

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2503

STATE OF NEW JERSEY
217th LEGISLATURE

ADOPTED SEPTEMBER 19, 2016

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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 Komninos' Law."

CURRENT VERSION OF TEXT

As amended on July 31, 2017 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 8/1/2017)

1 AN ACT concerning individuals with developmental disabilities,
2 designated as Stephen Komninos' Law, supplementing ¹[Title]
3 ²[Titles 2C and¹] Title² 30 of the Revised Statutes, and amending
4 ¹[P.L.2003, c.191 and P.L.2010, c.5] various parts of the
5 statutory law¹.

6
7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9
10 ²[¹1. (New section) Endangering Welfare of Individuals with
11 Developmental Disabilities.

12 a. A caregiver or other person who has a legal duty to care for
13 an individual with a developmental disability, or who has assumed
14 responsibility for the care of a individual with a developmental
15 disability, and who subjects the individual with a developmental
16 disability to abuse, neglect, or exploitation, is guilty of a crime of
17 the second degree. Any other person who engages in conduct or
18 who causes harm as described in this section to an individual with a
19 developmental disability is guilty of a crime of the third degree.

20 b. As used in this section:

21 “Abuse,” “caregiver,” “exploitation,” and “neglect” each mean
22 the same as those terms are defined by section 2 of P.L.2010, c.5
23 (C.30:6D-74).

24 “Developmental disability” means the same as that term is
25 defined by section 3 of P.L.1977, c.82 (C.30:6D-3).¹²

26
27 ²[¹2.] ¹2 (New section) As used in sections ²[2] ¹2 through
28 ²[7] ⁶2 of P.L. , c. (C.) (pending before the Legislature as
29 this bill):

30 “Abuse” means the same as that term is defined by section 2 of
31 P.L.2010, c.5 (C.30:6D-74).

32 “Commissioner” means the Commissioner of Human Services.

33 “Community-based residential program” or “residential program”
34 means a group home or supervised apartment, which is licensed and
35 regulated by the department.

36 “Day program” means a program that is certified to provide day
37 habilitation services or sheltered workshops for individuals with
38 developmental disabilities.

39 “Department” means the Department of Human Services.

40 “Department employee” means a direct employee of the
41 Department of Human Services, or an employee of a department-
42 funded case management agency.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted May 15, 2017.

² Assembly amendments adopted in accordance with Governor's recommendations July 31, 2017.

1 "Developmental disability" means the same as that term is
2 defined by section 3 of P.L.1977, c.82 (C.30:6D-3).

3 "Direct care staff member" means a person 18 years of age or
4 older who is employed by a program, facility, or living arrangement
5 identified in subsection a. of section ²[6] ⁵ of P.L. , c. (C.)
6 (pending before the Legislature as this bill), and who may come
7 into direct contact with individuals with developmental disabilities
8 during the course of such employment.

9 "Exploitation" means the same as that term is defined by section
10 2 of P.L.2010, c.5 (C.30:6D-74).

11 "Group home" means a living arrangement that is operated in a
12 residence or residences leased or owned by a licensee; which
13 provides the opportunity for individuals with developmental
14 disabilities to live together in a home, sharing in chores and the
15 overall management of the residence; and in which staff provides
16 supervision, training, or assistance in a variety of forms and
17 intensity as required to assist the individuals ²as they move toward
18 independence².

19 "Licensee" means an individual, partnership, or corporation that
20 is licensed by the department, and is responsible for providing
21 services associated with the operation of a community-based
22 residential program.

23 "Major physical injury" means an injury that requires treatment
24 that can only be performed at a general hospital or special hospital
25 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), and which
26 may additionally include admission to the hospital for further
27 treatment or observation.

28 "Minor physical injury" means an injury that does not constitute
29 a major physical injury or a moderate physical injury, and which
30 can be treated with basic first aid, and without the assistance of a
31 health care professional.

32 "Moderate physical injury" means an injury that does not
33 constitute a major injury, but which requires treatment, beyond
34 basic first aid, that can only be performed by a health care
35 professional.

36 "Neglect" means the same as that term is defined by section 2 of
37 P.L.2010, c.5 (C.30:6D-74).

38 "Program" means any program that is licensed or funded by the
39 department for the purpose of providing services to individuals with
40 developmental disabilities. "Program" includes, but is not limited
41 to, a day program or a community-based residential program.

42 "Supervised apartment" means an apartment that is occupied by
43 individuals with developmental disabilities; is leased or owned by a
44 licensee; and in which staff provides supervision, guidance, and
45 training, as needed, to assist individual occupants in the activities of
46 daily living, in accordance with each individual's needs and targeted
47 future goals.¹

1 ¹[1.]²[3.]¹ 2.² (New section) ¹a.¹ The ¹[Commissioner of
2 Human Services] commissioner¹, or the commissioner's designee,
3 shall designate employees of the Department of Human Services,
4 ²[who are not employees of a State developmental center ¹,¹ but]²
5 ¹who¹ may be case managers employed by the department or an
6 agency under contract with the department, ¹[as applicable,] to
7 annually¹ conduct ¹[six unannounced] not less than two¹ site visits
8 ¹[annually] of every community-based residential program ²[and
9 every day program]², in order¹ to ¹[randomly check] evaluate¹
10 whether the individuals with developmental disabilities who are
11 receiving services from ¹[a] each such¹ program ¹[as defined in
12 section 2 of P.L.2010, c.5 (C.30:6D-74)]¹ ²[, facility, or living
13 arrangement licensed or funded by the department, other than a
14 community care residence which is subject to visits pursuant to
15 section 7 of P.L.2012, c.69 (C.30:6D-5.13),]² are at risk of, or are
16 being subjected to, abuse, neglect, or exploitation by a caregiver,
17 and report the ¹[same] results of each site visit¹ pursuant to section
18 3 of P.L.2010, c.5 (C.30:6D-75).

