

SENATE, No. 3301

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 18, 2020

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Co-Sponsored by:

**Senators Corrado, Weinberg, Cryan, Schepisi, Diegnan, T.Kean,
Singleton, A.M.Bucco, Thompson, Rice and Cunningham**

SYNOPSIS

Requires certain group homes to install electronic monitoring devices in common areas, upon request and with uniform resident consent, and to permit consensual use of such devices in private rooms.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/8/2021)

1 **AN ACT** concerning the installation and use of electronic
2 monitoring devices at group homes for individuals with
3 developmental disabilities, and supplementing Title 30 of the
4 Revised Statutes.

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

8
9 1. The Legislature finds and declares the following:

10 a. Individuals with developmental disabilities are particularly
11 vulnerable to abuse, neglect, and exploitation by caregivers,
12 guardians, and other persons.

13 b. Group homes for individuals with developmental disabilities
14 admirably enable these individuals to live more independently
15 within a non-institutional setting; however, the lack of institutional
16 controls and oversight at these homes ultimately makes it harder for
17 the State, for individual group home operators, and for concerned
18 family members to promptly identify and respond to wrongdoing
19 that may be committed by caregivers, guardians, group home
20 employees, and other persons at the home.

21 c. The safety and quality of life of individuals with
22 developmental disabilities who receive care from group homes is of
23 paramount concern, and the use of video monitoring is a reasonable
24 means by which the State and concerned family members can better
25 ensure the prevention of, and the institution of a more proactive
26 response to, the abuse, neglect, and exploitation of group home
27 residents.

28 d. The rights of individuals with developmental disabilities,
29 including the right to privacy, should be respected and preserved at
30 all times, to the greatest extent practicable; however, just as is true
31 of all citizens, an individual with a developmental disability or the
32 individual's authorized representative, as the case may be, may
33 consent to the waiver or limitation of the individual's rights,
34 particularly the individual's rights to privacy, by knowingly
35 agreeing to video surveillance, as deemed by the individual or the
36 authorized representative to be appropriate.

37 e. It is in the public interest for the State to provide for the
38 enhanced protection of individuals with developmental disabilities
39 who reside at group homes by enabling group home residents, or
40 their authorized representatives, to cooperatively and collectively
41 decide whether to allow for the installation and use of video
42 monitoring devices in the common areas of the group homes, and to
43 individually decide whether to allow for the installation and use of
44 video monitoring devices in the private residential room of each
45 such resident, so that the treatment of such residents can be
46 recorded and instances of abuse, neglect, or exploitation
47 documented with video evidence.

1 f. The State recognizes that each individual with
2 developmental disabilities is unique and has differing needs and
3 preferences, and that, while some group home residents and their
4 authorized representatives may consent to the use of video
5 surveillance to better ensure the residents' safety, others may refuse
6 to consent to such video surveillance.

7 g. Through the enactment of this act, it is the intent of the
8 Legislature to make video monitoring technology more readily
9 available in group home settings, while taking great care to strike
10 the important and delicate balance between protecting the privacy
11 rights and protecting the overall well-being of group home
12 residents.

13 h. This act is dedicated to William "Billy" Cray, a 33-year-old
14 with developmental disabilities who, on a Sunday morning in
15 January 2017, was inexplicably found dead on the floor of his
16 bedroom in a West Deptford group home, operated by Devereux
17 Advanced Behavioral Health New Jersey, where he resided. Billy
18 Cray, who had suffered from institutional abuse since he was a
19 child, was the son of Martha Cray, a dedicated and long-time
20 advocate for persons with developmental disabilities. For many
21 years, both preceding and following her son's death, Martha Cray
22 has continued to work tirelessly to advance legislation protecting
23 the rights and safety of individuals with developmental disabilities,
24 particularly those residing in group homes. She was particularly
25 instrumental in facilitating the passage of "Stephen Komninos'
26 Law," P.L.2017, c.238 (C.30:6D-9.1), which provides for the
27 heightened scrutiny of group homes by requiring more frequent,
28 unannounced oversight visits, and which requires group homes to
29 provide prompt notice of injury to the parent or guardian of an
30 injured resident.

31 i. Billy Cray's death is yet another reminder of why the State
32 needs to continue its work both to strengthen oversight of group
33 homes for individuals with developmental disabilities and to further
34 facilitate and enhance the ability of group home residents and their
35 family members or guardians, as the case may be, to take
36 affirmative steps to protect the rights and safety of residents and
37 promptly and appropriately respond to resident injuries and other
38 concerning incidents occurring in the group homes. By enabling
39 group home residents with developmental disabilities and their
40 authorized representatives to use video-based electronic monitoring
41 to protect against, provide documentary evidence of, and ensure a
42 prompt and adequate response to, any abuse, neglect, and
43 exploitation occurring in the group home, the Legislature can
44 further preserve the rights and safety of group home residents and
45 facilitate the proactive prevention of deaths like Billy Cray's.

