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ASSEMBLY COMMITTEE SUBSTITUTE FOR
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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 reported by the Senate Health, Human Services and Senior Citizens Committee on May 15, 2017, with amendments.

(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 Titles 2C and¹ 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 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).¹
26

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

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

31 “Commissioner” means the Commissioner of Human Services.

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

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

38 “Department” means the Department of Human Services.

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

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

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.

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

7 “Exploitation” means the same as that term is defined by section
8 2 of P.L.2010, c.5 (C.30:6D-74).

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

16 “Licensee” means an individual, partnership, or corporation that
17 is licensed by the department, and is responsible for providing
18 services associated with the operation of a community-based
19 residential program.

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

25 “Minor physical injury” means an injury that does not constitute
26 a major physical injury or a moderate physical injury, and which
27 can be treated with basic first aid, and without the assistance of a
28 health care professional.

29 “Moderate physical injury” means an injury that does not
30 constitute a major injury, but which requires treatment, beyond
31 basic first aid, that can only be performed by a health care
32 professional.

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

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

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

45

46 ¹**[1.] 3.**¹ (New section) ¹**a.**¹ The ¹**[Commissioner of Human**
47 **Services]** commissioner¹, or the commissioner's designee, shall
48 designate employees of the Department of Human Services, who

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

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

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

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

34 ¹c. Nothing in this section shall be interpreted to authorize a
35 staff member or agent of a community-based residential program, or
36 a staff member or agent of a day program, to perform the site visits
37 required by this section.¹

38
39 ¹[2.] 4.¹ (New section) a. ¹The Commissioner of Human
40 Services, or the commissioner's designee, shall designate staff to
41 notify the guardian or authorized family member, as defined in
42 section 2 of P.L.2010, c.5 (C.30:6D-74), of an individual with a
43 developmental disability receiving services from a program as
44 defined in section 2 of P.L.2010, c.5 (C.30:6D-74), facility,
45 community care residence, or living arrangement licensed or funded
46 by the department of any physical injury to the individual with a

1 developmental disability, as soon as possible, but no later than 60
2 minutes after the occurrence of the injury.

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

14 b. Except as otherwise provided by subsection c. of this
15 section, the notification required under this section shall be
16 provided:

17 (1)¹ as soon as possible, but no later than 60 minutes after the
18 occurrence of the injury ¹].

19 c. Notifications pursuant to this section shall be in person] :

20 (2) to the guardian of the injured individual with a
21 developmental disability, or, if there is no guardian of the
22 individual, to a family member who requests such notification; and

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

27 ¹c. Notwithstanding the provisions of this section to the
28 contrary, notification pursuant to this section shall not be required if
29 the guardian or family member expresses, in a written document
30 filed with the caretaker, that they do not want to receive notification
31 of injury pursuant to this section.¹

32
33 ¹[3.] 5.¹ (New section) Within 48 hours ¹[of] after¹ receipt
34 of a report of an incident involving ¹[abuse or neglect, as those
35 terms are defined in section 2 of P.L.2010, c.5 (C.30:6D-74), or
36 physical injury in a program as defined in section 2 of P.L.2010, c.5
37 (C.30:6D-74), facility, community care residence, or living
38 arrangement licensed or funded by the Department of Human
39 Service for an individual with a developmental disability, the
40 Commissioner of Human Services] moderate physical injury, major
41 physical injury, or abuse, neglect, or exploitation in a State
42 developmental center, community-based residential program, or day
43 program, the commissioner¹ shall send an employee of the
44 department, who is not an employee of a State developmental center
45 ¹,¹ but ¹who¹ may be a case manager employed ¹either¹ by the
46 department ¹,¹ or ¹by¹ an agency under contract with the

1 department, ¹~~as applicable,~~¹ to the location of the reported
2 incident ¹, in order¹ to verify the level of severity of the incident.
3 ¹In investigating the incident, the department shall comply with the
4 provisions of section 4 of P.L.2010, c.5 (C.30:6D-76).¹

5
6 ¹~~4.~~¹ 6.¹ (New section) a. ¹~~As a condition of~~¹ (1) A person
7 applying for¹ employment as a direct care staff member ¹~~,~~¹ as
8 defined in subsection g. of this section,¹ at a program ¹~~as defined~~¹
9 ~~in section 2 of P.L.2010, c.5 (C.30:6D-74)~~¹, facility ¹, or living
10 arrangement licensed or funded by the department,¹ other than a
11 developmental center ¹~~which~~¹ that¹ is ¹already¹ subject to ¹~~drug~~¹
12 testing pursuant to¹ the provisions of¹ section 1 of P.L.2009, c.220
13 (C.30:4-3.27), ¹~~or living arrangement licensed or funded by the~~¹
14 Department of Human Services, an applicant for such
15 employment¹ shall consent to and undergo drug testing for
16 controlled dangerous substances ¹~~.~~¹ The drug testing shall be at the
17 expense of the applicant ¹as a condition of such employment¹.