19 ¹b. (1) In the case of a community-based residential program
20 that is a group home, not less than two annual site visits that are
21 conducted for each such group home shall be unannounced site
22 visits conducted by a department employee who is assigned to a
23 resident of the group home.

24 (2) In the case of a community-based residential program that is
25 a supervised apartment, not less than two annual site visits that are
26 conducted for each such supervised apartment shall be unannounced
27 site visits of the apartment, which shall be conducted by a
28 department employee who is unaffiliated and unfamiliar with the
29 assigned case.

30 ²[(3) In the case of a day program, not less than one annual site
31 visit that is conducted for each day habilitation service provider and
32 each sheltered workshop provider shall be an unannounced site visit
33 conducted by a department employee who is assigned to a
34 participant in the day program; and not less than one annual site
35 visits shall be an unannounced site visit conducted by a department
36 employee who is unaffiliated and unfamiliar with the assigned
37 case.]²

38 c. Nothing in this section shall be interpreted to authorize a
39 staff member or agent of a community-based residential program
40 ²[, or a staff member or agent of a day program,]² to perform the
41 site visits required by this section.¹

42
43 ¹[2.]²[4.]¹ 3.² (New section) a. ¹[The Commissioner of
44 Human Services, or the commissioner's designee, shall designate
45 staff to notify the guardian or authorized family member, as defined
46 in section 2 of P.L.2010, c.5 (C.30:6D-74), of an individual with a

1 developmental disability receiving services from a program as
2 defined in section 2 of P.L.2010, c.5 (C.30:6D-74), facility,
3 community care residence, or living arrangement licensed or funded
4 by the department of any physical injury to the individual with a
5 developmental disability, as soon as possible, but no later than 60
6 minutes after the occurrence of the injury.

7 b.]¹ A provider or licensee ¹[, as applicable,]¹ of a ²community-
8 based residential program or day² program ¹[as defined in section 2
9 of P.L.2010, c.5 (C.30:6D-74)]¹ ²[, facility, community care
10 residence, or living arrangement licensed or funded by the
11 department ¹,¹]² shall ¹[notify the guardian or authorized family
12 member of] provide notification, in accordance with the provisions
13 of subsection b. of this section, of any major physical injury,
14 moderate physical injury, or minor physical injury, as prescribed by
15 department regulation, that is suffered by¹ an individual with a
16 developmental disability ¹who is¹ receiving services from the
17 provider or licensee ¹[of any physical injury to the individual with
18 a developmental disability] .

19 b. Except as otherwise provided by subsection c. of this
20 section, the notification required under this section shall be
21 provided:

22 (1)¹ as soon as possible, but no later than ²[60 minutes] two
23 hours² after the occurrence of the injury ², except that if there is an
24 extraordinary circumstance that prevents such notification, the
25 provider or licensee shall provide notification as soon as possible,
26 but no later than eight hours after the occurrence of the injury and
27 shall provide a written, detailed explanation of the extraordinary
28 circumstance causing the delay to the commissioner and to the
29 guardian of the injured individual with a developmental disability
30 or, if there is no guardian of the individual, to a family member who
31 requests such notification, within 14 days of the incident² ¹].

32 c. Notifications pursuant to this section shall be in person] ;

33 (2) to the guardian of the injured individual with a
34 developmental disability, or, if there is no guardian of the
35 individual, to a family member who requests such notification
36 ²unless the individual has expressly prohibited the family member
37 from receiving such notification² ; and

38 (3) through in-person means¹ ²[,]² or by telephone ²[, and ¹also
39 through email or¹ other electronic means]² ¹[shall be used to
40 follow up the telephoned] . Electronic means may be used to
41 engage in follow-up communications after the initial¹ notification.

