

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 2503**

**STATE OF NEW JERSEY**

**217th LEGISLATURE**

DATED: JUNE 20, 2017

## SUMMARY

- Synopsis:** Provides protections for individuals with developmental disabilities; upgrades crimes committed against such individuals; and improves transparency and accountability in investigations of abuse, neglect, and exploitation of such individuals; designated as "Stephen Komminos' Law."
- Type of Impact:** Annual State expenditure increase from General Fund and potentially Casino Revenue Fund, and annual State revenue increase to General Fund.
- Agencies Affected:** Department of Human Services; Judiciary; Department of Law and Public Safety; Office of the Public Defender; Department of Corrections; State Parole Board.

### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Annual Impact</u></b>
<b>State Cost</b>	Indeterminate increase – See comments below.
<b>State Revenue</b>	Indeterminate increase – See comments below.

- The Office of Legislative Services (OLS) determines that the bill would produce an indeterminate increase in the annual administrative expenditures of several State agencies, with the most significant increase accruing to the Department of Human Services (DHS). In addition, the bill would yield indeterminate annual State revenue increases from fines and penalties collected from individuals convicted of the bill's new and upgraded crimes.
- Several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS. The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS would implement the bill.
- Additional staff would be needed to conduct site visits and restructure the investigations process as required under the bill. Based on information provided by the Executive on an

earlier version of the bill, the OLS assumes for purposes of illustrating the potential impact of the current legislation that 200 additional DHS employees may have to be hired at a gross annual cost of approximately \$24 million. Federal Medicaid funds may offset a portion of these costs, leading to an estimated annual State cost in this example of \$18 million.

- The OLS estimates that drug testing for applicants for employment as direct care staff may cost the State approximately \$600,000 annually. Indeterminate additional expenditures for drug testing of certain current employees would also be required under the bill.
- The OLS estimates that the establishment of two new criminal offenses and the upgrades of certain existing offenses related to the abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver would increase the annual workload and operating expenditures of the Department of Law and Public Safety, the Judiciary, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The OLS cannot quantify the annual cost increases because of a lack of data on the number of cases that would be adjudicated under the new and upgraded offenses.

## **BILL DESCRIPTION**

The First Reprint of the Assembly Committee Substitute for Assembly Bill No. 2503 of 2016, which is designated as "Stephen Komninos' Law," improves protections for individuals with developmental disabilities and provides for increased transparency and accountability in investigations of alleged abuse, neglect, or exploitation of such individuals.

The bill establishes two new grades of criminal offenses that involve endangering the welfare of an individual with a developmental disability. The bill also upgrades certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver.

In addition, the bill establishes a system for the regular site visitation of all community-based residential programs (i.e. group homes and supervised apartments) and day programs (including day habilitation programs and sheltered workshops) that provide services to individuals with developmental disabilities. Specifically, the bill requires that case managers annually conduct not fewer than two site visits of each community-based residential program and day program in order to evaluate whether the individuals with developmental disabilities are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the department. For a group home, not fewer than two site visits need to be unannounced visits conducted by a department employee who is assigned to a resident of the group home. For a supervised apartment, not fewer than two site visits need to be unannounced visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day program, at least one site visit needs to be an unannounced visit conducted by a department employee who is assigned to a participant in the day program; and at least one site visit needs to be an unannounced visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. A "department employee" may be a DHS employee or an employee of a department-funded case management agency.

The bill also requires certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded by the department. Notification of injury is

to be given by the provider or licensee of the program, facility, community care residence, or living arrangement where the injury occurred. Such notification needs to be provided to the guardian or family member who has requested such notifications no later than 60 minutes after the occurrence of the injury; and through in-person means, or by telephone, and also through email or other electronic means. Furthermore, the department is to provide notice of an incident involving abuse, neglect, or exploitation to the guardian or authorized family member no later than 60 minutes after the occurrence of the incident.

The bill also provides that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, community-based residential program, or day program, the department is to send an employee to verify the level of severity of the incident. In investigating the incident, the department is to comply with the Central Registry Law, which concerns investigations into the abuse, neglect, or exploitation of an individual with a developmental disability.

The bill further requires the drug testing of all direct care staff members who may come into direct contact with individuals with developmental disabilities during the course of their employment. The associated expenses are to be paid by the department. Direct care staff members are to undergo an initial drug test prior to employment. In addition, the employing program, facility, or living arrangement is to conduct at least once a year a random drug test of at least one employed direct care staff member. The bill also provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test when the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous substance.

The bill attempts to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center. In particular, the bill requires each developmental center to biannually schedule a meeting with the parents and guardians. Similarly, the bill requires programs to request contact information from each parent or guardian, and advise the parents and guardians that, if they agree, the provider will exchange their contact information with the parents and guardians of other individuals residing in the residential program.

