

P.L. 2017, CHAPTER 238, *approved October 6, 2017*
Assembly Committee Substitute (*Second Reprint*)
for Assembly, No. 2503

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.

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 "Community-based residential program" or "residential program"
2 means a group home or supervised apartment, which is licensed and
3 regulated by the department.

4 "Day program" means a program that is certified to provide day
5 habilitation services or sheltered workshops for individuals with
6 developmental disabilities.

7 "Department" means the Department of Human Services.

8 "Department employee" means a direct employee of the
9 Department of Human Services, or an employee of a department-
10 funded case management agency.

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

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

19 "Exploitation" means the same as that term is defined by section
20 2 of P.L.2010, c.5 (C.30:6D-74).

21 "Group home" means a living arrangement that is operated in a
22 residence or residences leased or owned by a licensee; which
23 provides the opportunity for individuals with developmental
24 disabilities to live together in a home, sharing in chores and the
25 overall management of the residence; and in which staff provides
26 supervision, training, or assistance in a variety of forms and
27 intensity as required to assist the individuals ²as they move toward
28 independence².

29 "Licensee" means an individual, partnership, or corporation that
30 is licensed by the department, and is responsible for providing
31 services associated with the operation of a community-based
32 residential program.

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

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

42 "Moderate physical injury" means an injury that does not
43 constitute a major injury, but which requires treatment, beyond
44 basic first aid, that can only be performed by a health care
45 professional.

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

1 “Program” means any program that is licensed or funded by the
2 department for the purpose of providing services to individuals with
3 developmental disabilities. “Program” includes, but is not limited
4 to, a day program or a community-based residential program.

5 “Supervised apartment” means an apartment that is occupied by
6 individuals with developmental disabilities; is leased or owned by a
7 licensee; and in which staff provides supervision, guidance, and
8 training, as needed, to assist individual occupants in the activities of
9 daily living, in accordance with each individual's needs and targeted
10 future goals.¹

11
12 ¹[1.]²[3.]¹ 2.² (New section) ¹a.¹ The ¹[Commissioner of
13 Human Services] commissioner¹, or the commissioner's designee,
14 shall designate employees of the Department of Human Services,
15 ²[who are not employees of a State developmental center ^{1,1} but]²
16 ¹who¹ may be case managers employed by the department or an
17 agency under contract with the department, ¹[as applicable,] to
18 annually¹ conduct ¹[six unannounced] not less than two¹ site visits
19 ¹[annually] of every community-based residential program ²[and
20 every day program]², in order¹ to ¹[randomly check] evaluate¹
21 whether the individuals with developmental disabilities who are
22 receiving services from ¹[a] each such¹ program ¹[as defined in
23 ^{section 2 of P.L.2010, c.5 (C.30:6D-74)]¹ ²[, facility, or living}
24 ^{arrangement licensed or funded by the department, other than a}
25 ^{community care residence which is subject to visits pursuant to}
26 ^{section 7 of P.L.2012, c.69 (C.30:6D-5.13),]}² are at risk of, or are
27 being subjected to, abuse, neglect, or exploitation by a caregiver,
28 and report the ¹[same] results of each site visit¹ pursuant to section
29 3 of P.L.2010, c.5 (C.30:6D-75).

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

35 (2) In the case of a community-based residential program that is
36 a supervised apartment, not less than two annual site visits that are
37 conducted for each such supervised apartment shall be unannounced
38 site visits of the apartment, which shall be conducted by a
39 department employee who is unaffiliated and unfamiliar with the
40 assigned case.