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

24 b. ¹~~A person who is~~¹ (1) Direct care staff members¹
25 employed¹ ~~as a direct care staff member pursuant to~~¹ at a program,
26 facility, or living arrangement identified in subsection a. of¹ this
27 section ¹,¹ shall be subject ¹, during the course of employment,¹ to
28 ¹random¹ drug testing for controlled dangerous substances ¹~~which~~¹
29 shall occur randomly and at ¹, as provided by this subsection.

30 (2) At¹ least once a year ¹, the employing program, facility, or
31 living arrangement shall require one or more of the direct care staff
32 members employed thereby to undergo random drug testing for
33 controlled dangerous substances. The person who is responsible for
34 the overall operation of the program, facility, or living arrangement
35 shall have the discretion to determine the total number of direct care
36 staff members who will be required to undergo random drug testing,
37 each year, pursuant to this subsection¹.

38 c. ¹~~A person who is employed as~~¹ In addition to the annual
39 performance of random drug testing, as provided by subsection b. of
40 this section, a program, facility, or living arrangement identified in
41 subsection a. of this section may additionally require¹ a direct care
42 staff member ¹~~may be required~~¹ employed thereby¹ to undergo
43 drug testing for controlled dangerous substances ¹, at any time,¹ if
44 the direct care staff member's immediate supervisor has reasonable
45 suspicion to believe that the staff member is illegally using a

1 controlled dangerous substance, based on the staff member's visible
2 impairment or professional misconduct which relates adversely to
3 patient care or safety. The supervisor shall report this information
4 to his immediate supervisor in a form and manner specified by the
5 commissioner, and ¹,¹ if the ¹["supervisor"] latter¹ concurs that there
6 is reasonable suspicion to believe that a direct care staff member is
7 illegally using a controlled dangerous substance, that supervisor
8 shall notify the person ¹who is¹ responsible for the overall operation
9 of the ¹["agency under contract with the department to provide
10 services to individuals with developmental disabilities"] program,
11 facility, or living arrangement¹, and request ¹written¹ approval ¹["in
12 writing for ordering"] therefrom to order¹ the direct care staff
13 member to undergo drug testing ¹["]. The drug] pursuant to this
14 subsection. Drug¹ testing ¹under this subsection¹ shall not be
15 ordered without the written approval of the person ¹who is¹
16 responsible for the overall operation of the ¹["agency"] program,
17 facility, or living arrangement¹.

18 d. ¹["A"] If a¹ direct care staff member ¹["who"] is subjected to a
19 drug test under subsection b. or c. of this section, and¹ tests positive
20 for the unlawful use of any controlled dangerous substance ¹, the
21 direct care staff member¹ may be referred for treatment services or
22 terminated from employment. A direct care staff member who
23 refuses to submit to drug testing ¹, as required by subsection b. or c.
24 of this section,¹ shall be terminated from employment.

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

28 f. ¹["The agency under contract with the department"] Any
29 program, facility, or living arrangement identified in subsection a.
30 of this section, which employs a direct care staff member,¹ shall
31 notify ¹["all direct care"] the¹ staff ¹["members"] member¹ of the
32 provisions of this section.

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

40
41 ¹7. (New section) a. Each State developmental center shall
42 biannually schedule a meeting with parents and guardians of
43 individuals with developmental disabilities residing in the
44 developmental center, in order to provide an opportunity for parents
45 and guardians to share experiences about the individuals.

1 b. The provider of a community-based residential program
2 shall request contact information from each parent or guardian of an
3 individual with a developmental disability who is residing in the
4 residential program, and shall advise the parent or guardian that, if
5 the parent or guardian agrees, the provider will exchange contact
6 information with other parents and guardians of individuals with
7 developmental disabilities residing in the residential program, in
8 order to provide an opportunity for parents and guardians to share
9 experiences about the individuals.

