



# Senate

General Assembly

**File No. 88**

January Session, 2009

Senate Bill No. 854

*Senate, March 16, 2009*

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***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 Section 46a-11 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 The director may, within available appropriations:

4 (1) Purchase or contract for necessary services including, but not  
5 limited to, legal services;

6 (2) Receive and spend, pursuant to the purposes of this chapter,  
7 moneys in the form of gifts, bequests, state appropriations, state or  
8 private grants or federal grants;

9 (3) Establish a state-wide toll-free telephone information and  
10 referral system for persons with disabilities for referral of such persons  
11 to appropriate public or private agencies or services. Such information  
12 and referral system may be coordinated with the Governor's state-

13 wide information bureau or any other existing information and referral  
14 services;

15 (4) Receive and investigate complaints from persons with  
16 disabilities, parents or guardians of such persons or in writing from  
17 any other interested person, act as an advocate for any person with a  
18 disability and initiate or fund legal actions to protect the rights of any  
19 person with a disability;

20 (5) Request and receive information, including personal data,  
21 concerning a person with a disability from any state or private agency,  
22 with the consent of such person with a disability, or the parent or  
23 guardian of such person, as appropriate. With respect to a  
24 developmentally disabled adult who has no guardian or whose  
25 guardian is an employee of the Department of Developmental  
26 Services, the director may request and receive such information only if:

27 (A) A request for advocacy services has been made on such person's  
28 behalf;

29 (B) Such person does not indicate refusal to give consent to receipt  
30 of the information by the director;

31 (C) Such person resides in a facility for developmentally disabled  
32 persons, including any institution, as defined in subsection (a) of  
33 section 19a-490, or has been placed in a boarding home, group home or  
34 other residential facility pursuant to section 17a-277;

35 (D) Such person has received an explanation of the manner in which  
36 any information obtained concerning such person will be used by the  
37 advocacy office;

38 (E) Such person has received an explanation of such person's right  
39 to refuse to allow the director to request or receive such information;  
40 and

41 (F) The director has documented the director's conscientious efforts  
42 to provide the required explanations and verified that the

43 developmentally disabled person has not indicated refusal to give  
44 consent;

45 (6) Coordinate and cooperate with other private and public agencies  
46 concerned with the implementation, monitoring and enforcement of  
47 the rights of persons with disabilities and enter into cooperative  
48 agreements with public or private agencies for furtherance of the  
49 rights of persons with disabilities;

50 (7) Represent, appear, intervene in or bring an action on behalf of  
51 any person with a disability or class of persons, with the consent of  
52 such person or the parent or legal guardian of such person, in any  
53 proceeding before any court, agency, board or commission in this state  
54 in which matters related to this chapter are in issue;

55 (8) Implement, with the approval of the individual using a service  
56 provided by the advocacy office, a case follow-up system;

57 (9) Research and identify the needs of persons with disabilities and  
58 programs and services available to meet those needs;

59 (10) Develop and maintain a program of public education and  
60 information, such program to include, but not be limited to, education  
61 of the public concerning the needs and rights of persons with  
62 disabilities, in cooperation with existing state and private agencies, an  
63 outreach effort to discover persons with disabilities in need of  
64 assistance or an advocate and provisions for a class or group advocacy  
65 service;

66 (11) Develop and maintain an individual advocacy service for  
67 persons with disabilities which shall investigate referred problems or  
68 complaints;

69 (12) Receive, review and make such recommendations as he deems  
70 appropriate on applications for waivers from the requirements of the  
71 State Building Code, submitted by the State Building Inspector  
72 pursuant to the provisions of subsection (b) of section 29-269;

73 (13) Ensure that all aspects of agency operations conform to  
74 federally established protection and advocacy requirements for  
75 program independence and authority, including:

76 (A) Structural independence from other agencies which provide  
77 services to people with disabilities;

78 (B) Authority to pursue legal and administrative remedies on behalf  
79 of persons with disabilities;