41 ²[(3) In the case of a day program, not less than one annual site
42 visit that is conducted for each day habilitation service provider and
43 each sheltered workshop provider shall be an unannounced site visit
44 conducted by a department employee who is assigned to a
45 participant in the day program; and not less than one annual site
46 visits shall be an unannounced site visit conducted by a department

1 employee who is unaffiliated and unfamiliar with the assigned
2 case.]²

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

7
8 ¹[²]²[⁴.¹] ³.² (New section) a. ¹[The Commissioner of
9 Human Services, or the commissioner's designee, shall designate
10 staff to notify the guardian or authorized family member, as defined
11 in section 2 of P.L.2010, c.5 (C.30:6D-74), of an individual with a
12 developmental disability receiving services from a program as
13 defined in section 2 of P.L.2010, c.5 (C.30:6D-74), facility,
14 community care residence, or living arrangement licensed or funded
15 by the department of any physical injury to the individual with a
16 developmental disability, as soon as possible, but no later than 60
17 minutes after the occurrence of the injury.

18 b.]¹ A provider or licensee ¹[, as applicable,]¹ of a ²community-
19 based residential program or day² program ¹[as defined in section 2
20 of P.L.2010, c.5 (C.30:6D-74)]¹ ²[, facility, community care
21 residence, or living arrangement licensed or funded by the
22 department ¹,¹]² shall ¹[notify the guardian or authorized family
23 member of] provide notification, in accordance with the provisions
24 of subsection b. of this section, of any major physical injury,
25 moderate physical injury, or minor physical injury, as prescribed by
26 department regulation, that is suffered by¹ an individual with a
27 developmental disability ¹who is¹ receiving services from the
28 provider or licensee ¹[of any physical injury to the individual with
29 a developmental disability] .

30 b. Except as otherwise provided by subsection c. of this
31 section, the notification required under this section shall be
32 provided:

33 (1)¹ as soon as possible, but no later than ²[60 minutes] two
34 hours² after the occurrence of the injury ², except that if there is an
35 extraordinary circumstance that prevents such notification, the
36 provider or licensee shall provide notification as soon as possible,
37 but no later than eight hours after the occurrence of the injury and
38 shall provide a written, detailed explanation of the extraordinary
39 circumstance causing the delay to the commissioner and to the
40 guardian of the injured individual with a developmental disability
41 or, if there is no guardian of the individual, to a family member who
42 requests such notification, within 14 days of the incident² ¹].

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

44 (2) to the guardian of the injured individual with a
45 developmental disability, or, if there is no guardian of the

1 individual, to a family member who requests such notification
2 ²unless the individual has expressly prohibited the family member
3 from receiving such notification² ; and

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

8 ¹c. Notwithstanding the provisions of this section to the
9 contrary, notification pursuant to this section shall not be required if
10 the guardian or family member expresses, in a written document
11 filed with the caretaker, that they do not want to receive notification
12 of injury pursuant to this section.¹

13
14 ¹[3.] ²[5.] ¹4.² (New section) Within 48 hours ¹[of] after¹
15 receipt of a report of an incident involving ¹[abuse or neglect, as
16 those terms are defined in section 2 of P.L.2010, c.5 (C.30:6D-74),
17 or physical injury in a program as defined in section 2 of P.L.2010,
18 c.5 (C.30:6D-74), facility, community care residence, or living
19 arrangement licensed or funded by the Department of Human
20 Service for an individual with a developmental disability, the
21 Commissioner of Human Services] moderate physical injury, major
22 physical injury, or abuse, neglect, or exploitation in a State
23 developmental center ²[,]² or² community-based residential
24 program, ²[or day program,]² the commissioner¹ shall send an
25 employee of the department, who is not an employee of a State
26 developmental center ¹,¹ but ¹who¹ may be a case manager
27 employed ¹either¹ by the department ¹,¹ or ¹by¹ an agency under
28 contract with the department, ¹[as applicable,]¹ to the location of
29 the reported incident ¹, in order¹ to verify the level of severity of
30 the incident. ¹In investigating the incident, the department shall
31 comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-
32 76).¹