46
47 2. As used in this act:

1 “Authorized representative” means a group home resident’s
2 court-appointed guardian of the person or, if there is no guardian of
3 the person, the person who holds a valid power of attorney or is
4 otherwise legally authorized to act as the representative of the group
5 home resident for the purposes of making decisions related to the
6 resident’s care and living arrangements. “Authorized
7 representative” does not include a caregiver or any other person
8 who is employed or contracted, on a paid or unpaid basis, by the
9 group home licensee.

10 “Common areas” means the living areas, dining areas, entrances,
11 outdoor areas, stairwells, and any other areas within a group home,
12 except bathrooms, which are commonly and communally accessible
13 to all residents, and are not dedicated for private use by a particular
14 resident.

15 “Division” means the Division of Developmental Disabilities in
16 the Department of Human Services.

17 “Electronic monitoring device” means a camera or other
18 electronic device that uses video, but not audio, recording
19 capabilities to monitor the activities taking place in the area where
20 the device is installed.

21 “Group home” means a living arrangement that is licensed by the
22 division and is operated in a residence or residences leased or
23 owned by a licensee; which living arrangement either provides the
24 opportunity for multiple adults with developmental disabilities to
25 live together in a home, sharing in chores and the overall
26 management of the residence, or provides the opportunity for a
27 single adult with developmental disabilities and extreme behavioral
28 difficulties to live more independently while receiving full-time
29 care, and in which on-site staff provides supervision, training, or
30 assistance, in a variety of forms and intensity, as required to assist
31 the individual or individuals as they move toward independence.
32 “Group home” does not include a living arrangement that is
33 dedicated for use by children with developmental disabilities.

34 “Licensee” means an individual, partnership, or corporation that
35 is licensed by the division, and is responsible for providing services
36 associated with the operation of a group home.

37 “Private room” means the private bedroom of a group home
38 resident.

39 “Private single occupancy room” means a private room that is
40 occupied by only a single group home resident.

41 “Private double occupancy room” means a private room that is
42 occupied by two or more group home residents.

43

44 3. a. A group home that does not have electronic monitoring
45 devices already installed in the group home’s common areas shall
46 be required to install electronic monitoring devices in those
47 common areas, upon the collective request of the residents and the
48 residents’ authorized representatives, if all of the residents of the

1 group home and their authorized representatives agree to have such
2 electronic monitoring devices installed and expressly consent to the
3 installation and use of such devices. A licensee shall not require
4 current residents to consent to the installation and use of electronic
5 monitoring devices in the common areas as a condition of their
6 continued residency in the group home. Each licensee operating a
7 group home that does not have electronic monitoring devices
8 already installed in the common areas shall:

9 (1) within six months after the group home adopts an internal
10 electronic monitoring policy pursuant to section 5 of this act, take
11 affirmative action to determine whether the residents of the group
12 home and their authorized representatives want and consent to have
13 electronic monitoring devices installed and used in the group
14 home's common areas pursuant to this section; and

15 (2) annually provide written notice to all residents and their
16 authorized representatives informing them of their right to request
17 the installation and use of electronic monitoring devices in the
18 group home's common areas, as provided by this section.

19 b. A group home that installs and uses electronic monitoring
20 devices in its common areas pursuant to the agreement, request, and
21 consent of the residents, as provided by this section, shall:

22 (1) require each person employed by the group home to provide
23 express written consent to the use of the electronic monitoring
24 devices in the group home's common areas, as a condition of the
25 person's employment;

26 (2) ensure that a prominent written notice is posted at the
27 entrance and exit doors to the home informing visitors that they will
28 be subject to electronic video monitoring while present in the home;
29 and

30 (3) ensure that, in the future, the group home only allows
31 residence by those individuals who consent to the ongoing use of
32 electronic monitoring devices in the group home's common areas.

33 c. An individual's refusal to agree and consent to the use of
34 electronic monitoring devices in a group home's common areas
35 shall not be used as a basis to prevent the timely placement of the
36 individual in appropriate housing without surveillance.

37 d. (1) Any electronic monitoring devices installed pursuant to
38 this section shall be unobstructed and recording at all times, and any
39 recordings produced by the devices shall be retained by the program
40 for a period of 90 days. Each licensee shall inspect the devices, and
41 shall document the results of each inspection, on a weekly basis.

42 (2) A resident or the resident's authorized representative shall
43 be authorized, upon request submitted to the licensee, to access and
44 review any footage that is recorded by an electronic monitoring
45 device in the common areas of the group home.

46 e. The Department of Human Services shall annually conduct
47 an on-site device inspection at each group home, in order to ensure
48 that any electronic monitoring devices installed in the common

1 areas are functioning properly, as required by subsection d. of this
2 section. The department may elect to conduct the on-site device
3 inspection required by this subsection as part of the broader
4 inspection of each group home that it is required to perform under
5 section 8 of P.L.2017, c.328 (C.30:11B-4.3).

6 f. Nothing in this section shall be deemed to prohibit a group
7 home licensee from installing and utilizing electronic monitoring
8 devices in the group home's common areas, pursuant to the group
9 home's internal policies, in cases where the group home's residents
10 have not submitted a collective request for such monitoring.