10 c. The provider of a day program shall request contact
11 information from each parent or guardian of an individual with a
12 developmental disability who is participating in the day program,
13 and shall advise the parent or guardian that, if the parent or
14 guardian agrees, the provider will exchange contact information
15 with other parents and guardians of individuals with developmental
16 disabilities who are participating in the same program, in order to
17 provide an opportunity for parents and guardians to share
18 experiences about the individuals.¹

19

20 ¹**[5.] 8.**¹ Section 4 of P.L.2003, c.191 (C.30:6D-5.4) is amended
21 to read as follows:

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

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

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

38

39 ¹**[6.] 9.**¹ Section 2 of P.L.2010, c.5 (C.30:6D-74) is amended to
40 read as follows:

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

42 "Abuse" means wrongfully inflicting or allowing to be inflicted
43 physical abuse, sexual abuse, or verbal or psychological abuse or
44 mistreatment by a caregiver upon an individual with a
45 developmental disability.

46 "Authorized family member" means a relative of ¹[the] an¹
47 individual with a developmental disability ¹who is¹ authorized by

1 the individual's guardian, or by the individual if the individual is his
2 own guardian, to receive information pursuant to P.L.2010, c.5
3 (C.30:6D-73 et seq.).

4 "Caregiver" means a person who receives State funding, directly
5 or indirectly, in whole or in part, to provide services or supports, or
6 both, to an individual with a developmental disability; except that
7 "caregiver" shall not include an immediate family member of a
8 person with a developmental disability.

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

12 "Commissioner" means the Commissioner of Human Services.

13 "Department" means the Department of Human Services.

14 "Developmental disability" means **1****[developmental disability]**
15 the same**1** as that term is**1** defined **1****[in] by****1** section 3 of P.L.1977,
16 c.82 (C.30:6D-3).

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

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

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

29 "Neglect" shall consist of any of the following acts by a
30 caregiver on an individual with a developmental disability: willfully
31 failing to provide proper and sufficient food, clothing, maintenance,
32 medical care, or a clean and proper home; or **1****[failure] failing****1**
33 do or permit to be done any act necessary for the well-being of an
34 individual with a developmental disability.

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

42 "Program" means any program **1**that is**1** licensed or funded by the
43 department **1****[that provides]** for the purpose of providing**1** services
44 to individuals with developmental disabilities **1****[and]** . "Program"**1**
45 includes **1**, but is not limited to,**1** a day program **1** or a community-
46 based residential program, as those terms are defined by section 2

1 of P.L. , c. (C.) (pending before the Legislature as this
2 bill)¹.

3 "Sexual abuse" means an act or attempted act of lewdness, sexual
4 contact, or sexual penetration between a caregiver and an individual
5 with a developmental disability. Any form of sexual contact or
6 activity between a caregiver and an individual with a developmental
7 disability, absent marriage, domestic partnership, or civil union, is
8 sexual abuse, regardless of whether the individual with a
9 developmental disability gives consent or the caregiver is on or off
10 duty.

11 "Sexual contact" means an intentional touching by a caregiver or
12 individual with a developmental disability, either directly or
13 through clothing, of the intimate parts of the individual with a
14 developmental disability or the caregiver for the purpose of
15 sexually arousing or sexually gratifying the caregiver. Sexual
16 contact of the caregiver with himself must be in view of the
17 individual with a developmental disability whom the caregiver
18 knows to be present.

19 "Sexual penetration" means vaginal intercourse, cunnilingus,
20 fellatio, or anal intercourse between a caregiver and an individual
21 with a developmental disability or insertion of the hand, finger, or
22 object into the anus or vagina, either by the caregiver or upon the
23 caregiver's instruction.

24 "Verbal or psychological abuse or mistreatment" means any
25 verbal or non-verbal act or omission by a caregiver that inflicts one
26 or more of the following: emotional harm; mental distress; or
27 invocation of fear, humiliation, intimidation, or degradation to an
28 individual with a developmental disability. Examples include, but
29 are not limited to: bullying; ignoring need; verbal assault; use of
30 racial or ethnic slurs; or intimidating gestures, such as shaking a fist
31 at an individual with a developmental disability.

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

33

34 ¹**[7.] 10.**¹ Section 3 of P.L.2010, c.5 (C.30:6D-75) is amended
35 to read as follows:

36 3. a. (1) A case manager or case manager's supervisor in the
37 department, a person employed or volunteering in a program,
38 facility, community care residence, or living arrangement licensed
39 or funded by the department, a person conducting ¹**[an**
40 **unannounced]** ¹a site visit pursuant to section ¹**[1] 3**¹ of P.L. , c.
41 (C.) (pending before the Legislature as this bill), or a person
42 providing community-based services with indirect State funding to
43 a person with a developmental disability, as applicable, having
44 reasonable cause to believe that an individual with a developmental
45 disability has been subjected to abuse, neglect, or exploitation by a
46 caregiver ^{1,1} shall report the same immediately to the department by
47 telephone or otherwise ¹**[, and the department shall notify, as]** .