33
34 ¹[4.] ²[6.] ¹5.² (New section) a. ¹[As a condition of] (1) A

35 person applying for¹ employment as a direct care staff member ¹[,
36 as defined in subsection g. of this section,]¹ at a program ¹[as
37 defined in section 2 of P.L.2010, c.5 (C.30:6D-74)]¹ , facility ¹, or
38 living arrangement licensed or funded by the department,¹ other
39 than a developmental center ¹[which] that¹ is ¹already¹ subject to
40 ¹[drug testing pursuant to] the provisions of¹ section 1 of P.L.2009,
41 c.220 (C.30:4-3.27), ¹[or living arrangement licensed or funded by
42 the Department of Human Services, an applicant for such
43 employment]¹ shall consent to and undergo drug testing for

1 controlled dangerous substances ¹ **]**. The drug testing shall be at the
2 expense of the applicant **]** as a condition of such employment¹.

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

9 b. ¹ **]** (1) Direct care staff members¹ employed
10 ¹ **]** as a direct care staff member pursuant to **]** at a program, facility,
11 or living arrangement identified in subsection a. of¹ this section ¹,¹
12 shall be subject ¹, during the course of employment,¹ to ¹ random¹
13 drug testing for controlled dangerous substances ¹ **]** which shall
14 occur randomly and at **]**, as provided by this subsection.

15 (2) At¹ least once a year ¹, the employing program, facility, or
16 living arrangement shall require one or more of the direct care staff
17 members employed thereby to undergo random drug testing for
18 controlled dangerous substances. The person who is responsible for
19 the overall operation of the program, facility, or living arrangement
20 shall have the discretion to determine the total number of direct care
21 staff members who will be required to undergo random drug testing,
22 each year, pursuant to this subsection¹.

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

1 responsible for the overall operation of the 1[agency] program,
2 facility, or living arrangement¹.

3 d. 1[A] If a¹ direct care staff member 1[who] is subjected to a
4 drug test under subsection b. or c. of this section, and¹ tests positive
5 for the unlawful use of any controlled dangerous substance ¹, the
6 direct care staff member¹ may be referred for treatment services or
7 terminated from employment. A direct care staff member who
8 refuses to submit to drug testing ¹, as required by subsection b. or c.
9 of this section,¹ shall be terminated from employment.

10 e. 1[The] Any¹ drug testing 1[required] performed¹ pursuant
11 to 1[subsections b. and c. of]¹ this section shall be 1done¹ at the
12 expense of 1[the agency under contract with]¹ the department.

13 f. 1[The agency under contract with the department] Any
14 program, facility, or living arrangement identified in subsection a.
15 of this section, which employs a direct care staff member,¹ shall
16 notify 1[all direct care] the¹ staff 1[members] member¹ of the
17 provisions of this section.

18 1[g. As used in this section, "direct care staff member" means a
19 person 18 years of age or older who is employed by a public or
20 private agency under contract with the department to provide
21 services to individuals with developmental disabilities receiving
22 services from the department and includes those employed persons
23 who may come into direct contact with individuals with
24 developmental disabilities.]¹

25

26 2[17.] 6.2 (New section) a. Each State developmental center
27 shall biannually schedule a meeting with parents and guardians of
28 individuals with developmental disabilities residing in the
29 developmental center, in order to provide an opportunity for parents
30 and guardians to share experiences about the individuals.

31 b. The provider of a community-based residential program
32 shall request contact information from each parent or guardian of an
33 individual with a developmental disability who is residing in the
34 residential program, and shall advise the parent or guardian that, if
35 the parent or guardian agrees, the provider will exchange contact
36 information with other parents and guardians of individuals with
37 developmental disabilities residing in the residential program, in
38 order to provide an opportunity for parents and guardians to share
39 experiences about the individuals.