11
12 4. a. A group home for individuals with developmental
13 disabilities shall permit electronic monitoring devices to be
14 installed and used in a resident's private room, as provided by this
15 section, for the purposes of monitoring the resident's in-room care,
16 treatment, and living conditions. Each licensee shall:

17 (1) within six months after the effective date of this act, and
18 annually thereafter, provide written notice to all residents, and to
19 their authorized representatives, informing them of their right to
20 install and use electronic monitoring devices in the residents'
21 private rooms, as provided by this section, and articulating the
22 notice requirements that are to be satisfied, pursuant to subsection
23 b. of this section, before an electronic monitoring device may be
24 installed and used in a private single occupancy room, and the
25 consent requirements that are to be satisfied, pursuant to subsection
26 c. of this section, before an electronic monitoring device may be
27 installed and used in a private double occupancy room;

28 (2) ensure that reasonable accommodations are made, as
29 necessary, to enable the authorized use of electronic monitoring
30 devices in private rooms, as provided by this section; and

31 (3) whenever a resident or the resident's authorized
32 representative seeks to install an electronic monitoring device in the
33 resident's private room, provide the resident or the resident's
34 authorized representative, as appropriate, with written notice of any
35 applicable installation or building construction requirements or
36 restrictions with which the resident must comply when installing
37 and using an electronic monitoring device in the private room.
38 Such notice shall be provided within 10 days after the licensee
39 receives notice of the resident's intent to install electronic
40 monitoring devices in a single occupancy room under subsection b.
41 of this section or within 10 days after the licensee receives a
42 resident's request for electronic monitoring of a double occupancy
43 room under subsection c. of this section.

44 b. (1) The installation and use of electronic monitoring devices
45 in a private single occupancy room: (a) shall be noncompulsory;
46 and (b) may be done by the resident or the resident's authorized
47 representative, at any time, following the resident's provision of
48 notice to the licensee pursuant to paragraph (2) of this subsection.

1 (2) Any person who wishes to install and utilize electronic
2 monitoring devices in a resident's private single occupancy room
3 shall provide the licensee with a written notice of intent at least 15
4 days prior to installation of the devices, and shall comply with any
5 installation or building construction constraints that are identified
6 by the licensee in the notice that is provided to the resident pursuant
7 to paragraph (3) of subsection a. of this section.

8 (3) Any resident who provides a notice of intent to install
9 electronic monitoring devices in a private single occupancy room,
10 or who so installs such devices, shall be deemed to have implicitly
11 consented to electronic monitoring in the private room.

12 c. (1) The installation and use of electronic monitoring devices
13 in a private double occupancy room shall: (a) be noncompulsory;
14 (b) be conditioned upon the licensee's receipt of written consent to
15 such monitoring from all roommates of the resident who is
16 requesting the monitoring, or from the roommates' authorized
17 representative, as appropriate; and (c) to the extent practicable,
18 protect the privacy rights of all roommates of the resident who is
19 requesting the monitoring.

20 (2) The roommate of a resident who requests electronic
21 monitoring of a double occupancy room, or the roommate's
22 authorized representative, may place conditions on his or her
23 consent to the use of electronic monitoring devices within the
24 private double occupancy room, including conditions that require
25 the electronic monitoring devices to be pointed away from the
26 consenting roommate at all times during operation, or at certain
27 specified times. The roommate's consent to electronic monitoring,
28 and any conditions on a roommate's consent that are established
29 pursuant to this paragraph, shall be memorialized in an electronic
30 monitoring agreement that is executed between the consenting
31 roommate and the resident who requested the monitoring, or
32 between their authorized representatives, as appropriate. The
33 licensee, either through its own activities, or through the activities
34 of a third party, shall ensure that the conditions established in the
35 agreement are followed.

36 (3) Each resident, or the authorized representative thereof, who
37 wishes to install and use an electronic monitoring device in a
38 double occupancy private room, shall file with the licensee: (a) a
39 signed form, developed by the division, formally requesting and
40 giving the resident's express consent for the installation and use of
41 one or more electronic monitoring devices in the double occupancy
42 room; and (b) a copy of the electronic monitoring agreement that
43 has been executed between the resident and the resident's roommate
44 pursuant to paragraph (2) of this subsection, or, if the roommate or
45 the roommate's authorized representative has refused to consent to
46 electronic monitoring of the private room, a copy of the consent
47 declination form that has been signed by the roommate or the
48 roommate's authorized representative.

1 (4) The installation and use of electronic monitoring devices in a
2 private double occupancy room shall be done in compliance with
3 any installation or building construction constraints that are
4 identified by the licensee in the notice that is provided to the
5 resident pursuant to paragraph (3) of subsection a. of this section.

6 d. If a resident's roommate or the roommate's authorized
7 representative, as appropriate, refuses to consent to the installation
8 and use of an electronic monitoring device in a private double
9 occupancy room, or if the licensee is unable to ensure compliance
10 with the conditions on such installation and use that are imposed by
11 a consenting roommate or the roommate's authorized representative
12 in the agreement executed pursuant to paragraph (2) of subsection c.
13 of this section, the licensee shall, within a reasonable period of
14 time, and to the extent practicable, transfer the resident requesting
15 the installation of the device to a different private room in order to
16 accommodate the resident's request for private monitoring. If a
17 request for private monitoring cannot be accommodated, the
18 resident or the resident's authorized representative may notify the
19 division, in which case, the division shall make every reasonable
20 attempt to timely transfer the resident to a group home that can
21 accommodate the request.