42 ¹c. Notwithstanding the provisions of this section to the
43 contrary, notification pursuant to this section shall not be required if
44 the guardian or family member expresses, in a written document
45 filed with the caretaker, that they do not want to receive notification
46 of injury pursuant to this section.¹

1 ¹[3.]²[5.]¹ 4.² (New section) Within 48 hours ¹[of] after¹
2 receipt of a report of an incident involving ¹[abuse or neglect, as
3 those terms are defined in section 2 of P.L.2010, c.5 (C.30:6D-74),
4 or physical injury in a program as defined in section 2 of P.L.2010,
5 c.5 (C.30:6D-74), facility, community care residence, or living
6 arrangement licensed or funded by the Department of Human
7 Service for an individual with a developmental disability, the
8 Commissioner of Human Services] moderate physical injury, major
9 physical injury, or abuse, neglect, or exploitation in a State
10 developmental center ²[.]² or² community-based residential
11 program, ²[or day program,]² the commissioner¹ shall send an
12 employee of the department, who is not an employee of a State
13 developmental center ¹,¹ but ¹who¹ may be a case manager
14 employed ¹either¹ by the department ¹,¹ or ¹by¹ an agency under
15 contract with the department, ¹[as applicable,]¹ to the location of
16 the reported incident ¹, in order¹ to verify the level of severity of
17 the incident. ¹In investigating the incident, the department shall
18 comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-
19 76).¹

21 ¹[4.]²[6.]¹ 5.² (New section) a. ¹[As a condition of] (1) A
22 person applying for¹ employment as a direct care staff member ¹[,
23 as defined in subsection g. of this section,]¹ at a program ¹[as
24 defined in section 2 of P.L.2010, c.5 (C.30:6D-74)]¹ , facility ¹, or
25 living arrangement licensed or funded by the department,¹ other
26 than a developmental center ¹[which] that¹ is ¹already¹ subject to
27 ¹[drug testing pursuant to] the provisions of¹ section 1 of P.L.2009,
28 c.220 (C.30:4-3.27), ¹[or living arrangement licensed or funded by
29 the Department of Human Services, an applicant for such
30 employment]¹ shall consent to and undergo drug testing for
31 controlled dangerous substances ¹[. The drug testing shall be at the
32 expense of the applicant] as a condition of such employment¹.

33 ¹(2)¹ If a person applying for employment pursuant to this
34 subsection, on or after the effective date of P.L. , c. (C.)
35 (pending before the Legislature as this bill), tests positive for the
36 unlawful use of any controlled dangerous substance, or refuses to
37 submit to drug testing ¹as required by this subsection¹, the person
38 shall be removed from consideration for employment.

39 b. ¹[A person who is] (1) Direct care staff members¹ employed
40 ¹[as a direct care staff member pursuant to] at a program, facility,
41 or living arrangement identified in subsection a. of¹ this section ¹,¹
42 shall be subject ¹, during the course of employment,¹ to ¹random¹
43 drug testing for controlled dangerous substances ¹[which shall
44 occur randomly and at] , as provided by this subsection.

1 (2) At¹ least once a year¹, the employing program, facility, or
2 living arrangement shall require one or more of the direct care staff
3 members employed thereby to undergo random drug testing for
4 controlled dangerous substances. The person who is responsible for
5 the overall operation of the program, facility, or living arrangement
6 shall have the discretion to determine the total number of direct care
7 staff members who will be required to undergo random drug testing,
8 each year, pursuant to this subsection¹.

9 c. **1****【A person who is employed as】** In addition to the annual
10 performance of random drug testing, as provided by subsection b. of
11 this section, a program, facility, or living arrangement identified in
12 subsection a. of this section may additionally require¹ a direct care
13 staff member **1**【may be required】 employed thereby¹ to undergo
14 drug testing for controlled dangerous substances ¹, at any time,¹ if
15 the direct care staff member's immediate supervisor has reasonable
16 suspicion to believe that the staff member is illegally using a
17 controlled dangerous substance, based on the staff member's visible
18 impairment or professional misconduct which relates adversely to
19 patient care or safety. The supervisor shall report this information
20 to his immediate supervisor in a form and manner specified by the
21 commissioner, and ¹,¹ if the **1**【supervisor】 latter¹ concurs that there
22 is reasonable suspicion to believe that a direct care staff member is
23 illegally using a controlled dangerous substance, that supervisor
24 shall notify the person ¹who is¹ responsible for the overall operation
25 of the **1**【agency under contract with the department to provide
26 services to individuals with developmental disabilities】 program,
27 facility, or living arrangement¹, and request ¹written¹ approval **1**【in
28 writing for ordering】 therefrom to order¹ the direct care staff
29 member to undergo drug testing ¹【. The drug】 pursuant to this
30 subsection. Drug¹ testing ¹under this subsection¹ shall not be
31 ordered without the written approval of the person ¹who is¹
32 responsible for the overall operation of the **1**【agency】 program,
33 facility, or living arrangement¹.

34 d. **1****【A】 If a¹ direct care staff member ¹【who】 is subjected to a**
35 **1****【drug test under subsection b. or c. of this section, and¹ tests positive**
36 **1****for the unlawful use of any controlled dangerous substance ¹, the**
37 **1****direct care staff member¹ may be referred for treatment services or**
38 **1****terminated from employment. A direct care staff member who**
39 **1****refuses to submit to drug testing ¹, as required by subsection b. or c.**
40 **1****of this section,¹ shall be terminated from employment.**

41 e. **1****【The】 Any¹ drug testing ¹【required】 performed¹ pursuant**
42 **1****to ¹【subsections b. and c. of】¹ this section shall be ¹done¹ at the**
43 **1****expense of ¹【the agency under contract with】¹ the department.**

44 f. **1****【The agency under contract with the department】 Any**
45 **1****program, facility, or living arrangement identified in subsection a.**

1 of this section, which employs a direct care staff member,¹ shall
2 notify ¹ **[all direct care]** the¹ staff ¹ **[members]** member¹ of the
3 provisions of this section.