40 c. The provider of a day program shall request contact
41 information from each parent or guardian of an individual with a
42 developmental disability who is participating in the day program,
43 and shall advise the parent or guardian that, if the parent or
44 guardian agrees, the provider will exchange contact information
45 with other parents and guardians of individuals with developmental

1 disabilities who are participating in the same program, in order to
2 provide an opportunity for parents and guardians to share
3 experiences about the individuals.¹

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

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

17 b. A penalty collected pursuant to this section shall be
18 dedicated to providing funding for training caregivers, as defined in
19 section 2 of P.L.2010, c.5 (C.30:6D-74), and for ¹site¹ visits
20 conducted pursuant to P.L. , c. (C.) (pending before the
21 Legislature as this bill).

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

23

24 ¹[6.] ²[9.1] 8.² Section 2 of P.L.2010, c.5 (C.30:6D-74) is
25 amended to read as follows:

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

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

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

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

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

44 "Commissioner" means the Commissioner of Human Services.

45 "Department" means the Department of Human Services.

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

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

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

10 "Lewdness" means the exposing of the genitals for the purpose
11 of arousing or gratifying the sexual desire of a caregiver or an
12 individual with a developmental disability, or any flagrantly lewd
13 and offensive act which the caregiver knows or reasonably expects
14 is likely to be observed by an individual with a developmental
15 disability.

16 "Neglect" shall consist of any of the following acts by a
17 caregiver on an individual with a developmental disability: willfully
18 failing to provide proper and sufficient food, clothing, maintenance,
19 medical care, or a clean and proper home; or **failure** failing¹
20 do or permit to be done any act necessary for the well-being of an
21 individual with a developmental disability.

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

29 "Program" means any program ¹that is¹ licensed or funded by the
30 department **that provides** for the purpose of providing¹ services
31 to individuals with developmental disabilities **and** . "Program"¹
32 includes ¹, but is not limited to,¹ a day program ¹or a community-
33 based residential program, as those terms are defined by section
34 **2[2] 1**² of P.L. , c. (C.) (pending before the Legislature as
35 this bill)¹.

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

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

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

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

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

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

20

21 ¹[7.] ²[10.1] ^{9.2} Section 3 of P.L.2010, c.5 (C.30:6D-75) is
22 amended to read as follows:

23 3. a. (1) A case manager or case manager's supervisor in the
24 department, a person employed or volunteering in a program,
25 facility, community care residence, or living arrangement licensed
26 or funded by the department, a person conducting ¹[an
27 unannounced] a¹ site visit pursuant to section ¹[1] ²[3¹] ² of
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 or a person providing community-based services with indirect State
30 funding to a person with a developmental disability, as applicable,
31 having reasonable cause to believe that an individual with a
32 developmental disability has been subjected to abuse, neglect, or
33 exploitation by a caregiver ^{1,1} shall report the same immediately to
34 the department by telephone or otherwise ¹[, and the department
35 shall notify, as] .

36 (2) ²[As¹ soon as possible ^{1,1} but no later than 60 minutes after
37 the occurrence of the abuse, neglect, or exploitation, the
38 department shall provide notice of the incident to the¹ guardian or
39 authorized family member of the individual with a developmental
40 disability who was the subject of the abuse, neglect, or exploitation.

41 ¹[(2) Such] (3)]² A¹ report ¹made pursuant to paragraph (1) of
42 this subsection¹ , where possible, shall contain ¹: (a)¹ the name and
43 address of the individual with a developmental disability ¹[and] ,
44 as well as the name and address of¹ the caregiver responsible for the
45 care, custody, or control of the individual with a developmental
46 disability, and the guardian, or other person having custody and

1 control of the individual ^{1,1} and ¹ **[,]** (b) ¹ if known, the condition of
2 the individual with a developmental disability, the nature and
3 possible extent of the individual's injuries, maltreatment, abuse,
4 neglect ^{1,1} or exploitation, including any evidence of previous
5 injuries, maltreatment, abuse, neglect, or exploitation, and any other
6 information that the person believes may be helpful with respect to
7 the injuries, maltreatment, abuse, neglect, or exploitation of the
8 individual with a developmental disability and the identity of the
9 alleged offender.