22 e. A licensee shall not refuse to admit an individual to a group
23 home, and shall not transfer or remove an individual from a group
24 home, except as otherwise provided by subsection d. of this section,
25 on the basis that the individual, or the individual's authorized
26 representative, has requested electronic monitoring of the
27 individual's private room, as authorized by this section.

28 f. A licensee shall ensure that a prominent written notice is
29 posted on the entry door to any private room wherein electronic
30 monitoring devices are installed and used pursuant to this section.
31 The notice shall indicate that an electronic monitoring device has
32 been installed in the room, and that visitors will be subject to
33 electronic video monitoring while present therein.

34 g. All of the costs associated with installation and maintenance
35 of an electronic monitoring device in the private room of a resident
36 shall be paid by the resident who requested the monitoring, or by
37 the authorized representative thereof.

38 h. (1) Any recordings produced by an electronic monitoring
39 device that has been installed in a private room, pursuant to this
40 section, shall remain the property, and shall be retained in the
41 possession, of the resident or the authorized representative who
42 installed the electronic monitoring device in the private room.

43 (2) A licensee shall not be authorized to require a resident or the
44 resident's authorized representative, as a condition of installing or
45 using an electronic monitoring device in the resident's private
46 room, to turn over to the licensee, or to otherwise allow the licensee
47 to access or review, any recordings that are produced by the
48 electronic monitoring device in the private room.

1 (3) Whenever an electronic monitoring device is proposed to be
2 installed in a private double occupancy room, pursuant to this
3 section, the consenting roommate or authorized representative
4 thereof, as the case may be, may elect to provide that, as a condition
5 of the installation and ongoing use of the device in the room, the
6 roommate and the roommate's authorized representative shall have
7 the right and ability to access and review any recordings that are
8 produced by the device, upon request submitted to the resident or
9 authorized representative who owns the device. This condition on
10 the installation and use of an electronic monitoring device in a
11 private double occupancy room, if elected by a consenting
12 roommate or the roommate's authorized representative, shall be
13 memorialized in the electronic monitoring agreement that is
14 executed pursuant to paragraph (2) of subsection c. of this section.
15 Any such electronic monitoring agreement shall also describe the
16 procedures or protocols that are to be used by the owner of the
17 device to ensure that the consenting roommate or the authorized
18 representative thereof, as the case may be, is provided with timely
19 access to all relevant footage recorded by the device, upon
20 submission of a request therefor.

21

22 5. a. (1) Within 90 days after the effective date of this act, the
23 division, in consultation with the Ombudsman for Individuals with
24 Intellectual or Developmental Disabilities and Their Families, the
25 New Jersey Council on Developmental Disabilities, and the group
26 home provider community, shall establish and publish guidelines
27 for the development of internal policies pursuant to this section.

28 (2) Within 180 days after the publication of guidelines pursuant
29 to paragraph (1) of this subsection, each licensee shall develop and
30 submit to the division a written internal policy specifying the
31 procedures and protocols that are to be used by facility staff when
32 installing and utilizing electronic monitoring devices as provided by
33 this act.

34 b. An internal electronic monitoring policy established
35 pursuant to this section shall:

36 (1) describe the procedures and protocols that are to be used:
37 (a) when obtaining consent from residents and facility staff for the
38 use of electronic monitoring devices in a group home's common
39 areas, as provided by section 3 of this act; and (b) when obtaining
40 consent from residents and roommates for the use of electronic
41 monitoring devices in private double occupancy rooms, as provided
42 by subsection c. of section 4 of this act;

43 (2) describe the procedures and protocols that are to be used in
44 the review of footage recorded by electronic monitoring devices in
45 the group home's common areas. The procedures and protocols
46 adopted pursuant to this paragraph shall, at a minimum, reflect the
47 requirements of subsection c. of this section; and

1 (3) identify the persons who will have access to footage
2 recorded by electronic monitoring devices installed in the group
3 home's common areas and private rooms, and the circumstances
4 under which recorded footage will be subject to review by such
5 persons.

6 c. Whenever a licensee receives notice about a complaint,
7 allegation, or reported incident of abuse, neglect, or exploitation
8 occurring within the group home, the licensee shall forward to the
9 division, for appropriate review, any and all potentially relevant
10 footage recorded by electronic monitoring devices in the group
11 home's common areas.

12
13 6. a. The division shall:

14 (1) develop, and provide to each licensee, consent forms that are
15 to be filled out and signed by individuals who consent to, or
16 request, electronic monitoring under section 3 or subsection c. of
17 section 4 of this act, and consent declination forms that are to be
18 filled out and signed by individuals who refuse to consent to such
19 electronic monitoring; and

20 (2) develop, and post on its Internet website, standardized notice
21 of intent forms that a group home resident and the resident's
22 authorized representative may elect to use when providing a
23 licensee with a notice of intent to engage in electronic monitoring
24 of a private single occupancy room, as required by subsection b. of
25 section 4 of this act.

