

ASSEMBLY, No. 3386

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MARCH 3, 2016

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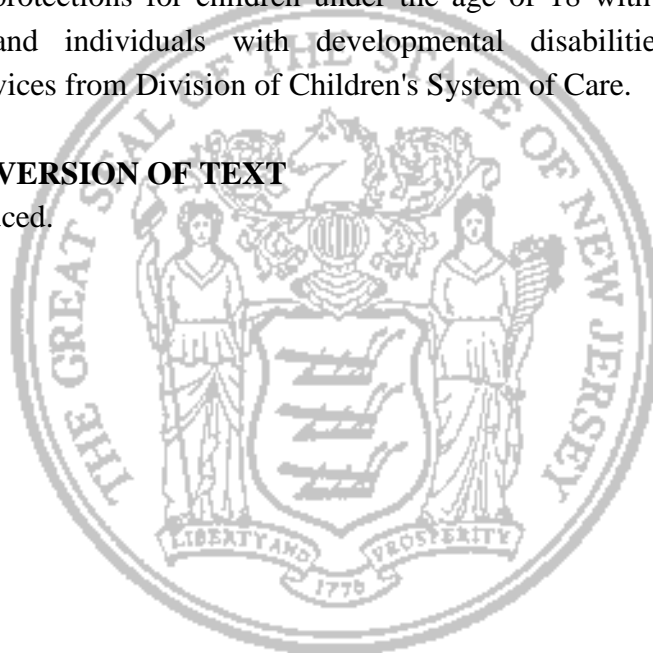
Assemblywomen Mosquera, Jasey and Assemblyman Benson

SYNOPSIS

Provides protections for children under the age of 18 with developmental disabilities and individuals with developmental disabilities ages 18-21 receiving services from Division of Children's System of Care.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/28/2016)

1 AN ACT concerning individuals with developmental disabilities,
2 amending P.L.2010, c.5, and supplementing Chapter 6 of Title 9
3 of the Revised Statutes.

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

7
8 1. Section 1 of P.L.2010, c.5 (C.30:6D-73) is amended to read
9 as follows:

10 1. The Legislature finds and declares that:

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

15 b. The safety of individuals with developmental disabilities
16 receiving care from State-operated facilities or programs, from
17 those facilities or programs licensed, contracted, or regulated by the
18 **[Department]** Departments of Human Services**[,]** or Children and
19 Families, or from State-funded community-based services shall be
20 of paramount concern;

21 c. It is the intent of this legislation to assure that the lives of
22 innocent individuals with developmental disabilities are
23 immediately safeguarded from further injury and possible death and
24 that the legal rights of such **[persons]** individuals are fully
25 protected; and

26 d. Therefore, this act establishes a Central Registry of
27 Offenders Against Individuals with Developmental Disabilities in
28 the Department of Human Services to prevent caregivers who
29 become offenders against individuals with developmental
30 disabilities from working with individuals with developmental
31 disabilities.

32 (cf: P.L.2010, c.5, s.1)

33
34 2. Section 2 of P.L.2010, c.5 (C.30:6D-74) is amended to read
35 as follows:

36 2. As used in this act:

37 "Abuse" means wrongfully inflicting or allowing to be inflicted
38 physical abuse, sexual abuse, or verbal or psychological abuse or
39 mistreatment by a caregiver upon an individual with a
40 developmental disability.

41 "Caregiver" means a person who receives State funding, directly
42 or indirectly, in whole or in part, to provide services or supports, or
43 both, to an individual with a developmental disability; except that
44 "caregiver" shall not include an immediate family member of **[a**
45 **person]** an individual with a developmental disability.

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.

1 "Central registry" means the Central Registry of Offenders
2 Against Individuals with Developmental Disabilities established
3 pursuant to this act.

4 "Children's System of Care" means the Division of Children's
5 System of Care in the Department of Children and Families.

6 "Commissioner" means the Commissioner of Human Services.

7 "Department" means the Department of Human Services.

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

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

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

16 "Lewdness" means the exposing of the genitals for the purpose
17 of arousing or gratifying the sexual desire of a caregiver or an
18 individual with a developmental disability, or any flagrantly lewd
19 and offensive act which the caregiver knows or reasonably expects
20 is likely to be observed by an individual with a developmental
21 disability.

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

28 "Physical abuse" means a physical act directed at an individual
29 with a developmental disability by a caregiver of a type that causes
30 one or more of the following: pain, injury, anguish, or suffering.
31 Such acts include, but are not limited to, the individual with a
32 developmental disability being kicked, pinched, bitten, punched,
33 slapped, hit, pushed, dragged, or struck with a thrown or held
34 object.