4 ¹ **[g.** As used in this section, "direct care staff member" means a
5 person 18 years of age or older who is employed by a public or
6 private agency under contract with the department to provide
7 services to individuals with developmental disabilities receiving
8 services from the department and includes those employed persons
9 who may come into direct contact with individuals with
10 developmental disabilities.]¹

11

12 ² **[17.] 6.**² (New section) a. Each State developmental center
13 shall biannually schedule a meeting with parents and guardians of
14 individuals with developmental disabilities residing in the
15 developmental center, in order to provide an opportunity for parents
16 and guardians to share experiences about the individuals.

17 b. The provider of a community-based residential program
18 shall request contact information from each parent or guardian of an
19 individual with a developmental disability who is residing in the
20 residential program, and shall advise the parent or guardian that, if
21 the parent or guardian agrees, the provider will exchange contact
22 information with other parents and guardians of individuals with
23 developmental disabilities residing in the residential program, in
24 order to provide an opportunity for parents and guardians to share
25 experiences about the individuals.

26 c. The provider of a day program shall request contact
27 information from each parent or guardian of an individual with a
28 developmental disability who is participating in the day program,
29 and shall advise the parent or guardian that, if the parent or
30 guardian agrees, the provider will exchange contact information
31 with other parents and guardians of individuals with developmental
32 disabilities who are participating in the same program, in order to
33 provide an opportunity for parents and guardians to share
34 experiences about the individuals.¹

35

36 ¹ **[5.]** ² **[8.1]** 7.² Section 4 of P.L.2003, c.191 (C.30:6D-5.4) is
37 amended to read as follows:

38 4. a. ¹ **[A]** Any¹ member of the staff at a facility for persons
39 with developmental disabilities or ¹ **[a facility]**¹ for persons with
40 traumatic brain injury ¹ **[or a]** , and any¹ member of the staff at a
41 public or private agency ¹ ,¹ who violates the provisions of section 3
42 of **[this act]** P.L.2003, c.191 (C.30:6D-5.3) shall be liable to a civil
43 penalty of \$5,000 for the first offense, \$10,000 for the second
44 offense, and \$25,000 for the third and each subsequent offense, to
45 be sued for and collected in a summary proceeding by the
46 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
47 P.L.1999, c.274 (C.2A:58-10 et seq.).

1 b. A penalty collected pursuant to this section shall be
2 dedicated to providing funding for training caregivers, as defined in
3 section 2 of P.L.2010, c.5 (C.30:6D-74), and for 'site' visits
4 conducted pursuant to P.L. , c. (C.) (pending before the
5 Legislature as this bill).

6 (cf: P.L.2003, c.191, s.4)

7
8 ¹**[6.]** ²**[9.1]** ³**8.2** Section 2 of P.L.2010, c.5 (C.30:6D-74) is
9 amended to read as follows:

10 2. As used in **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.):

11 "Abuse" means wrongfully inflicting or allowing to be inflicted
12 physical abuse, sexual abuse, or verbal or psychological abuse or
13 mistreatment by a caregiver upon an individual with a
14 developmental disability.

15 ²**["Authorized family member" means a relative of ¹**[the]** an¹**
16 **individual with a developmental disability ¹who is¹ authorized by**
17 **the individual's guardian, or by the individual if the individual is his**
18 **own guardian, to receive information pursuant to P.L.2010, c.5**
19 **(C.30:6D-73 et seq.).]²**

20 "Caregiver" means a person who receives State funding, directly
21 or indirectly, in whole or in part, to provide services or supports, or
22 both, to an individual with a developmental disability; except that
23 "caregiver" shall not include an immediate family member of a
24 person with a developmental disability.

25 "Central registry" means the Central Registry of Offenders
26 Against Individuals with Developmental Disabilities established
27 pursuant to **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.).

28 "Commissioner" means the Commissioner of Human Services.

29 "Department" means the Department of Human Services.

30 "Developmental disability" means ¹**[developmental disability]**
31 **the same¹ as ¹that term is¹ defined ¹**[in]** by¹ section 3 of P.L.1977,**
32 **c.82 (C.30:6D-3).**

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

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

39 "Lewdness" means the exposing of the genitals for the purpose
40 of arousing or gratifying the sexual desire of a caregiver or an
41 individual with a developmental disability, or any flagrantly lewd
42 and offensive act which the caregiver knows or reasonably expects
43 is likely to be observed by an individual with a developmental
44 disability.

45 "Neglect" shall consist of any of the following acts by a
46 caregiver on an individual with a developmental disability: willfully
47 failing to provide proper and sufficient food, clothing, maintenance,

1 medical care, or a clean and proper home; or ¹**[failure]** failing¹ to
2 do or permit to be done any act necessary for the well-being of an
3 individual with a developmental disability.

