

ASSEMBLY, No. 709

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

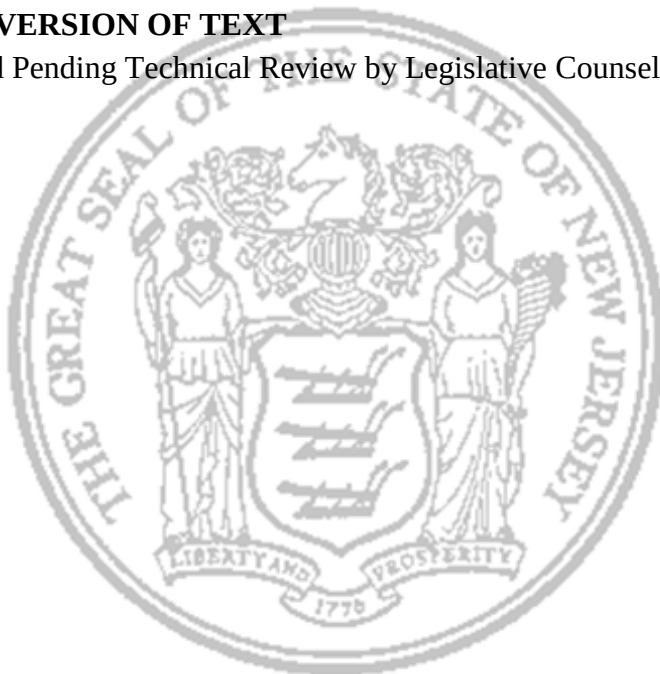
Assemblywoman Vainieri Huttle

SYNOPSIS

Establishes Division of Advocacy for Developmentally Disabled within Office of Public Defender; designates public defender for developmentally disabled clients in criminal cases.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** establishing the Division of Advocacy for the
2 Developmentally Disabled and supplementing Title 52 of the
3 Revised Statutes and Title 2A of the New Jersey Statutes.

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

7
8 1. Division of Advocacy for the Developmentally Disabled;
9 established.

10 a. There is hereby established in the Office of the Public
11 Defender the Division of Advocacy for the Developmentally
12 Disabled to be under the supervision of the Director of the Division
13 of Advocacy for the Developmentally Disabled.

14 b. The division is hereby designated as the State's protection
15 and advocacy agency for persons with developmentally disabilities.
16 The division shall have all of the powers necessary to carry out its
17 responsibilities as required to qualify for federal funding as the
18 State protection and advocacy agency. Until such designation is
19 effectuated, the division may take such action as it deems
20 appropriate for the purpose of coordinating with the private entity
21 designated as the State's protection and advocacy agency for
22 persons with developmental disabilities on the date of enactment of
23 this act.

24
25 2. Division of Advocacy for the Developmentally Disabled;
26 objective; duties.

27 a. The Division of Advocacy for the Developmentally Disabled
28 shall promote, advocate, and ensure the adequacy of the care
29 received, and the quality of life experienced, by persons with
30 developmental disabilities, including patients, residents, and clients
31 within the developmental disabilities facilities and programs
32 operated, funded, or licensed by the State. In determining what
33 elements are essential to ensure adequate care and quality of life,
34 the division shall consider the unique medical, social, and economic
35 needs and problems of persons with developmental disabilities as
36 patients, residents, and clients of facilities and as citizens and
37 community members.

38 b. The director shall establish and implement procedures to
39 elicit, receive, process, respond, and resolve complaints from
40 patients, their families, other interested citizens, public officials,
41 and government agencies concerning conditions in the State's
42 developmental disabilities facilities.

43
44 3. Division of Advocacy for the Developmentally Disabled;
45 services.

46 The Director of the Division of Advocacy for the
47 Developmentally Disabled may receive and investigate complaints
48 and provide such legal representation and other advocacy services

1 on an individual or class basis as the Public Defender deems
2 appropriate to protect and advocate the rights of developmentally
3 disabled persons. The division may also, within the limits of
4 available funding, provide services to other handicapped persons or
5 classes of persons found by the Public Defender to have needs
6 similar to developmentally disabled people.

7
8 4. Division of Advocacy for the Developmentally Disabled;
9 eligibility for services.

10 Eligibility for services for the developmentally disabled shall be
11 determined on the basis of the need of the client and in a manner
12 consistent with the conditions of any grant obtained by the Public
13 Defender to assist in implementing P.L. , c. (C.) (pending
14 before the Legislature as this bill).

15
16 5. Division of Advocacy for the Developmentally Disabled;
17 staff.

18 The Director of the Division of Advocacy for the
19 Developmentally Disabled may employ, with the approval of the
20 Public Defender, such assistants on a full time basis as are
21 necessary to protect the rights of developmentally disabled persons.
22 These assistants shall have knowledge of the needs of
23 developmentally disabled persons. When exceptional circumstances
24 arise, the director may retain, with the approval of the Public
25 Defender, on a temporary basis such other expert assistants as are
26 necessary pursuant to a reasonable fee schedule established in
27 advance by the Public Defender.

28 Cases shall be assigned to staff attorneys, or attorneys hired by
29 case, on a basis calculated to provide competent representation in
30 light of the nature of the case, the services to be performed, the
31 experience of the particular attorney and other relevant factors.

32
33 6. Division of Advocacy for the Developmentally Disabled;
34 status of staff.