35 "Sexual abuse" means an act or attempted act of lewdness, sexual
36 contact, or sexual penetration between a caregiver and an individual
37 with a developmental disability. Any form of sexual contact or
38 activity between a caregiver and an individual with a developmental
39 disability, absent marriage, domestic partnership, or civil union, is
40 sexual abuse, regardless of whether the individual with a
41 developmental disability gives consent or the caregiver is on or off
42 duty.

43 "Sexual contact" means an intentional touching by a caregiver or
44 individual with a developmental disability, either directly or
45 through clothing, of the intimate parts of the individual with a
46 developmental disability or the caregiver for the purpose of
47 sexually arousing or sexually gratifying the caregiver. Sexual
48 contact of the caregiver with himself must be in view of the

1 individual with a developmental disability whom the caregiver
2 knows to be present.

3 "Sexual penetration" means vaginal intercourse, cunnilingus,
4 fellatio, or anal intercourse between a caregiver and an individual
5 with a developmental disability or insertion of the hand, finger, or
6 object into the anus or vagina, either by the caregiver or upon the
7 caregiver's instruction.

8 "Verbal or psychological abuse or mistreatment" means any
9 verbal or non-verbal act or omission by a caregiver that inflicts one
10 or more of the following: emotional harm; mental distress; or
11 invocation of fear, humiliation, intimidation, or degradation to an
12 individual with a developmental disability. Examples include, but
13 are not limited to: bullying; ignoring need; verbal assault; use of
14 racial or ethnic slurs; or intimidating gestures, such as shaking a fist
15 at an individual with a developmental disability.

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

17

18 3. Section 4 of P.L.2010, c.5 (C.30:6D-76) is amended to read
19 as follows:

20 4. a. Upon receipt of a report pursuant to section 3 **[of this act]**
21 of P.L.2010, c.5 (C.30:6D-75), the department shall designate an
22 entity, as established by the commissioner, that shall immediately
23 take such action as shall be necessary to ensure the safety of the
24 individual 18 years of age or older with a developmental disability
25 and to that end may request appropriate assistance from local and
26 State law enforcement officials or contact Adult Protective Services
27 to provide assistance in accordance with the provisions of P.L.1993,
28 c.249 (C.52:27D-406 et seq.).

29 b. The commissioner shall adopt rules and regulations
30 necessary to provide for an investigation of a reported incident and
31 subsequent substantiation or non-substantiation of an allegation of
32 abuse, neglect, or exploitation of an individual 18 years of age or
33 older with a developmental disability by a caregiver, by maintaining
34 **[a Special Response Unit]** an Office of Investigation to investigate
35 serious unusual incidents, as defined by applicable rules and
36 regulations, in facilities or community programs licensed,
37 contracted, or regulated by the department. During its investigation
38 of an allegation of abuse, neglect, or exploitation of an individual
39 18 years of age or older with a developmental disability by a
40 caregiver, the **[Special Response Unit]** Office of Investigation shall
41 make a good faith effort to notify the caregiver of the possibility of
42 the caregiver's inclusion on the registry, and give the caregiver an
43 opportunity to respond to the department concerning the allegation.

44 c. The **[Special Response Unit]** Office of Investigation, the
45 department, or other investigating entity shall forward to the
46 commissioner, or the commissioner's designee, a substantiated
47 incident of abuse, neglect, or exploitation of an individual 18 years
48 of age or older with a developmental disability for inclusion of an

1 offending caregiver on the central registry. The **【Special Response**
2 **Unit】** Office of Investigation, the department, or other investigating
3 entity shall also forward to the commissioner, or the commissioner's
4 designee, all unsubstantiated incidents of abuse, neglect, or
5 exploitation of an individual 18 years of age or older with a
6 developmental disability. When the investigation involves an
7 individual between the ages of 18 and 21 with a developmental
8 disability who is receiving services from the Children's System of
9 Care, the department, the Office of Investigation, the Institutional
10 Abuse Investigation Unit in the Department of Children and
11 Families, or other investigating entity shall concurrently notify the
12 Director of the Children's System of Care, or the director's
13 designee, of the referral for inclusion of an offending caregiver on
14 the central registry. The department, the Office of Investigation,
15 the Institutional Abuse Investigation Unit, or other investigating
16 entity shall also forward to the director, or the director's designee,
17 all unsubstantiated incidents of abuse, neglect, or exploitation of an
18 individual between the ages of 18 and 21 with a developmental
19 disability. As soon as possible, and no later than 14 days after
20 receipt of the incident of abuse, neglect, or exploitation, the
21 commissioner or the commissioner's designee shall review the
22 incident. The offending caregiver of a substantiated incident shall
23 be included on the central registry as expeditiously as possible. The
24 **【Special Response Unit】** Office of Investigation shall retain a
25 record of all unsubstantiated incidents.