26 b. Consent forms and consent declination forms filed under
27 section 3 or subsection c. of section 4 of this act, and notices of
28 intent filed under subsection b. of section 4 of this act, shall be
29 retained by the licensee for a period of time to be determined by the
30 division.

31 c. When seeking to obtain consent from residents for electronic
32 monitoring, as required by this act, a licensee shall comply with
33 best practices that apply to professional interactions or
34 communications being undertaken with persons with developmental
35 disabilities, and particularly, with those persons who have difficulty
36 with communication or understanding.

37 d. The division may establish additional consent or consent
38 declination requirements, for the purposes of this act, as deemed by
39 the division to be necessary.

40
41 7. Notwithstanding the provisions of this act to the contrary, if,
42 as of the effective date of this act, a licensee has already installed
43 and is utilizing electronic monitoring devices in a group home's
44 common areas or private rooms, the licensee may continue to utilize
45 the devices so installed, in accordance with the licensee's written
46 internal policies; shall not be required to remove the devices from
47 service; and shall not be required to comply with the provisions of
48 this act in order to continue utilizing the previously-installed

1 devices. However, to the extent that a group home's common areas
2 or private rooms do not contain electronic monitoring devices on
3 the effective date of this act, the licensee shall comply with the
4 provisions of section 3 and 4 of this act, as applicable, when
5 installing and utilizing new electronic monitoring devices in such
6 unmonitored areas.

7
8 8. a. Any licensee that fails to comply with the provisions of
9 this act shall be subject to a penalty of \$5,000 for the first offense,
10 and a penalty of \$10,000 for the second or subsequent offense, to be
11 collected with costs in a summary proceeding, pursuant to the
12 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
13 et seq.), as well as an appropriate administrative penalty, the
14 amount of which shall be determined by the division.

15 b. A group home licensee shall not be subject to penalties
16 under this section, or to any other disciplinary action, for failing to
17 comply with the requirements of section 3 or 4 of this act, as
18 applicable, if the group home licensee establishes, through
19 documentation or otherwise, that electronic monitoring devices
20 were installed and being utilized in the group home's common areas
21 or private rooms, or both, as of the effective date of this act, as
22 provided by section 7 of this act, and that the group home is,
23 therefore, exempt from compliance with the requirements of section
24 3 or section 4 of this act, as appropriate.

25
26 9. a. Within five years after the effective date of this act, the
27 division shall prepare and submit to the Governor, and, pursuant to
28 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a
29 written report that:

30 (1) identifies best practices for the installation and use of
31 electronic monitoring devices under this act;

32 (2) identifies best practices and provides recommendations
33 regarding the obtaining of informed consent for electronic
34 monitoring, as provided by this act; and

35 (3) provides recommendations for the implementation of new
36 legislation, policies, protocols, and procedures related to the use of
37 electronic monitoring devices in group homes.

38 b. The Commissioner of Human Services, in consultation with
39 the assistant commissioner of the division, shall:

40 (1) annually prepare and submit to the Governor and, pursuant
41 to section 2 of P.L.1991, c.164 (C.52:14-19.1 et seq.), to the
42 Legislature, a written report describing how this act has been
43 implemented in the State. Each annual report shall include, at a
44 minimum:

45 (a) a list of group homes that are currently using electronic
46 monitoring devices in the common areas;

47 (b) a list of group homes that have not installed electronic
48 monitoring devices in the common areas;

1 (c) to the extent known, a list of group homes that have failed to
2 install and use electronic monitoring devices in the common areas
3 upon the request of the residents, as provided by section 3 of this
4 act, despite the licensee's receipt of uniform resident consent
5 authorizing such monitoring, and an indication of the penalties that
6 were imposed under section 8 of this act in response to such
7 failures;

8 (d) a list of group homes that are exempt from compliance with
9 the provisions of section 3 or 4 of this act, as provided by section 7
10 of this act;

11 (e) a list of group homes that have authorized the use of
12 electronic monitoring devices in the private rooms of one or more
13 residents, and an indication of the number and percentage of private
14 single occupancy rooms and private double occupancy rooms in
15 each such facility where electronic monitoring devices are installed
16 and being used, as provided by subsections b. and c. of section 4 of
17 this act; and

18 (f) recommendations for legislative, executive, or other action
19 that can be taken to improve compliance with the act's provisions,
20 or to otherwise expand the consensual use of electronic monitoring
21 devices in group homes; and

22 (2) post, at a publicly accessible location on the Department of
23 Human Services' Internet website, the various lists of group homes
24 produced under paragraph (1) of this subsection, and annually
25 update the website to ensure that each list contains the most current
26 data reported pursuant to this subsection. Each list posted online
27 shall be searchable by location and by name of group home.

28 c. The Ombudsman for Individuals with Intellectual or
29 Developmental Disabilities and Their Families shall include, in
30 each of the ombudsman's annual reports prepared pursuant to
31 section 3 of P.L.2017, c.269 (C.30:1AA-9.3), a section evaluating
32 the implementation of this act and providing recommendations for
33 improvement.

