

ASSEMBLY, No. 4519

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 13, 2020

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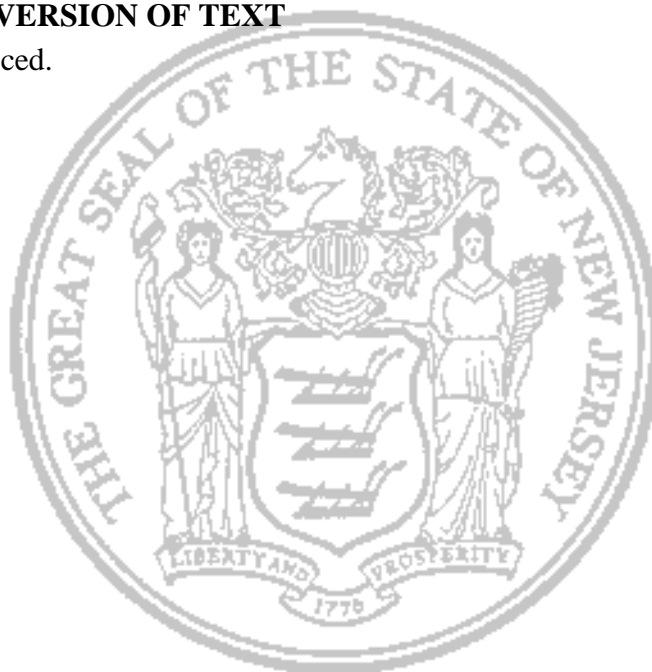
District 33 (Hudson)

SYNOPSIS

Establishes civil action for abuse, neglect, exploitation or bullying of minor or adult with disability; provides that bullying of vulnerable adult may constitute grounds for investigation by adult protective services and report to law enforcement.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/11/2021)

1 AN ACT concerning the bullying of disabled persons, amending
2 P.L.1993, c.249 and N.J.S.2A:14-2 and supplementing Title 2A
3 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. N.J.S.2A:14-2 is amended to read as follows:

9 2A:14-2. a. Except as otherwise provided by law, every action
10 at law for an injury to the person caused by the wrongful act,
11 neglect or default of any person within this State shall be
12 commenced within two years next after the cause of any such action
13 shall have accrued; except that an action by or on behalf of a minor
14 that has accrued for medical malpractice for injuries sustained at
15 birth shall be commenced prior to the minor's 13th birthday.

16 b. In the event that an action by or on behalf of a minor that has
17 accrued for medical malpractice for injuries sustained at birth is not
18 commenced by the minor's parent or guardian prior to the minor's
19 12th birthday, the minor or a person 18 years of age or older
20 designated by the minor to act on the minor's behalf may commence
21 such an action. For this purpose, the minor or designated person
22 may petition the court for the appointment of a guardian ad litem to
23 act on the minor's behalf.

24 c. (1) Every action at law for an injury to a minor with a
25 disability under the age of 18 where such injury resulted from
26 abuse, neglect, exploitation, or bullying as defined in section 2 of
27 P.L.1993, c.249 (C.52:27D-407) and the injury occurred prior to,
28 on, or after the effective date of P.L. , c. (C.) (pending before
29 the Legislature as this bill) shall be commenced within 37 years
30 after the minor reaches the age of majority, or within seven years
31 from the date of reasonable discovery of the injury and its causal
32 relationship to the act, whichever is later.

33 (2) Every action at law for an injury to an adult with a disability
34 aged 18 or older where such injury resulted from abuse, neglect,
35 exploitation, or bullying as defined in section 2 of P.L.1993, c.249
36 (C.52:27D-407) that occurred prior to, on, or after the effective date
37 of P.L. , c. (C.) (pending before the Legislature as this bill)
38 shall be commenced within seven years from the date of reasonable
39 discovery of the injury and its causal relationship to the act.

40 (cf: P.L.2019, c.120, s.1)

41
42 2. (New section) a. As used in P.L. , c. (C.)
43 (pending before the Legislature as this bill), “disability” has the
44 meaning set forth in subsection q. of section 5 of P.L.1945, c.169
45 (C.10:5-5).

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 b. A minor under the age of 18 with a disability shall have a
2 cause of action for injury resulting from abuse, neglect,
3 exploitation, or bullying as defined in section 2 of P.L.1993, c.249
4 (C.52:27D-407). The action shall be commenced within the time
5 period set forth in paragraph (1) of subsection c. of N.J.S.2A:14-2.

