

SENATE, No. 825

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 12, 2010

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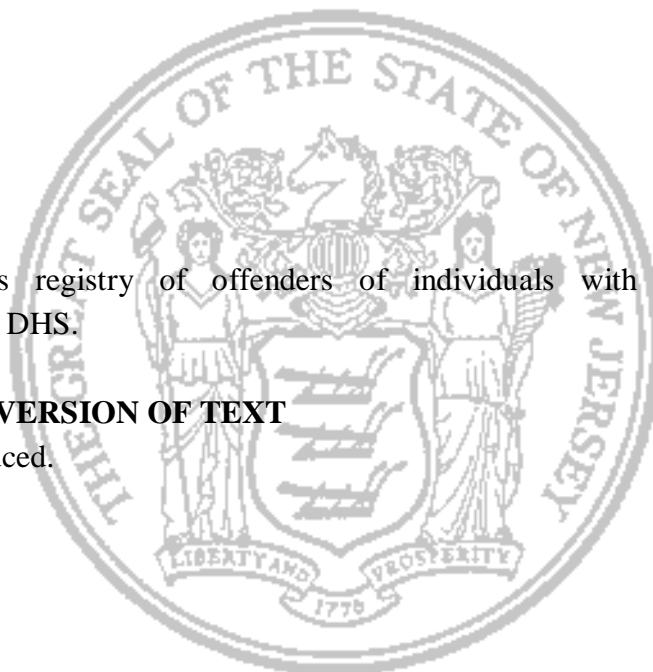
**Senator Gordon, Assemblywoman Tucker, Assemblyman Diegnan,
Assemblywoman Lampitt, Assemblyman Greenwald and Assemblywoman
Rodriguez**

SYNOPSIS

Establishes registry of offenders of individuals with developmental disabilities in DHS.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/26/2010)

1 AN ACT concerning persons with developmental disabilities and
2 supplementing chapter 6D of Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. The Legislature finds and declares that:

8 a. It is in the public interest for the State to provide for the
9 protection of individuals with developmental disabilities by
10 identifying those caregivers who have wrongfully caused them
11 injury;

12 b. The safety of individuals with developmental disabilities
13 receiving care from State-operated facilities or programs, from
14 those facilities or programs licensed, contracted, or regulated by the
15 Department of Human Services, or from State-funded community-
16 based services shall be of paramount concern;

17 c. It is the intent of this legislation to assure that the lives of
18 innocent individuals with developmental disabilities are
19 immediately safeguarded from further injury and possible death and
20 that the legal rights of such persons are fully protected; and

21 d. Therefore, this act establishes a Central Registry of
22 Offenders Against Individuals with Developmental Disabilities in
23 the Department of Human Services to prevent caregivers who
24 become offenders against individuals with developmental
25 disabilities from working with individuals with developmental
26 disabilities.

27

28 2. As used in this act:

29 "Abuse" means wrongfully inflicting or allowing to be inflicted
30 physical abuse, sexual abuse, or verbal or psychological abuse or
31 mistreatment by a caregiver upon an individual with a
32 developmental disability.

33 "Caregiver" means a person who receives State funding, directly
34 or indirectly, in whole or in part, to provide services or supports, or
35 both, to an individual with a developmental disability; except that
36 "caregiver" shall not include an immediate family member of a
37 person with a developmental disability.

38 "Central registry" means the Central Registry of Offenders
39 Against Individuals with Developmental Disabilities established
40 pursuant to this act.

41 "Commissioner" means the Commissioner of Human Services.

42 "Department" means the Department of Human Services.

43 "Developmental disability" means developmental disability as
44 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

45 "Exploitation" means the act or process of a caregiver using an
46 individual with a developmental disability or his resources for
47 another person's profit or advantage.

1 "Intimate parts" means the following body parts of a person:
2 sexual organs, genital area, anal area, inner thigh, groin, buttock, or
3 breast.

4 "Lewdness" means the exposing of the genitals for the purpose
5 of arousing or gratifying the sexual desire of a caregiver or an
6 individual with a developmental disability, or any flagrantly lewd
7 and offensive act which the caregiver knows or reasonably expects
8 is likely to be observed by an individual with a developmental
9 disability.

10 "Neglect" shall consist of any of the following acts by a
11 caregiver on an individual with a developmental disability:
12 willfully failing to provide proper and sufficient food, clothing,
13 maintenance, medical care, or a clean and proper home; or failure to
14 do or permit to be done any act necessary for the well-being of an
15 individual with a developmental disability.