34
35 10. The Commissioner of Human Services, in consultation with
36 the assistant commissioner of the division, shall adopt rules and
37 regulations, pursuant to the "Administrative Procedure Act,"
38 P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to
39 effectuate the provisions of this act.

40
41 11. This act shall take effect on the first day of the third month
42 next following the date of enactment.

43 44 45 STATEMENT

46
47 This bill provides certain requirements in association with the
48 use of electronic monitoring devices (EMDs) at group homes for

1 individuals with developmental disabilities. An “EMD” is a camera
2 or other electronic device that uses video, but not audio, recording
3 capabilities to monitor the activities taking place in the area where
4 the device is installed. The safety and quality of life of individuals
5 with developmental disabilities who receive care from group homes
6 is of paramount concern, and the use of video monitoring is one
7 way in which the State can better ensure the prevention of, and the
8 institution of a more proactive response to, the abuse, neglect, and
9 exploitation of group home residents.

10 This bill would make video monitoring technology more readily
11 available in group home settings, while taking great care to strike
12 the important and delicate balance between protecting the privacy
13 rights and protecting the overall well-being of group home
14 residents. Specifically, the bill would enable, but not require, group
15 home residents or their authorized representatives, as the case may
16 be, to cooperatively and collectively decide whether to allow for the
17 installation and use of EMDs in the common areas of the group
18 homes, and to individually decide whether to allow for the
19 installation and use of EMDs in the private residential room of each
20 such resident, so that the treatment of such residents can be
21 recorded and instances of abuse, neglect, or exploitation
22 documented with video evidence. In providing these authorizations,
23 the bill respects the rights of all individuals with developmental
24 disabilities, places a premium on their individuality, and recognizes
25 that different people have different needs and preferences with
26 respect to the use of video surveillance.

27

28 ***Scope of Bill***

29 The term “group home” is defined more broadly in this bill than
30 it is in other laws. Specifically, the term is defined to mean a living
31 arrangement that is licensed by the Division of Developmental
32 Disabilities (DDD) in the Department of Human Services (DHS)
33 and is operated in a residence or residences leased or owned by a
34 licensee; which living arrangement either provides the opportunity
35 for multiple adults with developmental disabilities to live together
36 in a home, sharing in chores and the overall management of the
37 residence, or provides the opportunity for a single adult with
38 developmental disabilities and extreme behavioral difficulties to
39 live more independently while receiving full-time care, and in
40 which on-site staff provides supervision, training, or assistance, in a
41 variety of forms and intensity, as required to assist the individual or
42 individuals as they move toward independence. “Group home”
43 does not include a living arrangement that is dedicated for use by
44 children with developmental disabilities. The revised definition
45 used in the bill makes it clear that this term not only includes
46 facilities that house multiple persons with developmental
47 disabilities, but also includes facilities that, while commonly
48 referred to as supervised apartments, provide group home-style

1 living for a single person who has developmental disabilities and
2 particularly severe behavioral difficulties that prevent them from
3 being housed in a group home with other disabled persons.

4 The bill would require group homes, as defined thereunder, to
5 install EMDs in the common areas, upon the agreement, request,
6 and uniform consent of all residents. “Common areas” is defined to
7 include entrances, living areas, dining areas, stairwells, and outdoor
8 areas, but not bathroom areas. The bill would additionally require
9 group homes to permit the installation and use of EMDs in the
10 private rooms of group home residents.

11 The bill is not intended to impose new requirements on those
12 group home providers who already engage in electronic monitoring
13 pursuant to an internal organizational policy. As a result, the bill
14 includes a provision that grandfathers-in and exempts from the
15 bill’s provisions those group homes that have already installed, and
16 are utilizing, EMDs as of the bill’s effective date. Specifically, the
17 bill provides that any such group home: 1) may continue to use
18 previously installed EMDs in accordance with the organization’s
19 written policies; 2) will not be required to remove the devices from
20 service; and 3) will not be required to comply with the bill’s
21 consent requirements in order to continue utilizing the devices.
22 However, to the extent that a group home’s common areas or
23 private rooms do not contain EMDs on the bill’s effective date, the
24 licensee will be required to comply with the bill when installing
25 new EMDs in such unmonitored areas. The bill is intended to give
26 residents – particularly those with severe behavioral difficulties –
27 the right to request electronic monitoring in the group home, as
28 necessary to ensure their safe care. The bill is not intended to
29 impose new electronic monitoring requirements on providers that
30 already engage in electronic monitoring; and it is not intended to
31 require other group home providers to commence electronic
32 monitoring, except in those cases where the residents have
33 requested and agreed to such monitoring.

34

35 ***Installation and Use of EMDs in Common Areas***

36 Under the bill’s provisions, any group home that does not have
37 EMDs already installed in the group home’s common areas will be
38 required to install EMDs in those common areas, upon the
39 collective request of the residents and the residents’ authorized
40 representatives, if all of the residents of the group home and their
41 authorized representatives agree to have EMDs installed and
42 expressly consent to the installation and use of such devices. A
43 licensee will be prohibited from requiring the group home’s current
44 residents to consent to the installation and use of EMDs in the
45 common areas as a condition of their continued residency in the
46 group home.