1 (2) As¹ soon as possible¹,¹ but no later than 60 minutes after
2 the occurrence of the abuse, neglect, or exploitation, the
3 department shall provide notice of the incident to the¹ guardian or
4 authorized family member of the individual with a developmental
5 disability who was the subject of the abuse, neglect, or exploitation.

6 ~~[(2) Such]~~ (3) A¹ report made pursuant to paragraph (1) of
7 this subsection¹, where possible, shall contain ¹: (a)¹ the name and
8 address of the individual with a developmental disability ~~and~~ ,
9 as well as the name and address of¹ the caregiver responsible for the
10 care, custody, or control of the individual with a developmental
11 disability, and the guardian, or other person having custody and
12 control of the individual¹; and ~~[,]~~ (b)¹ if known, the condition of
13 the individual with a developmental disability, the nature and
14 possible extent of the individual's injuries, maltreatment, abuse,
15 neglect¹,¹ or exploitation, including any evidence of previous
16 injuries, maltreatment, abuse, neglect, or exploitation, and any other
17 information that the person believes may be helpful with respect to
18 the injuries, maltreatment, abuse, neglect, or exploitation of the
19 individual with a developmental disability and the identity of the
20 alleged offender.

21 b. Within the department, the commissioner shall:

22 (1) maintain a unit to receive and prioritize ~~such~~¹ reports ~~[,]~~
23 that are filed pursuant to this section¹ ;

24 (2) provide for verification of the unit's prioritization of the
25 reports by sending an employee or case manager to the appropriate
26 location within 48 hours to verify the level of severity of the report,
27 ~~[pursuant to]~~ as provided by¹ section ~~[3]~~ 5¹ of P.L. _____,

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

29 (3) initiate appropriate responses through timely and appropriate
30 investigative activities ~~[,]~~;

31 (4) alert appropriate staff ~~[,]~~; and

32 (5) ensure that findings are reported in a uniform and timely
33 manner.

34 c. (1) A person employed or volunteering in a program,
35 facility, community care residence, or living arrangement licensed
36 or funded by the department, or a person providing community-
37 based services with indirect State funding to a person with a
38 developmental disability, as applicable, who fails to report an act of
39 abuse, neglect, or exploitation against an individual with a
40 developmental disability while having reasonable cause to believe
41 that such an act has been committed, is a disorderly person.

42 (2) A case manager or case manager's supervisor in the
43 department who fails to report an act of abuse, neglect, or
44 exploitation of an individual with a developmental disability while
45 having reasonable cause to believe that such an act has been
46 committed, shall be guilty of a ~~[disorderly person's offense]~~ crime
47 of the fourth degree, unless the abuse, neglect, or exploitation

1 results in the death of an individual with a developmental disability,
2 in which case the case manager or case manager's supervisor shall
3 be guilty of a crime of the ~~fourth~~ third degree.

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

11 e. A case manager or case manager's supervisor ^{1,1} or a
12 caregiver suspected of abuse, neglect, or exploitation of an
13 individual with a developmental disability ^{1,1} who is charged with
14 failure to report an act of abuse, neglect, or exploitation of an
15 individual with a developmental disability while having reasonable
16 cause to believe that such an act has been committed, shall be
17 temporarily reassigned to duties that do not involve contact with
18 individuals with developmental disabilities or other vulnerable
19 populations ^{1,1} and shall be terminated from employment if
20 convicted.

21 In the case of a case manager or case manager's supervisor ^{1,1} or
22 ^{1of1} a caregiver suspected of abuse, neglect, or exploitation who is
23 employed by the department, the case manager ~~or~~, supervisor, or
24 caregiver shall retain any available right of review by the Civil
25 Service Commission.

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

27
28 ¹~~[8.]~~ ¹11. Section 4 of P.L.2010, c.5 (C.30:6D-76) is amended
29 to read as follows:

30 4. a. Upon receipt of a report pursuant to section 3 of ~~this~~
31 ~~act~~ P.L.2010, c.5 (C.30:6D-75), the department shall designate an
32 entity, as established by the commissioner, that shall immediately
33 take such action as shall be necessary to ensure the safety of the
34 individual with a developmental disability and to that end may
35 request appropriate assistance from local and State law enforcement
36 officials or contact Adult Protective Services to provide assistance
37 in accordance with the provisions of P.L.1993, c.249 (C.52:27D-
38 406 et seq.). The guardian of the individual with a developmental
39 disability ¹~~[also]~~ ¹ shall ¹also be authorized to request appropriate
40 assistance from local and State law enforcement officials.
41 Assistance from local and State law enforcement officials pursuant
42 to this subsection shall be provided by such an official who has
43 undergone education or training in working with individuals with
44 developmental disabilities.