16 "Physical abuse" means a physical act directed at an individual
17 with a developmental disability by a caregiver of a type that causes
18 one or more of the following: pain, injury, anguish, or suffering.
19 Such acts include, but are not limited to, the individual with a
20 developmental disability being kicked, pinched, bitten, punched,
21 slapped, hit, pushed, dragged, or struck with a thrown or held
22 object.

23 "Sexual abuse" means an act or attempted act of lewdness, sexual
24 contact, or sexual penetration between a caregiver and an individual
25 with a developmental disability. Any form of sexual contact or
26 activity between a caregiver and an individual with a developmental
27 disability, absent marriage, domestic partnership, or civil union, is
28 sexual abuse, regardless of whether the individual with a
29 developmental disability gives consent or the caregiver is on or off
30 duty.

31 "Sexual contact" means an intentional touching by a caregiver or
32 individual with a developmental disability, either directly or
33 through clothing, of the intimate parts of the individual with a
34 developmental disability or the caregiver for the purpose of
35 sexually arousing or sexually gratifying the caregiver. Sexual
36 contact of the caregiver with himself must be in view of the
37 individual with a developmental disability whom the caregiver
38 knows to be present.

39 "Sexual penetration" means vaginal intercourse, cunnilingus,
40 fellatio, or anal intercourse between a caregiver and an individual
41 with a developmental disability or insertion of the hand, finger, or
42 object into the anus or vagina, either by the caregiver or upon the
43 caregiver's instruction.

44 "Verbal or psychological abuse or mistreatment" means any
45 verbal or non-verbal act or omission by a caregiver that inflicts one
46 or more of the following: emotional harm; mental distress; or
47 invocation of fear, humiliation, intimidation, or degradation to an
48 individual with a developmental disability. Examples include, but

1 are not limited to: bullying; ignoring need; verbal assault; use of
2 racial or ethnic slurs; or intimidating gestures, such as shaking a fist
3 at an individual with a developmental disability.

4
5 3. a. A person employed or volunteering in a program, facility,
6 community care residence, or living arrangement licensed or funded
7 by the department, or a person providing community-based services
8 with indirect State funding to a person with a developmental
9 disability, as applicable, having reasonable cause to believe that an
10 individual with a developmental disability has been subjected to
11 abuse, neglect, or exploitation by a caregiver shall report the same
12 immediately to the department by telephone or otherwise. Such
13 report, where possible, shall contain the name and address of the
14 individual with a developmental disability and the caregiver
15 responsible for the care, custody, or control of the individual with a
16 developmental disability, and the guardian, or other person having
17 custody and control of the individual and, if known, the condition
18 of the individual with a developmental disability, the nature and
19 possible extent of the individual's injuries, maltreatment, abuse,
20 neglect or exploitation, including any evidence of previous injuries,
21 maltreatment, abuse, neglect or exploitation, and any other
22 information that the person believes may be helpful with respect to
23 the injuries, maltreatment, abuse, neglect, or exploitation of the
24 individual with a developmental disability and the identity of the
25 alleged offender.

26 b. Within the department, the commissioner shall maintain a
27 unit to receive and prioritize such reports, initiate appropriate
28 responses through timely and appropriate investigative activities,
29 alert appropriate staff, and ensure that findings are reported in a
30 uniform and timely manner.

31 c. A person employed or volunteering in a program, facility,
32 community care residence, or living arrangement licensed or funded
33 by the department, or a person providing community-based services
34 with indirect State funding to a person with a developmental
35 disability, as applicable, who fails to report an act of abuse, neglect,
36 or exploitation against an individual with a developmental disability
37 while having reasonable cause to believe that such an act has been
38 committed, is a disorderly person.

39
40 4. a. Upon receipt of a report pursuant to section 3 of this act,
41 the department shall designate an entity, as established by the
42 commissioner, that shall immediately take such action as shall be
43 necessary to ensure the safety of the individual with a
44 developmental disability and to that end may request appropriate
45 assistance from local and State law enforcement officials or contact
46 Adult Protective Services to provide assistance in accordance with
47 the provisions of P.L.1993, c.249 (C.52:27D-406 et seq.).