The bill also requires the DHS to commence an investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident, and specifies several means by which guardians or family members must be informed and allowed to participate in the investigation. The bill also authorizes the disclosure of investigative records and reports to guardians or family members under certain circumstances.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Executive Branch has not submitted a formal, written fiscal note for this bill. However, the DHS provided information relevant to a previous iteration of the bill in response to OLS discussion points in May 2017. This information indicates that there are approximately 1,875 contracted programs that provide in-person/residential services to 8,975 individuals with developmental disabilities. An additional 16,500 individuals receive in-person/own-home services such as support coordination, individual supports, and community-based supports. For residential services, State case managers make four on-site visits per year, with monthly telephone contact between visits. Increasing this frequency to six on-site visits per year (which

was required by the version of the bill that was current at that time) would require a 50 percent increase in staff, or approximately 110 employees. Using a similar ratio for the own-home population would require an additional 200 new employees, bringing the total to over 300 contracted or State staff.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS determines that the bill would produce an indeterminate increase in the annual administrative expenditures of several State agencies, with the most significant increase accruing to the DHS. In addition, the bill would yield indeterminate annual State revenue increases from fines and penalties collected from individuals convicted of the bill's new and upgraded crimes.

Department of Human Services: The OLS finds that several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS. The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS would implement the bill.

The largest fiscal impact is likely to be the requirement to conduct unannounced site visits to residential and day programs. The current system of provider oversight is primarily oriented around the individuals receiving services, not the providers. Division of Developmental Disabilities (DDD) case managers and support coordinators visit their individual clients quarterly, most often at the client's residence (which is a residential program for some consumers), but sometimes at a day program or other location agreeable to the affected parties. During these visits, the case manager's or support coordinator's responsibility is to their assigned client, not the entire program (though the case manager would be obligated to report any incidentally witnessed abuse, neglect, or exploitation). When visits occur at a program site, the provider is typically made aware in advance. Thus, the bill requires fewer site visits than are currently conducted, but the visits would be functionally different – they must be unannounced, and in certain cases must be conducted by personnel who are unfamiliar with the particular program they are visiting. Thus, it is not clear that the current system could be easily adapted to meet the requirements of the bill, and a significant increase in staff may be necessary to add these additional site visits to the current system of oversight. In practice, the DHS may redesign the current oversight system to incorporate the bill's requirements, minimizing redundancy in site visitation and reducing the number of new staff who may need to be hired.

The bill's new requirements related to the notification of guardians and family members of injuries and investigations would similarly require some redesign of DDD policies and procedures. In particular, changes in the investigations process appear to be likely to require significantly more staff in order to generate reports, redact private information, and incorporate family members' input in investigations. As in the case of the reorganization of the provider oversight system, the actual increase in State costs would depend on the specific way in which the DDD redesigns its system.

The Executive estimated that an earlier version of the bill would require as many as 310 additional employees (described above). Noting that this version of the bill requires fewer site visits than the version previously evaluated by the Executive, the OLS assumes for purposes of illustrating the potential impact of the legislation that 200 additional employees may have to be hired under this version of the bill, when including both site visitation and investigations staff. At an estimated average annual cost of \$120,000 per employee (including salary, fringe benefits, equipment, and travel costs), this would lead to \$24 million in additional annual expenses. Federal Medicaid matching funds can offset 50 percent of allowable costs, but some of the bill's anticipated expenditures are not obviously consistent with federal Medicaid rules, so

the actual proportion of costs that would be offset with federal funds would depend upon the way that the DHS would design the system and apply for the federal funds. A total federal contribution of one-third of total costs may be reasonable, resulting in a State cost in this example of \$18 million annually.

The drug testing requirements of the bill would also increase State costs. Available information suggests that there are approximately 23,000 direct care staff in DHS-funded programs for individuals with developmental disabilities in New Jersey. Representatives of provider agencies have testified to the Legislature that their staff turnover rates for direct care staff are as high as 44 percent, suggesting approximately 10,000 new hires each year. At an estimated cost of \$60 per test (based on a survey of commercially available employee drug testing services), this would cost the State around \$600,000 annually. Additional costs for drug testing of job applicants who are not hired, random testing of certain current employees required by the bill, and administration would add an indeterminate amount to this total.

New and Upgraded Criminal Offenses: The OLS estimates that the establishment of two new criminal offenses and the upgrades of certain existing criminal offenses related to the abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver would increase the annual workload and operating expenditures of the Department of Law and Public Safety, the Judiciary, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The OLS, however, cannot quantify the annual cost increases because of a lack of data on the number of cases that would be adjudicated under the new and upgraded offenses.

The OLS notes that Department of Corrections data indicate that the average annual per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$41,964. However, this cost would not be incurred unless the prison population increased by a number large enough for the department to increase bed space capacity, raising fixed costs. Additional costs to be incurred in housing a small number of additional inmates without increasing bed spaces would approximate \$8.45 per day, totaling \$3,084 annually per inmate in marginal costs for food, wage, and clothing.

Any additional State cost from establishing the new crimes and upgrading several others may be offset, in part, by fines and penalties imposed by the courts on defendants convicted of having committed the offenses; however, the State's ability to collect criminal fines and penalties has historically been limited.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).