6 c. An adult aged 18 or older with a disability shall have a cause
7 of action for injury resulting from abuse, neglect, exploitation, or
8 bullying as defined in section 2 of P.L.1993, c.249 (C.52:27D-407).
9 The action shall be commenced within the time period set forth in
10 paragraph (2) of subsection c. of N.J.S.2A:14-2.

11
12 3. Section 2 of P.L.1993, c.249 (C.52:27D-407) is amended to
13 read as follows:

14 2. As used in this act:

15 "Abuse" means the willful infliction of physical pain, injury or
16 mental anguish, unreasonable confinement, or the willful
17 deprivation of services which are necessary to maintain a person's
18 physical and mental health.

19 "Bullying" means any gesture, any written, verbal, or physical
20 act, or any electronic communication that causes a reasonable
21 person to fear for his safety or fear damage to his property.

22 "Caretaker" means a person who has assumed the responsibility
23 for the care of a vulnerable adult as a result of family relationship or
24 who has assumed responsibility for the care of a vulnerable adult
25 voluntarily, by contract, or by order of a court of competent
26 jurisdiction, whether or not they reside together.

27 "Commissioner" means the Commissioner of Human Services.

28 "Community setting" means a private residence or any
29 noninstitutional setting in which a person may reside alone or with
30 others, but shall not include residential health care facilities,
31 rooming houses or boarding homes or any other facility or living
32 arrangement subject to licensure by, operated by, or under contract
33 with, a State department or agency.

34 "County adult protective services provider" means a county
35 Board of Social Services or other public or nonprofit agency with
36 experience as a New Jersey provider of protective services for
37 adults, designated by the county and approved by the commissioner.
38 The county adult protective services provider receives reports made
39 pursuant to this act, maintains pertinent records and provides,
40 arranges, or recommends protective services.

41 "County director" means the director of a county adult protective
42 services provider.

43 "Department" means the Department of Human Services.

44 "Emergency medical technician" means a person trained in basic
45 life support services as defined in section 1 of P.L.1985, c.351
46 (C.26:2K-21) and who is certified by the Department of Health to
47 provide that level of care.

1 "Exploitation" means the act or process of illegally or improperly
2 using a person or his resources for another person's profit or
3 advantage.

4 "Firefighter" means a paid or volunteer firefighter.

5 "Health care professional" means a health care professional who
6 is licensed or otherwise authorized, pursuant to Title 45 or Title 52
7 of the Revised Statutes, to practice a health care profession that is
8 regulated by one of the following boards or by the Director of the
9 Division of Consumer Affairs: the State Board of Medical
10 Examiners, the New Jersey Board of Nursing, the New Jersey State
11 Board of Dentistry, the New Jersey State Board of Optometrists, the
12 New Jersey State Board of Pharmacy, the State Board of
13 Chiropractic Examiners, the Acupuncture Examining Board, the
14 State Board of Physical Therapy Examiners, the State Board of
15 Respiratory Care, the Orthotics and Prosthetics Board of Examiners,
16 the State Board of Psychological Examiners, the State Board of
17 Social Work Examiners, the State Board of Examiners of
18 Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology
19 and Speech-Language Pathology Advisory Committee, the State
20 Board of Marriage and Family Therapy Examiners, the
21 Occupational Therapy Advisory Council, the Certified
22 Psychoanalysts Advisory Committee, and the State Board of
23 Polysomnography. "Health care professional" also means a nurse
24 aide or personal care assistant who is certified by the Department of
25 Health.

26 "Neglect" means an act or failure to act by a vulnerable adult or
27 his caretaker which results in the inadequate provision of care or
28 services necessary to maintain the physical and mental health of the
29 vulnerable adult, and which places the vulnerable adult in a
30 situation which can result in serious injury or which is life-
31 threatening.

32 "Protective services" means voluntary or court-ordered social,
33 legal, financial, medical or psychiatric services necessary to
34 safeguard a vulnerable adult's rights and resources, and to protect a
35 vulnerable adult from abuse, neglect or exploitation. Protective
36 services include, but are not limited to: evaluating the need for
37 services, providing or arranging for appropriate services, obtaining
38 financial benefits to which a person is entitled, and arranging for
39 guardianship and other legal actions.