26 d. Upon the initiation of an investigation, the department shall:
27 (1) ensure that any communication concerning the alleged abuse,
28 neglect, or exploitation of an individual 18 years of age or older
29 with a developmental disability between a caregiver, case manager
30 of the caregiver, the case manager's supervisor, including a case
31 manager or case manager supervisor under contract with the
32 Children's System of Care, or a person at the appropriate Regional
33 Office of the Division of Developmental Disabilities or the
34 Children's System of Care is identified, safeguarded from loss or
35 destruction, and maintained in a secure location; and (2) contact the
36 Office of the Attorney General, which shall determine whether to
37 participate in the investigation.

38 e. The **【Special Response Unit】** Office of Investigation shall
39 issue a written report of the investigation that includes the
40 conclusions of the **【unit】** office, the rationale for the conclusion,
41 and a detailed summary of any communication secured pursuant to
42 subsection d. of this section. The report shall also include an
43 assessment of the role of any case manager of a caregiver or the
44 case manager's supervisor, if applicable, in the allegation of abuse,
45 neglect, or exploitation, and a recommendation about whether any
46 civil or criminal action should be brought against the case manager
47 or supervisor. The report shall be made part of the record for
48 review in any civil or criminal proceeding that may ensue.

1 A written summary of the conclusions of the investigation shall
2 be provided to the guardian or authorized family member of the
3 individual 18 years of age or older with a developmental disability
4 who is the subject of the alleged abuse, neglect, or exploitation.

5 f. A licensed provider in another state shall be permitted access
6 to the central registry.

7 g. The department, the Office of Investigation, the Institutional
8 Abuse Investigation Unit, or other investigative entity shall forward
9 to the Commissioner of Children and Families, or his or her
10 designee, copies of the investigative reports involving any child
11 under the age of 18 with a developmental disability who is the
12 subject of an investigation of an act of child abuse or neglect
13 pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75) and is receiving
14 services from the Children's System of Care. The reports may be
15 used by the Department of Children and Families, as appropriate, to
16 initiate or support contracting, licensing, or other corrective actions.

17 h. The department, the Office of Investigation, the Institutional
18 Abuse Investigation Unit, or other investigative entity may share all
19 investigative records involving an individual between the age of 18
20 and 21 years with a developmental disability who is the subject of
21 an investigation of an incident of abuse, neglect, or exploitation
22 pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75).

23 (cf: P.L.2012, c.69, s.10)

24
25 4. Section 5 of P.L.2010, c.5 (C30:6D-77) is amended to read
26 as follows:

27 5. a. There is established a Central Registry of Offenders Against
28 Individuals with Developmental Disabilities in the department.

29 b. The commissioner shall adopt rules and regulations that
30 define the procedures and standards for inclusion of an offending
31 caregiver on the central registry and for notification of such
32 inclusion to the caregiver.

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

37 (2) For inclusion on the central registry in the case of a
38 substantiated incident of neglect, the caregiver shall have acted with
39 gross negligence, recklessness, or in a pattern of behavior that
40 causes or potentially causes harm to an individual with a
41 developmental disability.

42 (3) In the case of a substantiated incident of exploitation, the
43 commissioner shall establish a dollar amount for inclusion on the
44 central registry.

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

46 (1) necessary to provide for an appeals process, through the
47 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
48 seq.), of the commissioner's determination to include an alleged

1 offending caregiver's name on the central registry. The
2 commissioner's determination shall be a final agency decision
3 subject to review by the Appellate Division of the Superior Court;

4 (2) concerning the dissemination of information in the central
5 registry;

6 (3) that will prohibit persons included on the central registry
7 from employment in facilities or programs of the Division of
8 Developmental Disabilities in the department and those facilities or
9 programs licensed, contracted, or regulated by the department, or
10 from providing community-based services with indirect State
11 funding to **[persons]** individuals with developmental disabilities;
12 **[and]**

13 (4) necessary to provide for the removal of a person's name
14 from the central registry. A person may apply for removal of his
15 name to the commissioner after a period of five years of being
16 placed on the central registry. The person shall affirmatively
17 demonstrate to the commissioner clear and convincing evidence of
18 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
19 1 et seq.) as a guide; and

20 (5) that will prohibit persons included on the central registry
21 from employment at the Department of Children and Families and
22 in facilities or programs licensed, contacted, regulated, or funded by
23 the Department of Children and Families.

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

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

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

34

35 5. (New section) a. The Department of Children and Families
36 shall conduct a check of its child abuse registry for each person who
37 is seeking employment at the department, or in any facility or
38 program licensed, contracted, regulated, or funded by the
39 department, or seeking employment in any facility or program
40 licensed, contracted, or regulated by the Department of Human
41 Services, or who is seeking to provide community-based services
42 with indirect State funding to individuals with developmental
43 disabilities, in order to determine if the person is included on the
44 child abuse registry as a substantiated perpetrator of child abuse or
45 neglect. The department shall immediately forward the information
46 obtained as a result of the check to the Department of Human
47 Services.