4 "Physical abuse" means a physical act directed at an individual
5 with a developmental disability by a caregiver of a type that causes
6 one or more of the following: pain, injury, anguish, or suffering.
7 Such acts include, but are not limited to, the individual with a
8 developmental disability being kicked, pinched, bitten, punched,
9 slapped, hit, pushed, dragged, or struck with a thrown or held
10 object.

11 "Program" means any program ¹that is¹ licensed or funded by the
12 department ¹**[that provides]** for the purpose of providing¹ services
13 to individuals with developmental disabilities ¹**[and]** . "Program"¹
14 includes ¹, but is not limited to,¹ a day program ¹or a community-
15 based residential program, as those terms are defined by section
16 ²**[2]** ¹ of P.L. , c. (C.) (pending before the Legislature as
17 this bill)¹.

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

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

34 "Sexual penetration" means vaginal intercourse, cunnilingus,
35 fellatio, or anal intercourse between a caregiver and an individual
36 with a developmental disability or insertion of the hand, finger, or
37 object into the anus or vagina, either by the caregiver or upon the
38 caregiver's instruction.

39 "Verbal or psychological abuse or mistreatment" means any
40 verbal or non-verbal act or omission by a caregiver that inflicts one
41 or more of the following: emotional harm; mental distress; or
42 invocation of fear, humiliation, intimidation, or degradation to an
43 individual with a developmental disability. Examples include, but
44 are not limited to: bullying; ignoring need; verbal assault; use of
45 racial or ethnic slurs; or intimidating gestures, such as shaking a fist
46 at an individual with a developmental disability.

47 (cf: P.L.2010, c.5, s.2)

1 ¹[7.] ²[10.1] ^{9.}² Section 3 of P.L.2010, c.5 (C.30:6D-75) is
2 amended to read as follows:

3 3. a. (1) A case manager or case manager's supervisor in the
4 department, a person employed or volunteering in a program,
5 facility, community care residence, or living arrangement licensed
6 or funded by the department, a person conducting ¹[an
7 unannounced] a ¹ site visit pursuant to section ¹[1] ²[31] ² of
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 or a person providing community-based services with indirect State
10 funding to a person with a developmental disability, as applicable,
11 having reasonable cause to believe that an individual with a
12 developmental disability has been subjected to abuse, neglect, or
13 exploitation by a caregiver ¹, ¹ shall report the same immediately to
14 the department by telephone or otherwise ¹[, and the department
15 shall notify, as].

16 (2) ²[As¹ soon as possible ¹, ¹ but no later than 60 minutes after
17 the occurrence of the abuse, neglect, or exploitation, the
18 ¹department shall provide notice of the incident to the ¹ guardian or
19 authorized family member of the individual with a developmental
20 disability who was the subject of the abuse, neglect, or exploitation.

21 ¹[(2) Such] (3)]² A ¹ report ¹made pursuant to paragraph (1) of
22 this subsection ¹, where possible, shall contain ¹: (a) ¹ the name and
23 address of the individual with a developmental disability ¹[and] ,
24 as well as the name and address of ¹ the caregiver responsible for the
25 care, custody, or control of the individual with a developmental
26 disability, and the guardian, or other person having custody and
27 control of the individual ¹, ¹ and ¹[,] (b) ¹ if known, the condition of
28 the individual with a developmental disability, the nature and
29 possible extent of the individual's injuries, maltreatment, abuse,
30 neglect ¹, ¹ or exploitation, including any evidence of previous
31 injuries, maltreatment, abuse, neglect, or exploitation, and any other
32 information that the person believes may be helpful with respect to
33 the injuries, maltreatment, abuse, neglect, or exploitation of the
34 individual with a developmental disability and the identity of the
35 alleged offender.

36 b. Within the department, the commissioner shall:

37 (1) maintain a unit to receive and prioritize ¹[such]¹ reports [,]
38 that are filed pursuant to this section ¹ ;

39 (2) provide for verification of the unit's prioritization of the
40 reports by sending an employee or case manager to the appropriate
41 location within 48 hours to verify the level of severity of the report,
42 ¹[pursuant to] as provided by ¹ section ¹[3] ²[51] ⁴ of P.L. ,
43 c. (C.) (pending before the Legislature as this bill);

44 (3) initiate appropriate responses through timely and appropriate
45 investigative activities [,];

46 (4) alert appropriate staff [,]; and

1 (5) ensure that findings are reported in a uniform and timely
2 manner.

3 c. (1) A person employed or volunteering in a program,
4 facility, community care residence, or living arrangement licensed
5 or funded by the department, or a person providing community-
6 based services with indirect State funding to a person with a
7 developmental disability, as applicable, who fails to report an act of
8 abuse, neglect, or exploitation against an individual with a
9 developmental disability while having reasonable cause to believe
10 that such an act has been committed, is a disorderly person.

11 (2) A case manager or case manager's supervisor in the
12 department who fails to report an act of abuse, neglect, or
13 exploitation of an individual with a developmental disability while
14 having reasonable cause to believe that such an act has been
15 committed, shall be guilty of a **【disorderly person's offense】** crime
16 of the fourth degree, unless the abuse, neglect, or exploitation
17 results in the death of an individual with a developmental disability,
18 in which case the case manager or case manager's supervisor shall
19 be guilty of a crime of the **【fourth】** third degree.