47 A licensee operating a group home that does not have EMDs
48 already installed in the common areas will be required: 1) within

1 six months after the group home adopts an internal electronic
2 monitoring policy pursuant to the bill's provisions, to take
3 affirmative action to determine whether the residents of the group
4 home and their authorized representatives want and consent to have
5 EMDs installed and used in the group home's common areas; and 2)
6 annually provide written notice to all residents and their authorized
7 representatives informing them of their right to request the
8 installation and use of EMDs in the group home's common areas.

9 The bill would require any group home that installs and uses
10 EMDs in its common areas, pursuant to the agreement, request, and
11 consent of the residents, to: 1) require each person employed by the
12 group home to provide express written consent to the use of the
13 EMDs in the group home's common areas, as a condition of the
14 person's employment; 2) ensure that a prominent written notice is
15 posted at the entrance and exit doors to the home informing visitors
16 that they will be subject to electronic video monitoring while
17 present in the home; and 3) ensure that, in the future, the group
18 home only allows residence by those individuals who consent to the
19 ongoing use of EMDs in the group home's common areas.

20 The EMDs installed in a group home's common areas are to be
21 unobstructed and recording at all times. Each licensee will be
22 required to inspect the devices, and document the results of each
23 inspection, on a weekly basis. The DHS will further be required to
24 annually conduct an on-site device inspection, as part of its broader
25 group home inspection authority, in order to ensure that the EMDs
26 installed in a group home's common areas are functioning properly,
27 as required by the bill. A resident or the resident's authorized
28 representative will be authorized, upon request submitted to the
29 licensee, to access and review any footage that is recorded by an
30 EMD in the common areas of the group home.

31 The bill would specify that an individual's refusal to consent to
32 the use of EMDs in a group home's common areas may not be used
33 as a basis to prevent the timely placement of the individual in
34 appropriate housing without surveillance.

35 The bill would further provide that nothing in the provisions of
36 section 3, regarding the installation of EMDs in a group home's
37 common areas, may be deemed to prohibit a group home licensee
38 from installing and utilizing EMDs in the group home's common
39 areas, pursuant to the group home's internal policies, in cases where
40 the group home's residents have not submitted a collective request
41 for such monitoring. This bill is intended to require the placement
42 of EMDs in common areas only in cases where group home
43 residents have collectively requested the electronic monitoring of
44 such common areas. It is not intended to limit a licensee's
45 discretionary ability to install and utilize EMDs in the common
46 areas, in accordance with the group home's internal policies, in the
47 absence of a collective resident request.

1 ***Installation and Use of EMDs in Private Rooms***

2 The bill would further require all group homes to permit EMDs
3 to be installed and used, on a voluntary and noncompulsory basis, in
4 the private rooms of residents.

5 The installation and use of EMDs in a private single occupancy
6 room may be done by the resident or the resident's authorized
7 representative, at any time, following the resident's provision of
8 written notice to the licensee of the resident's intent to engage in
9 electronic monitoring of the private room. Such written notice is to
10 be submitted to the licensee at least 15 days prior to installation of
11 the devices in the private single occupancy room. Any resident, or
12 the authorized representative thereof, who provides such a notice of
13 intent to install EMDs in a private single occupancy room, or who
14 so installs such devices, will be deemed to have implicitly
15 consented to electronic monitoring of the private room.

16 The installation and use of EMDs in a private double occupancy
17 room may be effectuated only with the express written consent of
18 the roommates of the resident who requested the monitoring, or of
19 the roommates' authorized representatives, as the case may be. A
20 roommate may place conditions on his or her consent to the use of
21 EMDs within the double occupancy room, including conditions that
22 require the EMDs to be pointed away from the consenting
23 roommate at all times during operation, or at certain specified
24 times. The roommate's consent to electronic monitoring, and any
25 conditions on the roommate's consent, are to be memorialized in a
26 formal electronic monitoring agreement that is executed between
27 the consenting roommate and the resident who requested the
28 monitoring, or between their authorized representatives, as
29 appropriate. The licensee, either through its own activities or
30 through a third-party's activities, will be required to ensure that the
31 conditions established in the agreement are followed.

32 If a resident's roommate or the roommate's authorized
33 representative, as appropriate, refuses to consent to the installation
34 and use of an EMD in a private double occupancy room, or if the
35 licensee is unable to ensure compliance with the conditions on such
36 installation and use that are imposed by a consenting roommate or
37 the roommate's authorized representative, the licensee will be
38 required, within a reasonable period of time, and to the extent
39 practicable, to transfer the resident requesting the installation of the
40 device to a different private room, in order to accommodate the
41 resident's request for private monitoring. If a request for private
42 monitoring cannot be accommodated, the resident or resident's
43 authorized representative may notify the DDD, which will be
44 required to make every reasonable attempt to timely transfer the
45 resident to a group home that can accommodate the request.

46 All of the costs associated with installation and maintenance of
47 an EMD in a private room are to be paid by the resident who

1 requested the monitoring, or by the authorized representative
2 thereof.