10 b. Within the department, the commissioner shall:

11 (1) maintain a unit to receive and prioritize ¹ **[such]** ¹ reports **[,]**
12 ¹that are filed pursuant to this section¹ ;

13 (2) provide for verification of the unit's prioritization of the
14 reports by sending an employee or case manager to the appropriate
15 location within 48 hours to verify the level of severity of the report,
16 ¹ **[pursuant to]** as provided by¹ section ¹ **[3]** ² **[5¹]** ^{4²} of P.L. _____,

17 c. (C. _____) (pending before the Legislature as this bill);

18 (3) initiate appropriate responses through timely and appropriate
19 investigative activities **[,]**;

20 (4) alert appropriate staff **[,]**; and

21 (5) ensure that findings are reported in a uniform and timely
22 manner.

23 c. (1) A person employed or volunteering in a program,
24 facility, community care residence, or living arrangement licensed
25 or funded by the department, or a person providing community-
26 based services with indirect State funding to a person with a
27 developmental disability, as applicable, who fails to report an act of
28 abuse, neglect, or exploitation against an individual with a
29 developmental disability while having reasonable cause to believe
30 that such an act has been committed, is a disorderly person.

31 (2) A case manager or case manager's supervisor in the
32 department who fails to report an act of abuse, neglect, or
33 exploitation of an individual with a developmental disability while
34 having reasonable cause to believe that such an act has been
35 committed, shall be guilty of a **[disorderly person's offense]** crime
36 of the fourth degree, unless the abuse, neglect, or exploitation
37 results in the death of an individual with a developmental disability,
38 in which case the case manager or case manager's supervisor shall
39 be guilty of a crime of the **[fourth]** third degree.

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

1 e. A case manager or case manager's supervisor ^{1,1} or a
2 caregiver suspected of abuse, neglect, or exploitation of an
3 individual with a developmental disability ^{1,1} who is charged with
4 failure to report an act of abuse, neglect, or exploitation of an
5 individual with a developmental disability while having reasonable
6 cause to believe that such an act has been committed, shall be
7 temporarily reassigned to duties that do not involve contact with
8 individuals with developmental disabilities or other vulnerable
9 populations ^{1,1} and shall be terminated from employment if
10 convicted.

11 In the case of a case manager or case manager's supervisor ^{1,1} or
12 of a caregiver suspected of abuse, neglect, or exploitation who is
13 employed by the department, the case manager **[or]**, supervisor, or
14 caregiver shall retain any available right of review by the Civil
15 Service Commission.

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

17

18 ¹**[8.]** ²**[11.1]** ^{10.2} Section 4 of P.L.2010, c.5 (C.30:6D-76) is
19 amended to read as follows:

20 4. a. Upon receipt of a report pursuant to section 3 of **[this**
21 **act]** 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 with a developmental disability and to that end may
25 request appropriate assistance from local and State law enforcement
26 officials or contact Adult Protective Services to provide assistance
27 in accordance with the provisions of P.L.1993, c.249 (C.52:27D-
28 406 et seq.). The guardian of the individual with a developmental
29 disability ¹**[also]** ¹ shall ¹ also ¹ be authorized to request appropriate
30 assistance from local and State law enforcement officials.
31 ²**[Assistance from local and State law enforcement officials**
32 **pursuant to this subsection shall be provided by such an official**
33 **who has undergone education or training in working with**
34 **individuals with developmental disabilities.]**²

35 b. ¹(1)¹ The commissioner shall adopt rules and regulations
36 necessary to provide for an investigation of a reported incident and
37 subsequent substantiation or non-substantiation of an allegation of
38 abuse, neglect, or exploitation of an individual with a
39 developmental disability by a caregiver, **[by]** which shall include:

