



General Assembly

February Session, 2004

Raised Bill No. 5198

LCO No. 1153

* HB05198HS_PH021704 *

Referred to Committee on Human Services

Introduced by:
(HS)

**AN ACT CONCERNING THE OFFICE OF PROTECTION AND
ADVOCACY FOR PERSONS WITH DISABILITIES.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 46a-11a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 For the purposes of sections 46a-11a to 46a-11g, inclusive, as
4 amended by this act:

5 [(a)] (1) "Abuse" means the wilful infliction of physical pain or
6 injury or the wilful deprivation by a caretaker of services which are
7 necessary to the person's health or safety;

8 [(b)] (2) "Neglect" means a situation where a person with mental
9 retardation either is living alone and is not able to provide for himself
10 the services which are necessary to maintain his physical and mental
11 health or is not receiving such necessary services from the caretaker;

12 [(c)] (3) "Caretaker" means a person who has the responsibility for
13 the care of a person with mental retardation as a result of a family
14 relationship or who has assumed the responsibility for the care of the

15 person with mental retardation voluntarily, by contract or by order of
16 a court of competent jurisdiction. Neither a guardian nor a conservator
17 need be a caretaker;

18 [(d)] (4) "Conservator" means a conservator of the person or of the
19 estate appointed pursuant to section 45a-644 to 45a-662, inclusive;

20 [(e)] (5) "Director" means the director of the Office of Protection and
21 Advocacy for Persons with Disabilities;

22 [(f)] (6) "Facility" means any public or private hospital, nursing
23 home facility, training school, regional facility, group home,
24 community training home, school or other program serving persons
25 with mental retardation;

26 [(g)] (7) "Guardian" means the guardian or limited guardian of a
27 person with mental retardation appointed pursuant to sections 45a-668
28 to 45a-684, inclusive, as amended;

29 [(h)] (8) "Person with mental retardation" means a person who: (A)
30 has mental retardation, as defined in section 1-1g, [who] (B) is at least
31 the age of eighteen and under the age of sixty, except for purposes of
32 subsection (b) of section 46a-11c, as amended by this act, is eighteen
33 years of age or older, and [who] (C) is substantially unable to protect
34 himself from abuse and includes all such persons living in residential
35 facilities under the jurisdiction of the Department of Mental
36 Retardation;

37 [(i)] (9) "Protective services" means services provided by the state or
38 any other governmental or private organization or individual which
39 are necessary to prevent abuse or neglect. Such services may include
40 the provision of medical care for physical and mental health needs; the
41 provision of support services in the facility, including the time limited
42 placement of department staff in such facility; the relocation of a
43 person with mental retardation to a facility able to offer such care
44 pursuant to section 17a-210, as amended, 17a-274, as amended, or 17a-

45 277, as applicable; assistance in personal hygiene; food; clothing;
46 adequately heated and ventilated shelter; protection from health and
47 safety hazards; protection from maltreatment, the result of which
48 includes, but is not limited to, malnutrition, deprivation of necessities
49 or physical punishment; and transportation necessary to secure any of
50 the above-stated services, except that this term shall not include taking
51 such person into custody without consent; and

52 [(j)] (10) "Commissioner" means the Commissioner of Mental
53 Retardation.

54 Sec. 2. Subsection (a) of section 46a-11b of the general statutes is
55 repealed and the following is substituted in lieu thereof (*Effective*
56 *October 1, 2004*):

57 (a) Any physician or surgeon licensed under the provisions of
58 chapter 370, any resident physician or intern in any hospital in this
59 state, whether or not so licensed, any registered nurse, any person paid
60 for caring for persons in any facility and any licensed practical nurse,
61 medical examiner, dental hygienist, dentist, occupational therapist,
62 optometrist, chiropractor, psychologist, podiatrist, social worker,
63 school teacher, school principal, school guidance counselor, school
64 paraprofessional, mental health professional, physician assistant,
65 licensed or certified substance abuse counselor, licensed marital and
66 family therapist, speech pathologist, clergyman, police officer,
67 pharmacist, physical therapist or sexual assault counselor or battered
68 women's counselor as defined in section 52-146k who has reasonable
69 cause to suspect or believe that any person with mental retardation has
70 been abused or neglected shall, [within five calendar days] as soon as
71 practicable but not later than seventy-two hours after such person has
72 reasonable cause to suspect or believe that a person with mental
73 retardation has been abused or neglected, report such information or
74 cause a report to be made in any reasonable manner to the director or
75 persons the director designates to receive such reports. Such initial
76 report shall be followed up by a written report [within five additional]

77 not later than five calendar days after the initial report was made. Any
78 person required to report under this subsection who fails to make such
79 report shall be fined not more than five hundred dollars.