1 b. The commissioner shall adopt rules and regulations
2 necessary to provide for an investigation of a reported incident and
3 subsequent substantiation or non-substantiation of an allegation of
4 abuse, neglect, or exploitation of an individual with a
5 developmental disability by a caregiver, by maintaining a Special
6 Response Unit to investigate serious unusual incidents, as defined
7 by applicable rules and regulations, in facilities or community
8 programs licensed, contracted, or regulated by the department.
9 During its investigation of an allegation of abuse, neglect, or
10 exploitation of an individual with a developmental disability by a
11 caregiver, the Special Response Unit shall make a good faith effort
12 to notify the caregiver of the possibility of the caregiver's inclusion
13 on the registry, and give the caregiver an opportunity to respond to
14 the department concerning the allegation.

15 c. The Special Response Unit, the department, or other
16 investigating entity shall forward to the commissioner, or his
17 designee, a substantiated incident of abuse, neglect, or exploitation
18 of an individual with a developmental disability for inclusion of an
19 offending caregiver on the central registry.

20

21 5. a. There is established a Central Registry of Offenders
22 Against Individuals with Developmental Disabilities in the
23 department.

24 b. The commissioner shall adopt rules and regulations that
25 define the procedures and standards for inclusion of an offending
26 caregiver on the central registry and for notification of such
27 inclusion to the caregiver.

28 (1) For inclusion on the central registry in the case of a
29 substantiated incident of abuse, the caregiver shall have acted with
30 intent, recklessness, or careless disregard to cause or potentially
31 cause injury to an individual with a developmental disability.

32 (2) For inclusion on the central registry in the case of a
33 substantiated incident of neglect, the caregiver shall have acted with
34 gross negligence, recklessness, or in a pattern of behavior that
35 causes or potentially causes harm to an individual with a
36 developmental disability.

37 (3) In the case of a substantiated incident of exploitation, the
38 commissioner shall establish a dollar amount for inclusion on the
39 central registry.

40 c. The commissioner also shall adopt rules and regulations:

41 (1) necessary to provide for an appeals process, through the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.), of the commissioner's determination to include an alleged
44 offending caregiver's name on the central registry. The
45 commissioner's determination shall be a final agency decision
46 subject to review by the Appellate Division of the Superior Court;

47 (2) concerning the dissemination of information in the central
48 registry;

1 (3) that will prohibit persons included on the central registry
2 from employment in facilities or programs of the Division of
3 Developmental Disabilities in the department and those facilities or
4 programs licensed, contracted, or regulated by the department, or
5 from providing community-based services with indirect State
6 funding to persons with developmental disabilities; and

7 (4) necessary to provide for the removal of a person's name
8 from the central registry. A person may apply for removal of his
9 name to the commissioner after a period of five years of being
10 placed on the central registry. The person shall affirmatively
11 demonstrate to the commissioner clear and convincing evidence of
12 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
13 1 et seq.) as a guide.

14 d. The commissioner may adopt rules and regulations that will
15 allow bona fide employers serving vulnerable populations to inquire
16 of the department if potential or current employees are included on
17 the central registry, consistent with federal and State privacy and
18 confidentiality laws.

19 e. No information received in the central registry shall be
20 considered as a public or government record within the meaning of
21 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
22 al.).

23
24 6. All records of a report made pursuant to this act, all
25 information obtained by the department in investigating such
26 reports, and all reports of findings forwarded to the central registry
27 pursuant to this act shall be kept confidential and may be disclosed
28 only under circumstances expressly authorized by rules and
29 regulations promulgated by the commissioner. The department
30 shall only disclose information that is relevant to the purpose for
31 which the information is required; except that the department shall
32 not disclose information which would likely endanger the life,
33 safety, or physical or emotional well-being of an individual with a
34 developmental disability or the life or safety of any other person, or
35 which may compromise the integrity of a department investigation,
36 civil or criminal investigation, or judicial proceeding. If the
37 department denies access to specific information on this basis, the
38 requesting entity may seek disclosure through the Superior Court.
39 Nothing in this act shall be construed to permit the disclosure of any
40 information deemed confidential by federal or State law.

41
42 7. The department shall maintain, at all times, an emergency
43 telephone service for the receipt of calls involving a report,
44 complaint, or allegation of abuse, neglect, or exploitation against an
45 individual with a developmental disability.

46
47 8. A person acting pursuant to this act in the making of a report
48 under this act shall have immunity from any civil or criminal

1 liability that might otherwise be incurred or imposed. Such a
2 person shall have the same immunity with respect to testimony
3 given in any judicial proceeding resulting from the report. A person
4 who reports or causes to report in good faith an allegation of abuse,
5 neglect, or exploitation pursuant to this act and as a result thereof is
6 discharged from employment or in any manner discriminated
7 against with respect to compensation, hire, tenure, or terms,
8 conditions or privileges of employment, may file a cause of action
9 for appropriate relief in the Superior Court in the county in which
10 the discharge or alleged discrimination occurred or in the county of
11 the person's primary residence. If the court finds that the person
12 was discharged or discriminated against as a result of the person's
13 reporting an allegation of abuse, neglect, or exploitation pursuant to
14 this act, the court may grant reinstatement of employment with back
15 pay or other legal or equitable relief.