40 ¹**[(1)]** (a)¹ maintaining **[a Special Response Unit]** an Office of
41 Investigations to investigate serious unusual incidents, as defined
42 by applicable rules and regulations, in facilities or **[community]**
43 programs licensed, contracted, or regulated by the department and
44 to investigate incidents that occur in State developmental centers;

45 ¹**[and**

1 (2) (b)¹ providing ¹[an opportunity for a] the ¹guardian ²[or
2 authorized family member]² ¹of the individual with prior notice of
3 the commencement of an investigation under this section, and
4 providing an opportunity for the guardian ²[or authorized family
5 member]², ¹as appropriate, ¹to submit information to facilitate an
6 investigation, ²[to ¹represent the individual, ¹[and] to ¹be
7 informed of the progress of the investigation]² ¹[which shall
8 include a requirement that the department provide a] ²[, to be
9 present while the individual is being interviewed, and to terminate
10 the interview at any time, unless it would impede the investigation]
11 except that if there is no guardian, a family member of the
12 individual may submit information, unless the individual has
13 expressly prohibited the family member from doing so²; and

14 (c) providing ²[the ¹guardian or authorized family member ¹of
15 the individual ¹with a written progress report ¹[of] that shows ¹the
16 status of ¹[an] the ¹investigation, ¹[including] and includes ¹any
17 medical records or reports about the individual, within seven
18 calendar days of the incident ¹, ¹and weekly thereafter.

19 ¹(2) Before commencing an investigation in response to a report
20 of alleged abuse, neglect, or exploitation, the department shall first
21 notify the guardian or authorized family member of the alleged
22 victim, either in person or by telephone, that an investigation will
23 be undertaken pursuant to this section. The department shall also
24 notify the guardian or authorized family member before any
25 investigative interview of the alleged victim is commenced. The
26 guardian or authorized family member, upon request, shall be
27 permitted to attend or observe the investigative interview of the
28 person the guardian or family member represents, unless the
29 attendance or observation would impede the investigation. If the
30 guardian or authorized family member expressly requests, at any
31 time, that the department terminate an interview that has been
32 commenced under this section, the department, and its Office of
33 Investigations, shall immediately comply with the request, unless
34 it] that a guardian of an individual with a developmental disability,
35 upon request, may be permitted to attend the investigative interview
36 of the individual the guardian represents and to terminate the
37 interview of the individual the guardian represents, unless the
38 attendance or termination² would impede the investigation.

39 ²[(3)¹] (2)² During its investigation of an allegation of abuse,
40 neglect, or exploitation of an individual with a developmental
41 disability by a caregiver, the [Special Response Unit] Office of
42 Investigations shall make a good faith effort to notify the caregiver
43 of the possibility of the caregiver's inclusion on the registry, and
44 give the caregiver an opportunity to respond to the department
45 concerning the allegation. ¹[A guardian of an individual with a

1 developmental disability, upon request, may be permitted to attend
2 or observe the investigation, unless the attendance or observation
3 would impede the investigation.]¹

4 c. The **【Special Response Unit】** Office of Investigations, the
5 department, or other investigating entity shall forward to the
6 commissioner, or the commissioner's designee, a substantiated
7 incident of abuse, neglect, or exploitation of an individual with a
8 developmental disability for inclusion of an offending caregiver on
9 the central registry. The **【Special Response Unit】** Office of
10 Investigations, the department, or other investigating entity shall
11 also forward to the commissioner, or the commissioner's designee,
12 all unsubstantiated incidents of abuse, neglect, or exploitation of an
13 individual with a developmental disability. As soon as possible,
14 and no later than ¹**【14】** ²**【seven¹】** 14² days after receipt of the
15 incident of abuse, neglect, or exploitation, the commissioner or the
16 commissioner's designee shall review the incident. The offending
17 caregiver of a substantiated incident shall be included on the central
18 registry as expeditiously as possible. The **【Special Response Unit】**
19 Office of Investigations shall retain a record of all unsubstantiated
20 incidents.