80 (C) Authority to investigate allegations of abuse and neglect of  
81 persons with disabilities who receive care, treatment or services;

82 (D) Authority to access persons who are residents of facilities or  
83 clients of services systems, and with appropriate consent, to access  
84 such residents' records concerning care, treatment or services;

85 (E) Authority to educate policy makers, consumers and members of  
86 the public about issues affecting persons with disabilities;

87 (F) Authority to reach out to members of traditionally underserved  
88 populations; [and]

89 (G) Authority to develop an annual statement of priorities and  
90 objectives and to solicit public comment and input on such process;  
91 and

92 (H) Compliance with federally established confidentiality  
93 requirements; and

94 (14) Establish an Accessibility Advisory Board with membership  
95 comprised of design professionals, persons with disabilities, persons  
96 who have family members with disabilities and any other person that  
97 the director believes would provide valuable insight and input on  
98 matters relating to accessibility. The Accessibility Advisory Board shall  
99 meet periodically at such times and places as the director designates,  
100 to advise the director on accessibility matters relating to housing,  
101 transportation, government programs and services, and any other

102 matters deemed advisable by the director or the board.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	46a-11

**HS**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

This bill adds to the authority of the Executive Director of the Office of Protection and Advocacy for Persons with Disabilities to ensure all aspects of the agency's operations comply with federally established confidentiality requirements. There is no fiscal impact associated with this bill.

***The Out Years***

None

**OLR Bill Analysis****SB 854*****AN ACT CONCERNING THE OFFICE OF PROTECTION AND  
ADVOCACY FOR PERSONS WITH DISABILITIES.*****SUMMARY:**

The Office of Protection and Advocacy for Persons with Disabilities (OPA) is an independent state agency whose purpose is to protect and advocate for the civil rights of people with disabilities. This bill adds to the director's existing powers the authority to ensure that all aspects of the agency's operations comply with federally established confidentiality requirements. By law, the director must ensure that all aspects of the agency's operations conform to federal protection and advocacy requirements for program independence and authority.

EFFECTIVE DATE: Upon passage

**BACKGROUND*****State Confidentiality Requirements***

By law, certain state agencies must report to OPA incidents in which a person is seriously injured or dies as a result of the use of physical restraint or seclusion in an institution they operate, license, or support. State law exempts from the Freedom of Information Act (1) the name, address, and other personally identifiable information of the person injured or killed in the incident and anyone who provides information to OPA for its investigation and (2) any confidential records OPA obtains during its investigation (CGS 46a-11h).

OPA may disclose this confidential information if the person legally authorized to release the information consents. OPA may also issue reports and provide information to policy-making bodies as long as it does not disclose the identity of anyone with a disability or provide any way to discover such a person's identity (CGS § 46a-11h).

In addition, current law also extends attorney-client privilege to all communications between OPA and private attorneys who are working on behalf of a disabled individual (CGS § 46a-11h).

### **Federal Confidentiality Requirements**

OPA administers several federally mandated programs and is subject to federal requirements specifically aimed at people with developmental and other disabilities, people seeking rehabilitation services or assistive technology, people with mental illness, and beneficiaries of Social Security Disability Insurance and Supplemental Security Income. Confidentiality requirements vary across programs, but generally relate to a broad range of client information.

For example, federal Protection and Advocacy for Individuals with Mental Illness (PAIMI) regulations require a state's protection and advocacy agency to keep confidential, all records and information, including information kept in an automated electronic database, pertaining to (1) clients, (2) individuals who have been provided general information or technical assistance on a particular matter, (3) the identity of individuals who report or provide information about abuse and neglect incidents, and (4) the names of individuals who have received services and provided information to the protection and advocacy agency for the record.

PAIMI regulations also require state protection and advocacy agencies to have written policies about access, storage, duplication, and release of information from client records. Agencies must obtain written consent from the client before releasing their information to unauthorized individuals (42 CFR § 5 1.45).

### **COMMITTEE ACTION**

Human Services Committee

Joint Favorable

Yea 18 Nay 0 (02/26/2009)