16

17 9. The Commissioner of Human Services shall study and assess
18 the Central Registry of Offenders Against Individuals with
19 Developmental Disabilities, and report two years after the effective
20 date of this act to the Governor, and to the Legislature pursuant to
21 section 2 of P.L.1991, c.164 (C.52:14-19.1), on the viability of
22 extending the central registry to cover other populations served by
23 the department.

24

25 10. The Commissioner of Human Services shall adopt rules,
26 regulations and reporting procedures, pursuant to the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.) to carry out the purposes of this act.

29

30 11. This act shall take effect on the 180th day after the date of
31 enactment, but the Commissioner of Human Services may take such
32 anticipatory administrative action in advance thereof as shall be
33 necessary for the implementation of this act.

34

35

36

STATEMENT

37

38 This bill establishes the Central Registry of Offenders Against
39 Individuals with Developmental Disabilities (central registry) in the
40 Department of Human Services (DHS), to provide for the protection
41 of individuals with developmental disabilities by identifying in the
42 central registry those caregivers who have wrongfully caused injury
43 to individuals with developmental disabilities.

44

45 The bill defines the abuse (which includes physical abuse, sexual
46 abuse, and verbal or psychological abuse or mistreatment, also
47 defined in the bill), neglect, and exploitation that would warrant
48 exclusion of an individual from employment as a caregiver of an
individual with a developmental disability.

1 "Caregiver" is defined in the bill as "a person who receives State
2 funding, directly or indirectly, in whole or in part, to provide
3 services or supports, or both, to an individual with a developmental
4 disability; except that 'caregiver' shall not include an immediate
5 family member of a person with a developmental disability."

6 Under the provisions of the bill, a person employed or
7 volunteering in a program, facility, community care residence, or
8 living arrangement licensed or funded by DHS, or a person
9 providing community-based services with indirect State funding to
10 a person with a developmental disability, as applicable, having
11 reasonable cause to believe that an individual with a developmental
12 disability has been subjected to abuse, neglect or exploitation by a
13 caregiver is required to report such information immediately to
14 DHS. These reports, where possible, must contain the name and
15 address of the individual with a developmental disability and the
16 individual's caregiver, guardian, or other person having custody and
17 control of the individual with a developmental disability and, if
18 known, the condition and other pertinent information about the
19 individual with a developmental disability and the identity of the
20 alleged offender.

21 The bill provides that a person who fails to report an act of
22 abuse, neglect, or exploitation against an individual with a
23 developmental disability while having reasonable cause to believe
24 that such an act has been committed, is a disorderly person
25 (punishable by up to six months imprisonment, a fine of \$1,000, or
26 both).

27 The Commissioner of Human Services is required to maintain a
28 unit to receive and prioritize these reports, initiate appropriate
29 responses through timely and appropriate investigative activities,
30 alert appropriate staff, and ensure that findings are reported in a
31 uniform and timely manner. Upon receipt of a report, DHS would
32 designate an entity to immediately take such action as necessary to
33 ensure the safety of the individual with a developmental disability
34 and to that end may request appropriate assistance from local and
35 State law enforcement officials or contact Adult Protective Services
36 to provide assistance in accordance with the provisions of P.L.1993,
37 c.249 (C.52:27D-406 et seq.).

38 The commissioner is also required to adopt rules and regulations
39 necessary to provide for an investigation of a reported incident and
40 subsequent substantiation or non-substantiation of an allegation of
41 abuse, neglect, or exploitation of an individual with a
42 developmental disability by a caregiver, by maintaining a Special
43 Response Unit (SRU) to investigate serious unusual incidents in
44 facilities or community programs licensed, contracted, or regulated
45 by DHS. During its investigation of an allegation of abuse, neglect,
46 or exploitation of an individual with a developmental disability by a
47 caregiver, the SRU shall make a good faith effort to notify the
48 caregiver of the possibility of the caregiver's inclusion on the

1 registry, and give the caregiver an opportunity to respond to DHS
2 concerning the allegation. The SRU or other investigating entity
3 must forward to the commissioner, or his designee, a substantiated
4 incident of abuse, neglect, or exploitation of an individual with a
5 developmental disability for inclusion of an offending caregiver on
6 the central registry.