21 d. Upon the initiation of an investigation, the department shall:
22 (1) ensure that any communication concerning the alleged abuse,
23 neglect, or exploitation of an individual with a developmental
24 disability between a caregiver, case manager of the caregiver, the
25 case manager's supervisor, or a person at the appropriate Regional
26 Office of the Division of Developmental Disabilities is identified,
27 safeguarded from loss or destruction, and maintained in a secure
28 location; and (2) contact the Office of the Attorney General, which
29 shall determine whether to participate in the investigation.

30 e. ¹**【The】¹ 【Special Response Unit】** ¹(1) No later than ²**【14】**
31 30² days after an investigation under this section is concluded, the¹
32 Office of Investigations shall issue a written report of the
33 investigation that includes the conclusions of the unit, the rationale
34 for the ¹**【conclusion】** conclusions¹, and a detailed summary of any
35 communication secured pursuant to subsection d. of this section.
36 The report shall also include an assessment of the role of any case
37 manager of a caregiver or the case manager's supervisor, if
38 applicable, in the allegation of abuse, neglect, or exploitation, and a
39 recommendation about whether any civil or criminal action should
40 be brought against the case manager or supervisor. The report shall
41 be made part of the record for review in any civil or criminal
42 proceeding that may ensue.

43 ¹(2)¹ A written summary of the **【conclusions of the】**
44 investigation, ¹**【including any medical records or reports about the**
45 individual with a developmental disability】 as provided for in
46 paragraph (3) of this subsection¹ , shall be provided to the guardian

1 ²[or authorized family member]² of the individual with a
2 developmental disability who is the subject of the alleged abuse,
3 neglect, or exploitation ¹; however, the actual records and reports of
4 an investigation shall also be provided to a guardian or ²[authorized
5 family member] other person who is responsible for the welfare of
6 the individual with a developmental disability² if the information is
7 needed in connection with the provision of care, treatment,
8 assessment, evaluation, or supervision to the individual; and the
9 provision of information is in the best interests of the individual
10 with a developmental disability, as determined by the Division of
11 Developmental Disabilities ²[, or by the individual's guardian or
12 authorized family member]².

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

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

18 (b) the date of the incident, or the date the incident was reported
19 if the incident date is unknown;

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

22 (d) the incident number;

23 (e) a summary of the allegation of abuse, neglect, or
24 exploitation;

25 (f) a finding that the incident is substantiated or
26 unsubstantiated;

27 (g) the rationale for the finding and, if the incident is
28 substantiated, a description of the action or inaction that
29 precipitated the finding;

30 (h) if known at the time of issuing the summary, whether or not
31 criminal charges against the alleged offending caregiver are
32 pending; and

33 (i) whether remedial action was taken¹.

34 ²(4) If there is no guardian of the individual with a
35 developmental disability who is the subject of the alleged abuse,
36 neglect, or exploitation, the written summary described in
37 paragraph (3) of this subsection shall be provided to a family
38 member of the individual who requests such summary, unless the
39 individual has expressly prohibited the family member from
40 receiving such summary.²

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

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

44

45 ¹[9.] ²[12.1] 11.² Section 5 of P.L.2010, c.5 (C.30:6D-77) is
46 amended to read as follows:

1 5. a. There is established a Central Registry of Offenders
2 Against Individuals with Developmental Disabilities in the
3 department.