3 Any recordings produced by an EMD installed in a private room
4 will remain the property, and are to be retained in the possession, of
5 the resident or the authorized representative who installed the EMD
6 in the private room. The bill would specify that a licensee may not
7 require a resident or the resident's authorized representative, as a
8 condition of installing or using an EMD in the resident's private
9 room, to turn over to the licensee, or to otherwise allow the licensee
10 to access or review, any recordings that are produced by the EMD
11 in the private room. Whenever an EMD is proposed to be installed
12 in a private double occupancy room, the consenting roommate or
13 authorized representative thereof, as the case may be, may elect to
14 provide that, as a condition of the installation and ongoing use of
15 the device in the room, the roommate and the roommate's
16 authorized representative shall have the right and ability to access
17 and review any recordings that are produced by the EMD, upon
18 request submitted to the resident or authorized representative who
19 owns the device. This condition, if elected by a consenting
20 roommate or the roommate's authorized representative, is to be
21 memorialized in the electronic monitoring agreement that is
22 executed pursuant to bill's provisions. Any such electronic
23 monitoring agreement will also be required to describe the
24 procedures or protocols that are to be used by the owner of the
25 device to ensure that the consenting roommate or the authorized
26 representative thereof, as the case may be, is provided with timely
27 access to all relevant footage recorded by the device, upon
28 submission of a request therefor.

29

30 ***Additional Provisions***

31 The bill would require a group home licensee, when seeking to
32 obtain consent from residents for electronic monitoring, to comply
33 with best practices that apply to professional interactions or
34 communications being undertaken with persons with developmental
35 disabilities, and particularly, with those persons who have difficulty
36 with communication or understanding. The DDD would be
37 authorized to impose any additional consent or consent declination
38 requirements that it deems to be necessary.

39 Any recordings produced by an EMD in a group home's common
40 areas are to be retained by the group home for a period of 90 days.
41 Any consent forms, consent declination forms, and notice of intent
42 forms submitted under the bill are to be retained by the group home
43 for a period of time to be determined by the DDD.

44 Within 180 days after the bill's effective date, each group home
45 will be required to develop and submit to the division a written
46 internal policy specifying the procedures and protocols that are to
47 be used by program staff when installing and utilizing EMDs. The
48 internal policy is to provide, amongst other things, that whenever a

1 licensee receives notice about a complaint, allegation, or reported
2 incident of abuse, neglect, or exploitation occurring within the
3 group home, the licensee will forward to the DDD, for appropriate
4 review, all potentially relevant footage recorded by EMDs in the
5 group home's common areas.

6 Any residential program that fails to comply with the bill's
7 requirements will be subject to a penalty of \$5,000 for the first
8 offense, and a penalty of \$10,000 for the second or subsequent
9 offense, as well as an appropriate administrative penalty, the
10 amount of which is to be determined by the DHS. However, a
11 group home licensee will not be subject to penalties or other
12 disciplinary action for failing to comply with the bill's requirements
13 if the group home licensee establishes, through documentation or
14 otherwise, that EMDs were installed and being utilized in the group
15 home on the bill's effective date, and that the group home is,
16 therefore, exempt from compliance with the bill's provisions related
17 to the placement of EMDs in unmonitored areas.

18 The Commissioner of Human Services, in consultation with the
19 assistant commissioner of the DDD, will be required to annually
20 report to the Governor and Legislature on the implementation of the
21 bill's provisions. Each annual report is to include: 1) a list of
22 group homes that are currently using EMDs in the common areas;
23 2) a list of group homes that have not installed EMDs in the
24 common areas; 3) a list of group homes that have failed to install
25 and use EMDs in the common areas, despite the licensee's receipt
26 of uniform resident consent, and an indication of the penalties
27 imposed in response to such failures; 4) a list of group homes that
28 are exempt from the bill's provisions; 5) a list of group homes that
29 have authorized the use of EMDs in the private rooms of one or
30 more residents, and an indication of the number and percentage of
31 private single occupancy rooms and the number and percentage of
32 private double occupancy rooms in each such facility where EMDs
33 are installed and being used; and 6) recommendations for
34 legislative, executive, or other action that can be taken to improve
35 compliance with the bill or otherwise expand the consensual use of
36 EMDs in group homes. The commissioner, in consultation with the
37 assistant commissioner, will also be required to post, at a publicly
38 accessible location on the department's Internet website, the various
39 lists of group homes that the department has produced for its annual
40 reports. Each list posted online is to be searchable both by location
41 and by name of group home. The commissioner will be required to
42 annually update the website to ensure that each posted list contains
43 the most recently reported data.

44 In addition to the commissioner's annual reports, the bill requires
45 the Ombudsman for Individuals with Intellectual or Developmental
46 Disabilities and Their Families to include, in each of the
47 ombudsman's annual reports, a section evaluating the
48 implementation of the bill and providing recommendations for

1 improvement. The bill further requires the DDD, within five years
2 of the bill's effective date, to provide the Governor and Legislature
3 with a written report that: 1) identifies best practices for the
4 installation and use of EMDs under the bill; 2) identifies best
5 practices and provides recommendations regarding the obtaining of
6 informed consent for electronic monitoring under the bill; and 3)
7 provides recommendations for the implementation of new
8 legislation, policies, protocols, and procedures related to the use of
9 EMDs in group homes.