40 "Vulnerable adult" means a person 18 years of age or older who
41 resides in a community setting and who, because of a physical or
42 mental illness, disability or deficiency, lacks sufficient
43 understanding or capacity to make, communicate, or carry out
44 decisions concerning his well-being and is the subject of abuse,
45 neglect **[or]** exploitation, or bullying. A person shall not be
46 deemed to be the subject of abuse, neglect **[or]**, exploitation, or
47 bullying or in need of protective services for the sole reason that the
48 person is being furnished nonmedical remedial treatment by

1 spiritual means through prayer alone or in accordance with a
2 recognized religious method of healing in lieu of medical treatment,
3 and in accordance with the tenets and practices of the person's
4 established religious tradition.

5 (cf: P.L.2012, c.17, s.424)

6

7 4. Section 4 of P.L.1993, c.249 (C.52:27D-409) is amended to
8 read as follows:

9 4. a. (1) A health care professional, law enforcement officer,
10 firefighter, paramedic or emergency medical technician who has
11 reasonable cause to believe that a vulnerable adult is the subject of
12 abuse, neglect **[or]**, exploitation, or bullying as defined in section 2
13 of P.L.1993, c.249 (C.52:27D-407) shall report the information to
14 the county adult protective services provider.

15 (2) Any other person who has reasonable cause to believe that a
16 vulnerable adult is the subject of abuse, neglect**[or]**, exploitation,
17 or bullying as defined in section 2 of P.L.1993, c.249 (C.52:27D-
18 407) may report the information to the county adult protective
19 services provider.

20 b. The report, if possible, shall contain the name and address of
21 the vulnerable adult; the name and address of the caretaker, if any;
22 the nature and possible extent of the vulnerable adult's injury or
23 condition as a result of abuse, neglect**[or]**, exploitation, or bullying
24 as defined in section 2 of P.L.1993, c.249 (C.52:27D-407); and any
25 other information that the person reporting believes may be helpful.

26 c. A person who reports information pursuant to this act, or
27 provides information concerning the abuse of a vulnerable adult to
28 the county adult protective services provider, or testifies at a grand
29 jury, judicial or administrative proceeding resulting from the report,
30 is immune from civil and criminal liability arising from the report,
31 information, or testimony, unless the person acts in bad faith or
32 with malicious purpose.

33 d. An employer or any other person shall not take any
34 discriminatory or retaliatory action against an individual who
35 reports abuse, neglect**[or]**, exploitation, or bullying as defined in
36 section 2 of P.L.1993, c.249 (C.52:27D-407) pursuant to this act.
37 An employer or any other person shall not discharge, demote or
38 reduce the salary of an employee because the employee reported
39 information in good faith pursuant to this act. A person who
40 violates this subsection is liable for a fine of up to \$1,000.

41 e. A county adult protective services provider and its
42 employees are immune from criminal and civil liability when acting
43 in the performance of their official duties, unless their conduct is
44 outside the scope of their employment, or constitutes a crime, actual
45 fraud, actual malice, or willful misconduct.

46 (cf: P.L.2009, c.276, s.2)

1 5. Section 14 of P.L.1993, c.249 (C.52:27D-419) is amended to
2 read as follows:

3 14. If the county director or his designee has reasonable cause to
4 believe that a caretaker or other person has committed a criminal act
5 against a vulnerable adult including, but not limited to,
6 P.L.1989, c.23 (C.2C:24-8) or section 1 of P.L.2015, c.186
7 (C.2C:24-7.1), he shall immediately report the information to local
8 law enforcement officials or the prosecutor of the county in which
9 the alleged criminal act was committed. If the report is made
10 orally, a written report shall follow in a timely manner.
11 (cf: P.L.1993, c.249, s.14)

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13

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STATEMENT

15

16 This bill provides for a specific civil action by a disabled minor
17 or disabled adult for injury resulting from abuse, neglect,
18 exploitation, or bullying.

19 The bill's definition of "disability" is the same as the definition
20 set forth in the Law Against Discrimination, P.L.1945, c.169
21 (C.10:5-1 et seq.): "physical or sensory disability, infirmity,
22 malformation, or disfigurement which is caused by bodily injury,
23 birth defect, or illness including epilepsy and other seizure
24 disorders, and which shall include, but not be limited to, any degree
25 of paralysis, amputation, lack of physical coordination, blindness or
26 visual impairment, deafness or hearing impairment, muteness or
27 speech impairment, or physical reliance on a service or guide dog,
28 wheelchair, or other remedial appliance or device, or any mental,
29 psychological, or developmental disability, including autism
30 spectrum disorders, resulting from anatomical, psychological,
31 physiological, or neurological conditions which prevents the typical
32 exercise of any bodily or mental functions or is demonstrable,
33 medically or psychologically, by accepted clinical or laboratory
34 diagnostic techniques. Disability shall also mean AIDS or HIV
35 infection."

