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Sponsored by:

Assemblyman GARY S. SCHAER

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Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman NICHOLAS CHIARAVALLOTTI

District 31 (Hudson)

Assemblywoman MARLENE CARIDE

District 36 (Bergen and Passaic)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

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 reported by the Senate Health, Human Services and Senior Citizens Committee on January 30, 2017, with amendments.

(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

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:

¹Senate SHH committee amendments adopted January 30, 2017.

1 "caregiver" shall not include an immediate family member of [a
2 person] an individual with a developmental disability.

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

6 "Children's System of Care" means the Division of Children's
7 System of Care in the Department of Children and Families.

8 "Commissioner" means the Commissioner of Human Services.

9 "Department" means the Department of Human Services.

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

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

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

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

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

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

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

45 "Sexual contact" means an intentional touching by a caregiver or
46 individual with a developmental disability, either directly or
47 through clothing, of the intimate parts of the individual with a
48 developmental disability or the caregiver for the purpose of

1 sexually arousing or sexually gratifying the caregiver. Sexual
2 contact of the caregiver with himself must be in view of the
3 individual with a developmental disability whom the caregiver
4 knows to be present.

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

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

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

19

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

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

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

46 c. The **【Special Response Unit】** Office of Investigation, the
47 department, or other investigating entity shall forward to the
48 commissioner, or the commissioner's designee, a substantiated

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

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

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

1 or supervisor. The report shall be made part of the record for
2 review in any civil or criminal proceeding that may ensue.

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

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

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

19 h. The department, the Office of Investigation, the Institutional
20 Abuse Investigation Unit, ¹[or] and any¹ other investigative entity
21 may share ¹, with and among each other,¹ all investigative records
22 involving an individual between the age of 18 and 21 years with a
23 developmental disability who is the subject of an investigation of an
24 incident of abuse, neglect, or exploitation pursuant to section 3 of
25 P.L.2010, c.5 (C.30:6D-75).

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

27

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

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

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

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

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

45 (3) In the case of a substantiated incident of exploitation, the
46 commissioner shall establish a dollar amount for inclusion on the
47 central registry.

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

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

7 (2) concerning the dissemination of information in the central
8 registry;

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

16 (4) necessary to provide for the removal of a person's name
17 from the central registry. A person may apply for removal of his
18 name to the commissioner after a period of five years of being
19 placed on the central registry. The person shall affirmatively
20 demonstrate to the commissioner clear and convincing evidence of
21 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
22 1 et seq.) as a guide; and

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

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

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

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

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

1 obtained as a result of the check to the Department of Human
2 Services.

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

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