7 The rules and regulations also would define the procedures and
8 standards for inclusion of an offending caregiver on the central
9 registry and for notification of such inclusion to the caregiver, and
10 would specify that:

11 -- in the case of a substantiated incident of abuse, the caregiver
12 shall have acted with intent, recklessness, or careless disregard to
13 cause or potentially cause injury to an individual with a
14 developmental disability;

15 -- in the case of a substantiated incident of neglect, the caregiver
16 shall have acted with gross negligence, recklessness, or in a pattern
17 of behavior that causes or potentially causes harm to an individual
18 with a developmental disability; and

19 -- in the case of a substantiated incident of exploitation, the
20 commissioner shall establish a dollar amount for inclusion on the
21 central registry.

22 The bill also requires the commissioner to adopt rules and
23 regulations:

- 24 • necessary to provide for an appeals process, through the
25 "Administrative Procedure Act," of the commissioner's
26 determination to include an alleged offending caregiver's
27 name on the central registry. The commissioner's
28 determination would be a final agency decision subject to
29 review by the Appellate Division of the Superior Court;
- 30 • concerning the dissemination of information in the central
31 registry;
- 32 • that will prohibit persons included on the central registry
33 from employment in facilities or programs of the Division of
34 Developmental Disabilities in DHS and those licensed,
35 contracted, or regulated by DHS, or from providing
36 community-based services with indirect State funding to
37 persons with developmental disabilities; and
- 38 • necessary to provide for the removal of a person's name from
39 the central registry. The bill permits a person to apply for
40 removal of his name after a period of five years of being
41 placed on the central registry. The person must affirmatively
42 demonstrate to the commissioner clear and convincing
43 evidence of rehabilitation, using the provisions of P.L.1968,
44 c.282 (C.2A:168A-1 et seq.), concerning rehabilitated
45 offenders, as a guide.

46 The commissioner also may adopt rules and regulations that will
47 allow bona fide employers serving vulnerable populations to inquire
48 of DHS if potential or current employees are included on the central

1 registry, consistent with federal and State privacy and
2 confidentiality laws. Information in the central registry shall not be
3 considered a public or government record within the meaning of
4 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
5 al.).

6 The bill provides for confidentiality of all records of a reported
7 incident, information obtained by DHS in investigating these
8 reports, and all reports of findings forwarded to the central registry.
9 Information may be disclosed only under circumstances expressly
10 authorized by rules and regulations adopted by the commissioner.
11 DHS shall only disclose information that is relevant to the purpose
12 for which the information is required; except that DHS shall not
13 disclose any information which would likely endanger the life,
14 safety, or physical or emotional well-being of an individual with a
15 developmental disability or the life or safety of any other person, or
16 which may compromise the integrity of a DHS investigation, civil
17 or criminal investigation, or judicial proceeding. If access to
18 specific information is denied on this basis, the requesting entity
19 may seek disclosure through the Superior Court. The bill stipulates
20 that nothing in the bill shall be construed to permit the disclosure of
21 any information deemed confidential by federal or State law.

22 In addition, DHS must maintain, at all times, an emergency
23 telephone service for the receipt of calls involving a report,
24 complaint or allegation of abuse, neglect, or exploitation against an
25 individual with a developmental disability.

26 The bill also provides for immunity from any civil or criminal
27 liability for making a report pursuant to the bill, and the immunity
28 extends to testimony given in any judicial proceeding resulting from
29 the report. A person who reports or causes to report in good faith
30 an allegation of abuse, neglect, or exploitation and is discharged
31 from employment as a result of this report or in any manner is
32 discriminated against with respect to compensation, hire, tenure, or
33 terms, conditions or privileges of employment, may file a cause of
34 action for relief in the Superior Court. The court may grant
35 reinstatement of employment with back pay or other legal or
36 equitable relief if the court finds that the person was discharged or
37 discriminated against as a result of reporting an allegation of abuse,
38 neglect, or exploitation.

39 The bill requires the commissioner to study and assess the
40 central registry, and report two years after the effective date of the
41 bill to the Governor and the Legislature on the viability of
42 extending the central registry to cover other populations served by
43 DHS.

44 The bill has a delayed effective date of 180 days following
45 enactment, but permits the commissioner to take anticipatory action
46 in advance as necessary for the bill's implementation.