20 d. In addition to any penalty imposed pursuant to this section, a
21 person convicted under this section shall be subject to a penalty in
22 the amount of \$350 for each day that the abuse, neglect, or
23 exploitation was not reported, payable to the Treasurer of the State
24 of New Jersey, which shall be used by the department to fund the
25 provision of food and care to individuals with developmental
26 disabilities residing in community care residences.

27 e. A case manager or case manager's supervisor ^{1,1} or a
28 caregiver suspected of abuse, neglect, or exploitation of an
29 individual with a developmental disability ^{1,1} who is charged with
30 failure to report an act of abuse, neglect, or exploitation of an
31 individual with a developmental disability while having reasonable
32 cause to believe that such an act has been committed, shall be
33 temporarily reassigned to duties that do not involve contact with
34 individuals with developmental disabilities or other vulnerable
35 populations ^{1,1} and shall be terminated from employment if
36 convicted.

37 In the case of a case manager or case manager's supervisor ^{1,1} or
38 ¹of a caregiver suspected of abuse, neglect, or exploitation who is
39 employed by the department, the case manager **【or】**, supervisor, or
40 caregiver shall retain any available right of review by the Civil
41 Service Commission.

42 (cf: P.L.2012, c.69, s.9)

43

44 ¹**【8.】** ²**【11.1】** 10.² Section 4 of P.L.2010, c.5 (C.30:6D-76) is
45 amended to read as follows:

46 4. a. Upon receipt of a report pursuant to section 3 of **【this**
47 **act】** P.L.2010, c.5 (C.30:6D-75), the department shall designate an

1 entity, as established by the commissioner, that shall immediately
2 take such action as shall be necessary to ensure the safety of the
3 individual with a developmental disability and to that end may
4 request appropriate assistance from local and State law enforcement
5 officials or contact Adult Protective Services to provide assistance
6 in accordance with the provisions of P.L.1993, c.249 (C.52:27D-
7 406 et seq.). The guardian of the individual with a developmental
8 disability ¹~~also~~¹ shall ¹~~also~~¹ be authorized to request appropriate
9 assistance from local and State law enforcement officials.
10 ²~~Assistance from local and State law enforcement officials~~
11 pursuant to this subsection shall be provided by such an official
12 who has undergone education or training in working with
13 individuals with developmental disabilities.²

14 b. ¹~~(1)~~¹ The commissioner shall adopt rules and regulations
15 necessary to provide for an investigation of a reported incident and
16 subsequent substantiation or non-substantiation of an allegation of
17 abuse, neglect, or exploitation of an individual with a
18 developmental disability by a caregiver, ~~by~~ which shall include:

19 ¹~~(1)~~¹ (a) ¹ maintaining ~~a Special Response Unit~~ an Office of
20 Investigations to investigate serious unusual incidents, as defined
21 by applicable rules and regulations, in facilities or ~~community~~
22 programs licensed, contracted, or regulated by the department and
23 to investigate incidents that occur in State developmental centers;
24 ¹~~and~~

25 ²~~(2)~~¹ (b) ¹ providing ¹~~an opportunity for a~~ the¹ guardian ²~~or~~
26 authorized family member² ¹of the individual with prior notice of
27 the commencement of an investigation under this section, and
28 providing an opportunity for the guardian ²~~or authorized family~~
29 member², as appropriate,¹ to submit information to facilitate an
30 investigation, ²~~to~~¹ represent the individual, ¹~~and~~¹ to
31 be informed of the progress of the investigation² ¹~~which shall~~
32 include a requirement that the department provide a ²~~,~~
33 to be present while the individual is being interviewed, and to terminate
34 the interview at any time, unless it would impede the investigation
35 except that if there is no guardian, a family member of the
36 individual may submit information, unless the individual has
37 expressly prohibited the family member from doing so²; and

38 (c) providing ²~~the~~¹ guardian or authorized family member ¹of
39 the individual¹ with a written progress report ¹~~of~~¹ that shows ¹the
40 status of ¹~~an~~¹ the¹ investigation, ¹~~including~~¹ and includes ¹any
41 medical records or reports about the individual, within seven
42 calendar days of the incident ¹,¹ and weekly thereafter.

43 ¹~~(2)~~ Before commencing an investigation in response to a report
44 of alleged abuse, neglect, or exploitation, the department shall first
45 notify the guardian or authorized family member of the alleged
46 victim, either in person or by telephone, that an investigation will

1 be undertaken pursuant to this section. The department shall also
2 notify the guardian or authorized family member before any
3 investigative interview of the alleged victim is commenced. The
4 guardian or authorized family member, upon request, shall be
5 permitted to attend or observe the investigative interview of the
6 person the guardian or family member represents, unless the
7 attendance or observation would impede the investigation. If the
8 guardian or authorized family member expressly requests, at any
9 time, that the department terminate an interview that has been
10 commenced under this section, the department, and its Office of
11 Investigations, shall immediately comply with the request, unless
12 it] that a guardian of an individual with a developmental disability,
13 upon request, may be permitted to attend the investigative interview
14 of the individual the guardian represents and to terminate the
15 interview of the individual the guardian represents, unless the
16 attendance or termination² would impede the investigation.