45 b. ¹⁽¹⁾ The commissioner shall adopt rules and regulations
46 necessary to provide for an investigation of a reported incident and
47 subsequent substantiation or non-substantiation of an allegation of

1 abuse, neglect, or exploitation of an individual with a
2 developmental disability by a caregiver, **[by]** which shall include:

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

9 ¹**(2)] (b)**¹ providing ¹**[an opportunity for a]** the¹ guardian or
10 authorized family member ¹of the individual with prior notice of the
11 commencement of an investigation under this section, and
12 providing an opportunity for the guardian or authorized family
13 member, as appropriate,¹ to submit information to facilitate an
14 investigation, ¹to¹ represent the individual, ¹**[and]** ¹to¹ be informed
15 of the progress of the investigation ¹**[which shall include a**
16 requirement that the department provide a] , to be present while the
17 individual is being interviewed, and to terminate the interview at
18 any time, unless it would impede the investigation; and

19 ¹**(c)** providing the¹ guardian or authorized family member ¹of the
20 individual¹ with a written progress report ¹**[of]** that shows¹ the
21 status of ¹**[an]** the¹ investigation, ¹**[including]** and includes¹ any
22 medical records or reports about the individual, within seven
23 calendar days of the incident ¹, ¹ and weekly thereafter.

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

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

1 disability, upon request, may be permitted to attend or observe the
2 investigation, unless the attendance or observation would impede
3 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】** seven¹ days after receipt of the incident of
15 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 14 days
31 after an investigation under this section is concluded, the¹ Office of
32 Investigations shall issue a written report of the investigation that
33 includes the conclusions of the unit, the rationale for the
34 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
47 or authorized family member of the individual with a

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

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

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

15 (b) the date of the incident, or the date the incident was reported
16 if the incident date is unknown;

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

19 (d) the incident number;

20 (e) a summary of the allegation of abuse, neglect, or
21 exploitation;

22 (f) a finding that the incident is substantiated or
23 unsubstantiated;

24 (g) the rationale for the finding and, if the incident is
25 substantiated, a description of the action or inaction that
26 precipitated the finding;

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

30 (i) whether remedial action was taken¹.

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

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

34

35 ¹[9.] 12.¹ Section 5 of P.L.2010, c.5 (C.30:6D-77) is amended
36 to read as follows:

37 5. a. There is established a Central Registry of Offenders
38 Against Individuals with Developmental Disabilities in the
39 department.

40 b. The commissioner shall adopt rules and regulations that
41 define the procedures and standards for inclusion of an offending
42 caregiver on the central registry, and for notification of such
43 inclusion to the caregiver and to the guardian or authorized family
44 member of the individual with a developmental disability who was
45 the subject of the abuse, neglect, or exploitation that led to the
46 caregiver's inclusion on the central registry. The commissioner or
47 the commissioner's designee shall designate staff to notify the
48 guardian or authorized family member of the individual of any

1 action taken by the department to remediate a condition that may
2 have contributed to the occurrence of the abuse, neglect, or
3 exploitation of the individual.

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

8 (2) For inclusion on the central registry in the case of a
9 substantiated incident of neglect, the caregiver shall have acted with
10 gross negligence, recklessness, or in a pattern of behavior that
11 causes or potentially causes harm to an individual with a
12 developmental disability.

13 (3) In the case of a substantiated incident of exploitation, the
14 commissioner shall establish a dollar amount for inclusion on the
15 central registry.

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

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

23 (2) concerning the dissemination of information in the central
24 registry;

25 (3) that will prohibit persons included on the central registry
26 from employment in facilities or programs of the Division of
27 Developmental Disabilities in the department and those facilities or
28 programs licensed, contracted, or regulated by the department, or
29 from providing community-based services with indirect State
30 funding to ¹~~persons~~ individuals¹ with developmental disabilities;
31 and

32 (4) necessary to provide for the removal of a person's name
33 from the central registry. A person may apply for removal of his
34 name to the commissioner after a period of five years of being
35 placed on the central registry. The person shall affirmatively
36 demonstrate to the commissioner clear and convincing evidence of
37 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
38 1 et seq.) as a guide.

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

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

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

1 ¹**[10.] 13.**¹ Section 6 of P.L.2010, c.5 (C.30:6D-78) is amended
2 to read as follows:

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

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

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

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

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

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

38
39 ¹**[12.] 15.**¹ This act shall take effect on the first day of the
40 seventh month next following the date of enactment, but the
41 Commissioner of Human Services may take such anticipatory
42 administrative action in advance thereof as shall be necessary for
43 the implementation of this act.