1 b. The Commissioner of Children and Families shall adopt
2 rules and regulations that will prohibit a person included on the
3 child abuse registry from employment at the Department of
4 Children or in any facility or program licensed, contracted,
5 regulated, or funded by the department or the Department of Human
6 Services, and from providing community-based services with
7 indirect State funding to individuals with developmental
8 disabilities.

9
10 6. This act shall take effect on the first day of the sixth month
11 following the date of enactment.

12
13
14 STATEMENT

15
16 This bill provides protections for individuals with disabilities
17 between the ages of 18 and 21 who have been subjected to abuse,
18 neglect, or exploitation and are receiving services from the Division
19 of Children's System of Care (CSOC) in the Department of Children
20 and Families (DCF). It also establishes procedures for the transfer
21 of investigative reports relating to an act of child abuse or neglect,
22 involving children under the age of 18 with developmental
23 disabilities between the Department of Human Services (DHS), the
24 Office of Investigation in DHS, and the Institutional Abuse
25 Investigation Unit (IAIU) in DCF.

26 Specifically, the bill provides that, when DHS receives a report
27 of abuse, neglect, or exploitation by a caregiver of an individual
28 between the ages of 18 and 21 with a developmental disability who
29 is receiving services from CSOC, DHS, the Office of Investigation
30 in DHS (formally named the Special Response Unit), IAIU, or other
31 investigative entity would be required to concurrently notify the
32 Director of CSOC, or the director's designee, of the referral for
33 inclusion of the offending caregiver on the central registry. DHS,
34 the Office of Investigation, IAIU, or other investigative entity
35 would also be required to notify the director of any unsubstantiated
36 reports. Currently, the law requires that reports of abuse, neglect,
37 or exploitation or unsubstantiated reports of such acts be forwarded
38 to the Commissioner of Human Services but not to the director of
39 CSOC.

40 The bill requires DHS, the Office of Investigation, IAIU, or other
41 investigative entity to forward to the Commissioner of Children and
42 Families, or his or her designee, copies of the investigative reports
43 involving any child under the age of 18 with a developmental
44 disability who is the subject of an investigation of an act of child
45 abuse or neglect and is receiving services from CSOC. The reports
46 would be used by DCF, as appropriate, to initiate or support
47 contracting, licensing, or other corrective actions.

1 The bill also allows DHS, the Office of Investigation, the IAIU,
2 or other investigative entity to share all investigative records
3 involving an individual between the ages of 18 and 21 with a
4 developmental disability who is the subject of an investigation of an
5 incident of abuse, neglect, or exploitation. Currently, such reports
6 are not shared between the Office of Investigation, DHS, IAIU, or
7 other investigative entity.

8 The bill also stipulates that the Commissioner of DHS would
9 adopt rules and regulations prohibiting a person included on the
10 central registry from employment at DCF or in facilities or
11 programs licensed, contacted, regulated, or funded by DCF.
12 Currently, DHS has the authority to adopt rules and regulations
13 prohibiting a person included on the central registry from
14 employment in facilities or programs of the Division of
15 Developmental Disabilities and DHS, or from providing
16 community-based services to individuals with developmental
17 disabilities but not a person seeking employment at DCF or in
18 facilities or programs. licensed, contacted, regulated, or funded by
19 DCF.

20 The bill mandates that DCF conduct a check of its child abuse
21 registry for each person who is seeking employment at the
22 department, or in any facility or program licensed, contracted,
23 regulated, or funded by the department, or seeking employment in
24 any facility or program licensed, contracted, or regulated by the
25 Department of Human Services, or who is seeking to provide
26 community-based services with indirect State funding to individuals
27 with developmental disabilities, in order to determine if the person
28 is included on the registry as a substantiated perpetrator of child
29 abuse or neglect, and immediately forward the information to DHS.

30 Finally, under the bill's provisions, the Commissioner of DCF
31 would be required to adopt rules and regulations prohibiting a
32 person included on the child abuse registry from employment at the
33 Department of Children or in any facility or program licensed,
34 contracted, regulated, or funded by the department, DHS, and from
35 providing community-based services with indirect State funding to
36 individuals with developmental disabilities

37 Currently, there are no statutory provisions that specifically
38 mandate DCF to conduct a child abuse registry check on a person
39 seeking employment at DCF, in facilities or programs licensed,
40 contracted, regulated, or funded, as applicable, by DCF or DHS, or
41 seeking to provide community-based services to individuals with
42 developmental disabilities. Additionally, there are no regulatory
43 provisions prohibiting a person included on the registry from
44 obtaining such employment or providing such community-based
45 services.