17 ²~~[(3)¹]~~ (2)² During its investigation of an allegation of abuse,
18 neglect, or exploitation of an individual with a developmental
19 disability by a caregiver, the ~~【Special Response Unit】~~ Office of
20 Investigations shall make a good faith effort to notify the caregiver
21 of the possibility of the caregiver's inclusion on the registry, and
22 give the caregiver an opportunity to respond to the department
23 concerning the allegation. ¹~~【A guardian of an individual with a~~
24 developmental disability, upon request, may be permitted to attend
25 or observe the investigation, unless the attendance or observation
26 would impede the investigation.】¹

27 c. The ~~【Special Response Unit】~~ Office of Investigations, the
28 department, or other investigating entity shall forward to the
29 commissioner, or the commissioner's designee, a substantiated
30 incident of abuse, neglect, or exploitation of an individual with a
31 developmental disability for inclusion of an offending caregiver on
32 the central registry. The ~~【Special Response Unit】~~ Office of
33 Investigations, the department, or other investigating entity shall
34 also forward to the commissioner, or the commissioner's designee,
35 all unsubstantiated incidents of abuse, neglect, or exploitation of an
36 individual with a developmental disability. As soon as possible,
37 and no later than ¹~~【14】~~ ²~~【seven¹】~~ 14² days after receipt of the
38 incident of abuse, neglect, or exploitation, the commissioner or the
39 commissioner's designee shall review the incident. The offending
40 caregiver of a substantiated incident shall be included on the central
41 registry as expeditiously as possible. The ~~【Special Response Unit】~~
42 Office of Investigations shall retain a record of all unsubstantiated
43 incidents.

44 d. Upon the initiation of an investigation, the department shall:
45 (1) ensure that any communication concerning the alleged abuse,
46 neglect, or exploitation of an individual with a developmental
47 disability between a caregiver, case manager of the caregiver, the

1 case manager's supervisor, or a person at the appropriate Regional
2 Office of the Division of Developmental Disabilities is identified,
3 safeguarded from loss or destruction, and maintained in a secure
4 location; and (2) contact the Office of the Attorney General, which
5 shall determine whether to participate in the investigation.

6 e. ¹~~【The】~~¹ ~~【Special Response Unit】~~ ¹(1) ~~【No later than ²【14】~~
7 ~~【30² days after an investigation under this section is concluded, the ¹~~
8 ~~【Office of Investigations】~~ shall issue a written report of the
9 investigation that includes the conclusions of the unit, the rationale
10 for the ¹~~【conclusion】~~ ~~conclusions¹~~, and a detailed summary of any
11 communication secured pursuant to subsection d. of this section.
12 The report shall also include an assessment of the role of any case
13 manager of a caregiver or the case manager's supervisor, if
14 applicable, in the allegation of abuse, neglect, or exploitation, and a
15 recommendation about whether any civil or criminal action should
16 be brought against the case manager or supervisor. The report shall
17 be made part of the record for review in any civil or criminal
18 proceeding that may ensue.

19 ¹(2)¹ A written summary of the ~~【conclusions of the】~~
20 investigation, ¹~~【including any medical records or reports about the~~
21 ~~individual with a developmental disability】~~ ~~as provided for in~~
22 ~~paragraph (3) of this subsection¹~~, shall be provided to the guardian
23 ²~~【or authorized family member】~~² of the individual with a
24 developmental disability who is the subject of the alleged abuse,
25 neglect, or exploitation ¹; ~~however, the actual records and reports of~~
26 ~~an investigation shall also be provided to a guardian or ²【authorized~~
27 ~~family member】~~ other person who is responsible for the welfare of
28 the individual with a developmental disability² if the information is
29 needed in connection with the provision of care, treatment,
30 assessment, evaluation, or supervision to the individual; and the
31 provision of information is in the best interests of the individual
32 with a developmental disability, as determined by the Division of
33 Developmental Disabilities ²~~【, or by the individual's guardian or~~
34 ~~authorized family member】~~².

35 (3) The written summary of an investigation of an alleged
36 incident of abuse, neglect, or exploitation shall include, but need
37 not be limited to:

38 (a) the name of the individual with a developmental disability
39 who is the subject of the alleged abuse, neglect, or exploitation;

40 (b) the date of the incident, or the date the incident was reported
41 if the incident date is unknown;

42 (c) whether the incident is an allegation of abuse, neglect, or
43 exploitation;

44 (d) the incident number;

45 (e) a summary of the allegation of abuse, neglect, or
46 exploitation;

- 1 (f) a finding that the incident is substantiated or
2 unsubstantiated;
3 (g) the rationale for the finding and, if the incident is
4 substantiated, a description of the action or inaction that
5 precipitated the finding;
6 (h) if known at the time of issuing the summary, whether or not
7 criminal charges against the alleged offending caregiver are
8 pending; and
9 (i) whether remedial action was taken¹.