35 Independent contractors or other individuals, agencies, or entities
36 not established in or employed by the Office of the Public Defender
37 retained or designated to provide protection and advocacy services
38 to persons with a developmental disability as the term is defined in
39 section 3 of the "Developmentally Disabled Rights Act," P.L.1977,
40 c.82 (C.30:6D-3), are not public entities or public employees for
41 purposes of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

42
43 7. Division of Advocacy for the Developmentally Disabled;
44 definition.

45 For purposes of this act, a developmentally disabled person is a
46 person with a developmental disability as that term is defined in
47 section 3 of the "Developmentally Disabled Rights Act," P.L.1977,
48 c.82 (C.30:6D-3).

1 8. Division of Advocacy for the Developmentally Disabled;
2 transfer of functions.

3 All functions, powers, and duties which had been vested in a
4 private entity pursuant to designation by the Governor as the State's
5 protection and advocacy agency for persons with developmental
6 disabilities are hereby transferred to and assumed by the Division of
7 Advocacy for the Developmentally Disabled in the Office of the
8 Public Defender, except that the private entity shall continue to
9 exercise the functions, powers and duties as the State's protection
10 and advocacy agency for persons with developmental disabilities
11 until the designation of the division as the State's protection and
12 advocacy agency for persons with developmental disabilities is
13 effectuated.

14 Whenever, in any law, rule, regulation, order, reorganization
15 plan, contract, document, judicial or administrative proceeding, or
16 otherwise, reference is made to the private entity designated by the
17 Governor as the State's protection and advocacy agency for persons
18 with developmental disabilities concerning functions, powers, and
19 duties which are now vested in the private entity, the same shall
20 mean and refer to the Division of Advocacy for the
21 Developmentally Disabled in the Office of the Public Defender,
22 except that with regard to the private entity the reference shall be
23 ineffective when the designation of the division as the State's
24 protection and advocacy agency for persons with developmental
25 disabilities is effectuated.

26

27 9. The Public Defender shall designate at least one deputy
28 public defender or assistant public defender in every office with a
29 knowledge of the needs of developmental disabled persons to
30 represent those clients with developmental disabilities.

31 A developmentally disabled person is a person with a
32 developmental disability as that term is defined in section 3 of the
33 "Developmentally Disabled Rights Act," P.L.1977, c.82 (C.30:6D-
34 3).

35

36 10. This act shall take effect on the 180th day following
37 enactment.

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STATEMENT

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42 This bill would provide legal representation and other advocacy
43 services to protect and advocate for the rights of developmentally
44 disabled persons by establishing the Division of Advocacy for
45 Developmentally Disabled within the Office of the Public Defender.
46 This bill also provides that the Public Defender would designate at
47 least one public defender in every office with knowledge of the

1 needs of developmentally disabled persons to represent those clients
2 with developmental disabilities in criminal cases.

3 This bill would establish the Division of Advocacy for the
4 Developmentally Disabled in the Office of the Public Defender to
5 be under the supervision of the Director of the Division of
6 Advocacy for the Developmentally Disabled.

7 The division would be designated as the State's protection and
8 advocacy agency for persons with developmental disabilities. The
9 division would have all of the powers necessary to carry out its
10 responsibilities as required to qualify for federal funding as the
11 State protection and advocacy agency.

12 The Division of Advocacy for the Developmentally Disabled
13 would promote, advocate, and ensure the adequacy of the care
14 received by persons with developmental disabilities, including
15 persons within facilities and programs operated, funded, or licensed
16 by the State. The division would be authorized to receive and
17 investigate complaints and provide legal representation and other
18 advocacy services on an individual or class basis.

19 Eligibility for services for the developmentally disabled would
20 be determined on the basis of the need of the client and in a manner
21 consistent with the conditions of any grant obtained by the Public
22 Defender to assist in implementing this bill.

23 The Director of the Division of Advocacy for the
24 Developmentally Disabled may employ, with the approval of the
25 Public Defender, such assistants on a full time basis as are
26 necessary to protect the rights of developmentally disabled persons.
27 These assistants would have knowledge of the needs of
28 developmental disabled persons. When exceptional circumstances
29 arise, the director may retain, with the approval of the Public
30 Defender, on a temporary basis such other expert assistants as are
31 necessary pursuant to a reasonable fee schedule established in
32 advance by the Public Defender.

33 Cases would be assigned to staff attorneys, or attorneys hired by
34 case, on a basis calculated to provide competent representation in
35 light of the nature of the case, the services to be performed, the
36 experience of the particular attorney and other relevant factors.

37 The bill also supplements Title 2A and provides that the Public
38 Defender would designate at least one deputy public defender or
39 assistant public defender in every office with knowledge of the
40 needs of developmentally disabled persons to represent those clients
41 with developmental disabilities in criminal cases.

42 This bill defines a developmentally disabled person by cross-
43 referencing to the definition in section 3 of the "Developmentally
44 Disabled Rights Act," P.L.1977, c.82 (C.30:6D-3). Pursuant to that
45 section, a developmental disability means a severe, chronic
46 disability of a person which: is attributable to either a mental or
47 physical impairment, or a combination of mental or physical

A709 SUMTER, KENNEDY

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1 impairments; manifests before age 22; is likely to continue
2 indefinitely; results in substantial functional limitations in at least
3 three areas of major life activity, such as self-care and receptive and
4 expressive language; and reflects the need for a combination and
5 sequence of special inter-disciplinary or generic care, treatment or
6 other services which are lifelong or extended duration and are
7 individually planned and coordinated.