36 Under the bill, every civil action for an injury to a minor with a
37 disability under the age of 18 where such injury resulted from
38 abuse, neglect, exploitation, or bullying and the injury occurred
39 prior to, on, or after the effective date of the bill would be required
40 to be commenced within 37 years after the minor reaches the age of
41 majority, or within seven years from the date of reasonable
42 discovery of the injury and its causal relationship to the act,
43 whichever is later.

44 The bill provides that every civil action for an injury to an adult
45 with a disability aged 18 or older where such injury resulted from
46 abuse, neglect, exploitation, or bullying that occurred prior to, on,
47 or after the effective date of the bill would be required to be

1 commenced within seven years from the date of reasonable
2 discovery of the injury and its causal relationship to the act.

3 The bill also provides that the bullying of a “vulnerable adult”
4 may constitute grounds for an investigation by adult protective
5 services and a report to law enforcement for possible criminal
6 prosecution.

7 Under the “Adult Protective Services Act,” P.L.1993, c.249
8 (C.52:27D-406 et seq.), a health care professional, law enforcement
9 officer, firefighter, paramedic or emergency medical technician who
10 has reasonable cause to believe that a vulnerable adult is the subject
11 of abuse, neglect or exploitation must report the information to the
12 county adult protective services provider. Other persons with such
13 reasonable cause may report the information.

14 The act defines a "vulnerable adult" as “a person 18 years of age
15 or older who resides in a community setting and who, because of a
16 physical or mental illness, disability or deficiency, lacks sufficient
17 understanding or capacity to make, communicate, or carry out
18 decisions concerning his well-being and is the subject of abuse,
19 neglect or exploitation.”

20 Under the Adult Protective Services Act, the county adult
21 protective services provider must initiate an investigation within 72
22 hours of a report. If necessary, the provider may petition a court for
23 an order to conduct the investigation. If the provider finds
24 reasonable cause to believe that the vulnerable adult has been the
25 subject of abuse, neglect or exploitation, the provider will
26 determine the need for protective services and arrange for such
27 services. The director of a county adult services provider may
28 petition for a court order for services if he determines that the
29 vulnerable adult will incur a substantial risk of physical harm or
30 deterioration without protective services, and the adult refuses or is
31 unable to consent.

32 The act further provides that if the county director or his
33 designee has reasonable cause to believe that a caretaker or other
34 person has committed a criminal act against a vulnerable adult, the
35 director must immediately report the information to local law
36 enforcement officials or the county prosecutor.

37 This bill would add bullying of a vulnerable adult as grounds for
38 an investigation and report. The bill defines “bullying” as “any
39 gesture, any written, verbal, or physical act, or any electronic
40 communication that causes a reasonable person to fear for his safety
41 or fear damage to his property.” Under the bill, health care
42 providers and first responders would be required to report bullying,
43 in addition to abuse, neglect, or exploitation, and other persons
44 could report such acts.

45 In addition, the bill adds to the specific criminal acts that the
46 county director is required to report to law enforcement or the
47 prosecutor a violation of section 1 of P.L.2015, c.186 (C.2C:24-
48 7.1), Endangering Another Person. Under this statute, creating a

1 risk of injury to another person is a criminal offense ranging from a
2 disorderly persons offense to a crime of the third degree, depending
3 on the offender's criminal culpability and the degree of risk of
4 injury to the victim. If the offense is committed against a person
5 with a developmental disability, the criminal penalties are
6 increased by one degree, so that they range from a crime of the
7 fourth degree to a crime of the second degree.

8 A crime of the second degree is generally punishable by a term
9 of five to 10 years or a fine up to \$150,000, or both; a crime of the
10 third degree, by a term of three to five years or a fine up to \$15,000,
11 or both; and a crime of the fourth degree, by a term up to 18 months
12 or a fine up to \$10,000, or both. A disorderly persons offense is
13 generally punishable by a term of imprisonment of up to six months
14 or a fine of up to \$1,000, or both.