pay sub-minimum wage to workers with disabilities; almost 84% were sheltered workshops.⁵ 97% of workers in sheltered workshops received sub-minimum wage.⁶ People with disabilities and their families are often misinformed that sheltered employment at sub-minimum wage is the best and only option open to them.

There have been several studies of the quality of life of individuals with disabilities after the conversion of a sheltered workshop. Most people reported that the conversion initially caused anxiety but in the long run led to benefits such as increased income, new social relationships, increased independence, and discovering the potential of employment opportunities they had never considered possible.⁷ Still, some people were unable to find employment or experienced unstable employment, and either remained unemployed or chose to return to sheltered employment. For this reason, DRNY continues visiting and monitoring sheltered workshops across New York State during the State's conversion.

In the last 11 months, DRNY has visited and monitored 35 sheltered workshops, asking workers and agencies several questions. DRNY has heard the same concerns raised by individuals with disabilities, and providers—fear of the loss of benefits, reluctance from families to allow for transition fearing the consequences of leaving sheltered workshops, concern over the elimination of even sub minimum wages. Ultimately, these fears reflect the lack of State investment in resources needed to effectuate a viable transition. Workers in these workshops have limited access to vocational rehabilitation services; many do not have any relationship with the State's

¹ US Department of Labor. (1979). Summary of major findings of the US Department of Labor Sheltered workshop study. *Amicus*, 4(5,6), 276-276.

² Robert Evert Cimera, Paul Wehman, Michael West and Sloane Burgess, *Do Sheltered Workshops Enhance Employment Outcomes for Adults with Autism Spectrum Disorder?*, *Autism*, published online May 24, 2011: <http://aut.sagepub.com/content/early/2011/05/19/1362361311408129>

³ Robert Evert Cimera Ph.D., *Does Being in Sheltered Workshops Improve the Employment Outcomes of Supported Employees with Intellectual Disabilities?* *Journal of Vocational Rehabilitation*, Kent State University, (March, 2011), Pages 8, 9.

⁴ Exec. Order No. 136 (Sep. 17, 2014), <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-establishing-commission-create-employment-first-policy-new>.

⁵ GAO, September 2001, Special Minimum Wage Program, *Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight* GAO-01-886, Page 3.

⁶ *Id.* at Page 9.

⁷ Murphy, Rogan, Handley, Kincaid, Royce-Davis 2002.

VR agencies. There is a belief that individuals in sheltered workshops are not eligible for VR services because they are not ready for working without support. The strongest complaint of providers was the underfunding of transition programs. Workers are not being offered individualized supports through supported employment services, and are generally provided the limited choice of remaining where they are making pennies an hour or going to non-vocational day programming. The State must invest in this conversion so that each person in a sheltered workshop is offered the option of supported employment instead of relocation to non-pay day supports.

People with disabilities prefer to work alongside non-disabled co-workers when given actual choice and individualized supports. Many agencies in other states are already supporting this choice and investing in this workforce. These states have diverted resources from sheltered employment programs to supported employment programs. Individuals with significant disabilities are engaging in integrated paid work, within businesses and industry, with ongoing support. In 2000, Vermont decided to stop funding new entrance to sheltered workshops and beginning in 2002 closed all workshops over a three year period. By 2012, Vermont's integrated employment rate for individuals with intellectual and developmental disabilities was twice the national average at 35%.⁸ Vermont invested 29% of total allocation of services to supported employment.⁹

In New York, as of 2013, only 7,369 (13% of individuals served to Vermont's 38%) were enrolled in supported employment while 54,919 (87% of individuals served) were receiving segregated day services, pre-vocation, sheltered employment or day habilitation services.¹⁰ These numbers are not surprising since New York spent less than 4% (to Vermont's 29%) of the total allocation on supported employment services.¹¹

When public dollars are invested in employment programs that individualize placement in local businesses, those dollars are used more cost effectively than in the segregated program model. In fact, research shows that employees receiving supported employment services generate lower cumulative costs than employees receiving sheltered workshop services. The cost-trend of supported employees shifts downward over time whereas the cost of associated with sheltered workshop services increases overtime.¹² Amazingly, it has been difficult to break the hold segregated programs have on public funding.

In 2012, the National Council on Disability (NCD), an independent federal agency which makes recommendations to the President and Congress, issued a report *Subminimum Wage and*

⁸ Butterworth, J., Smith, F., A., Hall, A.C., Migliore, A., Winsor, J., Domin, D., Timmons, J.C. (2012). *StateData: The national report on employment services and outcomes*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion, http://www.statedata.info/sites/statedata.info/files/files/statedatabook_2015_F.pdf

⁹ *Id.*

¹⁰ Butterworth, J., Winsor, J., Smith, F., Migliore, A., Domin, D., Timmons, J.C., Hall, A.C. (2014) *StateData: The National Report on Employment Services and Outcomes*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

¹¹ *Id.*

¹² Robert Evert Citera, *The cost-trends of supported employment versus sheltered employment*, Journal of Vocational Rehabilitation, Kent State University (2008), 15-20, Pages 18, 19.

Supported Employment which examined 7 states including New York. This report establishes a foundation for the changes that are happening in New York today. The Committee recommended national transformation of sheltered employment services and to phase out sub-minimum wage – “a policy relic from the 1930s when discrimination was inevitable because service systems were based on a charity model, rather than empowerment and self-determination.”

To that end, DRNY recommends this Committee review NCD’s recommendations and transformation plan including the role New York State should take in: expanding supported employment programs and services; creating and investing in peer support networks for those in sheltered workshops transitioning to integrated employment; phasing out sub-minimum wage; and requiring mandatory notification and training to every individual in segregated day settings of the supported employment model.

DRNY stands by the principal that no person with a disability should be discriminated against in an employment setting by being paid less than the minimum wage available to all other citizens. DRNY promotes the equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; to achieve competitive employment through inclusion and integration into the workforce.

Thank you.