10 ²(4) If there is no guardian of the individual with a
11 developmental disability who is the subject of the alleged abuse,
12 neglect, or exploitation, the written summary described in
13 paragraph (3) of this subsection shall be provided to a family
14 member of the individual who requests such summary, unless the
15 individual has expressly prohibited the family member from
16 receiving such summary.²

17 f. A licensed provider in another state shall be permitted access
18 to the central registry.
19 (cf: P.L.2012, c.69, s.10)

20

21 ¹[9.] ²[12.1] 11.² Section 5 of P.L.2010, c.5 (C.30:6D-77) is
22 amended to read as follows:

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

26 b. The commissioner shall adopt rules and regulations that
27 define the procedures and standards for inclusion of an offending
28 caregiver on the central registry, and for notification of such
29 inclusion to the caregiver and to the guardian ²[or authorized
30 family member]² of the individual with a developmental disability
31 who was the subject of the abuse, neglect, or exploitation that led to
32 the caregiver's inclusion on the central registry. The commissioner
33 or the commissioner's designee shall designate staff to notify the
34 guardian ²[or authorized family member]² of the individual of any
35 action taken by the department to remediate a condition that may
36 have contributed to the occurrence of the abuse, neglect, or
37 exploitation of the individual. ²If the individual with a
38 developmental disability has no guardian, notification pursuant to
39 this subsection shall be given to a family member who requests
40 such notification, unless the individual has expressly prohibited the
41 family member from receiving such notification.²

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

46 (2) For inclusion on the central registry in the case of a
47 substantiated incident of neglect, the caregiver shall have acted with

1 gross negligence, recklessness, or in a pattern of behavior that
2 causes or potentially causes harm to an individual with a
3 developmental disability.

4 (3) In the case of a substantiated incident of exploitation, the
5 commissioner shall establish a dollar amount for inclusion on the
6 central registry.

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

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

14 (2) concerning the dissemination of information in the central
15 registry;

16 (3) that will prohibit persons included on the central registry
17 from employment in facilities or programs of the Division of
18 Developmental Disabilities in the department and those facilities or
19 programs licensed, contracted, or regulated by the department, or
20 from providing community-based services with indirect State
21 funding to ¹**persons** individuals¹ with developmental disabilities;
22 and

23 (4) necessary to provide for the removal of a person's name
24 from the central registry. A person may apply for removal of his
25 name to the commissioner after a period of five years of being
26 placed on the central registry. The person shall affirmatively
27 demonstrate to the commissioner clear and convincing evidence of
28 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
29 1 et seq.) as a guide.

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

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

39 (cf: P.L.2010, c.5, s.5)

40

41 ¹**[10.]** ²**[13.1]** 12.² Section 6 of P.L.2010, c.5 (C.30:6D-78) is
42 amended to read as follows:

43 6. ¹a.¹ All records of a report made pursuant to **[this act]**
44 section 3 of P.L.2010, c.5 (C.30:6D-75), all information obtained by
45 the department in investigating such reports, and all reports of
46 findings forwarded to the central registry pursuant to **[this act]**

1 P.L.2010, c.5 (C.30:6D-73 et seq.) shall be kept confidential and
2 may be disclosed only ¹;

3 (1)¹ insofar as information is shared with a guardian in
4 connection with a guardian's attendance ¹at ²[, ¹ or observation of
5 ¹ ¹ ² an investigative interview pursuant to subsection b. of section
6 4 of P.L.2010, c.5 (C.30:6D-76) ¹; ¹ or

7 ¹(2)¹ under circumstances expressly authorized by ¹paragraph
8 (2) of subsection e. of section 4 of P.L.2010, c.5 (C.30:6D-76), or
9 by¹ rules and regulations promulgated by the commissioner.

10 ¹b.¹ The department shall only disclose information that is
11 relevant to the purpose for which the information is required ¹[or,
12 pursuant to subsection b. of section 4 of P.L.2010, c.5 (C.30:6D-
13 76), is shared in connection with a guardian's attendance or
14 observation of an investigative interview or in connection with a
15 progress report]¹; except that the department shall not disclose
16 information which would likely endanger the life, safety, or
17 physical or emotional well-being of an individual with a
18 developmental disability or the life or safety of any other person, or
19 which may compromise the integrity of a department investigation,
20 civil or criminal investigation, or judicial proceeding. If the
21 department denies access to specific information on this basis, the
22 requesting entity may seek disclosure through the Superior Court.
23 Nothing in **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.) shall be
24 construed to permit the disclosure of any information deemed
25 confidential by federal or State law.

26 (cf: P.L.2010, c.5, s.6)

27

28 ²13. The Department of Human Services shall post a copy of
29 P.L. , c. (C.) (pending before the Legislature as this bill) on
30 its website.²

31

32 ¹[11.] 14.¹ The Commissioner of Human Services, pursuant to
33 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
34 seq.), shall adopt rules and regulations necessary to effectuate the
35 purposes of this act.

36

37 ¹[12.] 15.¹ This act shall take effect on the first day of the
38 seventh month next following the date of enactment, but the
39 Commissioner of Human Services may take such anticipatory
40 administrative action in advance thereof as shall be necessary for
41 the implementation of this act.