80 Sec. 3. Section 46a-11c of the general statutes, as amended by section
81 3 of public act 03-146, is repealed and the following is substituted in
82 lieu thereof (*Effective October 1, 2004*):

83 (a) The director, upon receiving a report that a person with mental
84 retardation allegedly is being or has been abused or neglected, shall
85 make an initial determination whether such person has mental
86 retardation, shall determine if the report warrants investigation and
87 shall cause, in cases that so warrant, a prompt, thorough evaluation to
88 be made to determine whether the person has mental retardation and
89 has been abused or neglected. [In cases where there is a death of a
90 person with mental retardation for whom the Department of Mental
91 Retardation has direct or oversight responsibility for medical care, and
92 there are allegations that such death may be due to abuse or neglect,
93 the director shall conduct an investigation to determine whether abuse
94 or neglect occurred, except as may be otherwise required by court
95 order. The director, in consultation with the Commissioner of Mental
96 Retardation, shall establish protocols for conducting such
97 investigations.] For the purposes of sections 46a-11a to 46a-11g,
98 inclusive, as amended by this act, the determination of mental
99 retardation may be made by means of a review of records and shall not
100 require the director to conduct a full psychological examination of the
101 person. Any delay in making such determination of mental retardation
102 shall not delay the investigation of abuse or neglect or
103 recommendation of provision of protective services. The evaluation
104 shall include a visit to the named person with mental retardation and
105 consultation with those individuals having knowledge of the facts of
106 the particular case. All state, local and private agencies shall have a
107 duty to cooperate with any investigation conducted by the Office of
108 Protection and Advocacy for Persons with Disabilities under this
109 section, including the release of complete client records for review,

110 inspection and copying, except where the person with mental
111 retardation refuses to permit his or her record to be released. The
112 director shall have subpoena powers to compel any information
113 related to such investigation. All client records shall be kept
114 confidential by said office. Upon completion of the evaluation of each
115 case, written findings shall be prepared which shall include a
116 determination of whether abuse or neglect has occurred and
117 recommendations as to whether protective services are needed. The
118 director, except in cases where the parent or guardian is the alleged
119 perpetrator of abuse or is residing with the alleged perpetrator, shall
120 notify the parents or guardian, if any, of the person with mental
121 retardation if a report of abuse or neglect is made which the director
122 determines warrants investigation. The director shall provide the
123 parents or guardians who the director determines are entitled to such
124 information with further information upon request. The person filing
125 the report of abuse or neglect shall be notified of the findings upon
126 request.

127 (b) In cases where there is a death of a person with mental
128 retardation for whom the Department of Mental Retardation has direct
129 or oversight responsibility for medical care, and there are allegations
130 that such death may be due to abuse or neglect, the Commissioner of
131 Mental Retardation shall notify the director or the director's designee
132 not later than twenty-four hours after such death and the director shall
133 conduct an investigation to determine whether abuse or neglect
134 occurred, except as may be otherwise required by court order. The
135 director, in consultation with the Commissioner of Mental Retardation,
136 shall establish protocols for conducting such investigations.

137 ~~[(b)]~~ (c) The director shall maintain a state-wide registry of the
138 reports received, the evaluation and findings and actions
139 recommended.

140 ~~[(c)]~~ (d) Neither the original report nor the evaluation report of the
141 investigator which includes findings and recommendations shall be

142 deemed a public record for purposes of section 1-210, as amended. The
143 name of the person making the original report shall not be disclosed to
144 any person unless the person making the original report consents to
145 such disclosure or unless a judicial proceeding results therefrom.

146 Sec. 4. Subsection (c) of section 46a-11e of the general statutes is
147 repealed and the following is substituted in lieu thereof (*Effective*
148 *October 1, 2004*):

149 (c) If the director commences an investigation and finds that the
150 person with mental retardation is seriously in need of immediate
151 protective services, he shall report the facts of the case to the
152 commissioner and the commissioner shall not delay the
153 commencement of protective services pending the full evaluation
154 report. If the commissioner's proposed action involves the removal
155 from his home of a person with mental retardation under
156 guardianship or of a person with mental retardation who is competent
157 and does not voluntarily consent to his removal, the commissioner
158 shall follow the procedures mandated in [subsection (k) of section 19a-
159 448] section 17a-274, as amended, including the filing of an application
160 in the Court of Probate pursuant to subsection (b) of section 46a-11a, as
161 amended by this act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>

HS

Joint Favorable C/R

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