4 b. The commissioner shall adopt rules and regulations that
5 define the procedures and standards for inclusion of an offending
6 caregiver on the central registry, and for notification of such
7 inclusion to the caregiver and to the guardian ²[or authorized
8 family member]² of the individual with a developmental disability
9 who was the subject of the abuse, neglect, or exploitation that led to
10 the caregiver's inclusion on the central registry. The commissioner
11 or the commissioner's designee shall designate staff to notify the
12 guardian ²[or authorized family member]² of the individual of any
13 action taken by the department to remediate a condition that may
14 have contributed to the occurrence of the abuse, neglect, or
15 exploitation of the individual. ²If the individual with a
16 developmental disability has no guardian, notification pursuant to
17 this subsection shall be given to a family member who requests
18 such notification, unless the individual has expressly prohibited the
19 family member from receiving such notification.²

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

24 (2) For inclusion on the central registry in the case of a
25 substantiated incident of neglect, the caregiver shall have acted with
26 gross negligence, recklessness, or in a pattern of behavior that
27 causes or potentially causes harm to an individual with a
28 developmental disability.

29 (3) In the case of a substantiated incident of exploitation, the
30 commissioner shall establish a dollar amount for inclusion on the
31 central registry.

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

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

39 (2) concerning the dissemination of information in the central
40 registry;

41 (3) that will prohibit persons included on the central registry
42 from employment in facilities or programs of the Division of
43 Developmental Disabilities in the department and those facilities or
44 programs licensed, contracted, or regulated by the department, or
45 from providing community-based services with indirect State

1 funding to ¹**[persons]** individuals¹ with developmental disabilities;
2 and

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

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

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

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

20

21 ¹**[10.]** ²**[13.1]** 12.² Section 6 of P.L.2010, c.5 (C.30:6D-78) is
22 amended to read as follows:

23 6. ¹a.¹ All records of a report made pursuant to **[this act]**
24 section 3 of P.L.2010, c.5 (C.30:6D-75), all information obtained by
25 the department in investigating such reports, and all reports of
26 findings forwarded to the central registry pursuant to **[this act]**
27 P.L.2010, c.5 (C.30:6D-73 et seq.) shall be kept confidential and
28 may be disclosed only ¹:

29 ⁽¹⁾¹ insofar as information is shared with a guardian in
30 connection with a guardian's attendance ¹at ²**[,]** ¹or observation of
31 ¹¹² an investigative interview pursuant to subsection b. of section
32 4 of P.L.2010, c.5 (C.30:6D-76) ¹; ¹or

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

36 ¹b.¹ The department shall only disclose information that is
37 relevant to the purpose for which the information is required ¹**[or,**
38 pursuant to subsection b. of section 4 of P.L.2010, c.5 (C.30:6D-
39 76), is shared in connection with a guardian's attendance or
40 observation of an investigative interview or in connection with a
41 progress report]¹; except that the department shall not disclose
42 information which would likely endanger the life, safety, or
43 physical or emotional well-being of an individual with a
44 developmental disability or the life or safety of any other person, or
45 which may compromise the integrity of a department investigation,
46 civil or criminal investigation, or judicial proceeding. If the

1 department denies access to specific information on this basis, the
2 requesting entity may seek disclosure through the Superior Court.
3 Nothing in **【this act】** P.L.2010, c.5 (C.30:6D-73 et seq.) shall be
4 construed to permit the disclosure of any information deemed
5 confidential by federal or State law.
6 (cf: P.L.2010, c.5, s.6)

7
8 ²13. The Department of Human Services shall post a copy of
9 P.L. , c. (C.) (pending before the Legislature as this bill) on
10 its website.²

11
12 ¹**【11.】** 14.¹ The Commissioner of Human Services, pursuant to
13 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.), shall adopt rules and regulations necessary to effectuate the
15 purposes of this act.

16
17 ¹**【12.】** 15.¹ This act shall take effect on the first day of the
18 seventh month next following the date of enactment, but the
19 Commissioner of Human Services may take such anticipatory
20 administrative action in advance thereof as shall be necessary for
21 the implementation of this act.

22
23
24 _____
25
26 Provides protections for individuals with developmental
27 disabilities; upgrades crimes committed against such individuals;
28 and improves transparency and accountability in investigations of
29 abuse, neglect, and exploitation of such individuals; designated as
30 "Stephen Komninos' Law."