



House of Representatives

General Assembly

File No. 531

February Session, 2014

Substitute House Bill No. 5456

House of Representatives, April 14, 2014

The Committee on Public Health reported through REP. JOHNSON of the 49th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING MANDATORY REPORTING OF ABUSE AND NEGLECT OF INDIVIDUALS WITH AUTISM SPECTRUM DISORDER, THE DEFINITION OF ABUSE, AND THE DEPARTMENT OF DEVELOPMENTAL SERVICES ABUSE AND NEGLECT REGISTRY.

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

1 Section 1. Section 17a-247a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2014*):

3 As used in this section, section 2 of this act and sections 17a-247b to
4 17a-247e, inclusive, as amended by this act:

5 (1) "Abuse" means (A) the wilful infliction by an employee of
6 physical pain or injury, [or] financial exploitation, psychological abuse
7 or verbal abuse; (B) the wilful deprivation of services necessary to the
8 physical and mental health and safety of [a department client] an
9 individual who receives services or funding from the department; or
10 (C) sexual abuse.

11 (2) "Authorized agency" means any agency authorized in

12 accordance with the general statutes to conduct abuse and neglect
13 investigations and responsible for issuing or carrying out protective
14 services for persons with intellectual disability or individuals receiving
15 services or funding from the department's Division of Autism
16 Spectrum Disorder Services.

17 (3) "Commissioner" means the Commissioner of Developmental
18 Services.

19 (4) "Department" means the Department of Developmental Services.

20 [(5) "Department client" means a person who is eligible for, and
21 receives services or funding from, the department.]

22 [(6)] (5) "Employee" means any [individual] person employed (A) by
23 the department, or (B) by an agency, organization or [individual]
24 person that is licensed or funded by the department.

25 [(7)] (6) "Employer" means (A) the department, or (B) an agency,
26 organization or [individual] person that is licensed or funded by the
27 department.

28 (7) "Financial exploitation" means the theft, misappropriation or
29 unauthorized or improper use of property, money or other resource
30 that is intended to be used by or for an individual who receives
31 services or funding from the department.

32 (8) "Neglect" means the failure by an employee, through action or
33 inaction, to provide [a department client] an individual who receives
34 services or funding from the department with the services necessary to
35 maintain such [client's] individual's physical and mental health and
36 safety.

37 (9) "Protective services" has the same meaning as provided in
38 section 46a-11a, as amended by this act.

39 (10) "Psychological abuse" means an act intended to (A) humiliate,
40 intimidate, degrade or demean an individual who receives services or

41 funding from the department, (B) inflict emotional harm or invoke fear
42 in such individual, or (C) otherwise negatively impact the mental
43 health of such individual.

44 [(10)] (11) "Registry" means a centralized data base containing
45 information regarding substantiated abuse or neglect.

46 (12) "Sexual abuse" means (A) any sexual contact between an
47 individual who receives services or funding from the department,
48 regardless of such individual's ability to consent, and an employee, or
49 (B) the encouragement by an employee of an individual who receives
50 services or funding from the department to engage in sexual activity.

51 [(11)] (13) "Substantiated abuse or neglect" means a determination
52 by an authorized agency, following an investigation conducted or
53 monitored by such agency, that (A) abuse or neglect of [a department
54 client] an individual who receives services or funding from the
55 department has occurred, or (B) there has been a criminal conviction of
56 a felony or misdemeanor involving abuse or neglect.

57 (14) "Verbal abuse" means the use of offensive or intimidating
58 language that is intended to provoke or cause the distress of an
59 individual who receives services or funding from the department.

60 Sec. 2. (NEW) (*Effective October 1, 2014*) (a) For purposes of this
61 section "individual who receives services from the department's
62 Division of Autism Spectrum Disorder Services" means an individual
63 eighteen years of age to sixty years of age, inclusive, who receives
64 funding or services from the Department of Developmental Services'
65 Division of Autism Spectrum Disorder Services.

66 (b) (1) The commissioner may investigate any reports alleging abuse
67 or neglect of an individual who receives services from the
68 department's Division of Autism Spectrum Disorder Services. Such
69 investigation shall include a visit to the residence of the individual
70 reported to have been abused or neglected and consultation with
71 persons having knowledge of the facts surrounding such allegation.

72 All state, local and private agencies shall have a duty to cooperate with
73 any such investigation, including the release of complete records of
74 such individual for review, inspection and copying, except where such
75 individual refuses to permit his or her record to be released. All such
76 records shall be kept confidential by the department.

77 (2) Upon completion of the investigation of each case, the
78 commissioner shall prepare written findings that shall include a
79 determination as to whether abuse or neglect has occurred and
80 recommendations as to whether protective services are needed. The
81 commissioner, except in cases where the parent or guardian of the
82 individual reported to be abused or neglected is the alleged
83 perpetrator of abuse or neglect or is residing with the alleged
84 perpetrator, shall notify the parents or guardian, if any, of such
85 individual if a report of abuse or neglect is made that the department
86 determines warrants investigation. The commissioner shall provide the
87 parents or guardians who the commissioner determines are entitled to
88 such information with further information upon request. The person
89 making the allegation of abuse or neglect and the Director of the Office
90 of Protection and Advocacy for Persons with Disabilities shall be
91 notified of the findings resulting from the investigation, upon such
92 person's request.

93 (3) Neither the original allegation of abuse or neglect nor the
94 investigation report of the investigator that includes findings and
95 recommendations shall be deemed a public record for purposes of
96 section 1-210 of the general statutes. The name of the person making
97 the original allegation shall not be disclosed to any person unless the
98 person making the original allegation consents to such disclosure or
99 unless a judicial proceeding results therefrom.

100 Sec. 3. Section 17a-247b of the general statutes is repealed and the
101 following is substituted in lieu thereof (*Effective October 1, 2014*):

102 (a) The Department of Developmental Services shall establish and
103 maintain a registry of [individuals] former employees who have been
104 terminated or separated from employment as a result of substantiated

105 abuse or neglect. The department shall, for the purposes of
106 maintaining the registry, be capable of responding to inquiries in
107 accordance with subsection (c) of this section as to whether [an
108 individual] a former employee has been terminated or separated from
109 employment as a result of substantiated abuse or neglect. Such
110 capability may include response by telephone voice mail or other
111 automated response for initial inquiries.

112 (b) The registry shall include, but not be limited to, the following: (1)
113 The names, addresses and Social Security numbers of those
114 [individuals] former employees terminated or separated from
115 employment as a result of substantiated abuse or neglect; (2) the date
116 of termination or separation; (3) the type of abuse or neglect; and (4)
117 the name of any employer or authorized agency requesting
118 information from the registry, the reason for the request and the date
119 of the request.

120 (c) The department shall make information in the registry available
121 only to: (1) Authorized agencies, for the purpose of protective service
122 determinations; (2) employers who employ [individuals] employees to
123 provide services to [a department client] an individual who receives
124 services or funding from the department; (3) the Departments of
125 Children and Families and Mental Health and Addiction Services, for
126 the purpose of determining whether an applicant for employment
127 appears on the registry; or (4) charitable organizations [which] that
128 recruit volunteers to support programs for persons with intellectual
129 disability or autism spectrum disorder, upon application to and
130 approval by the commissioner, for purposes of conducting background
131 checks on such volunteers.

132 (d) The department shall limit responses to requests for identifying
133 information from the registry established under this section to (1)
134 identification of the [individual] former employee terminated or
135 separated from employment for substantiated abuse or neglect, and (2)
136 the type of abuse or neglect so substantiated.

137 (e) Not later than five business days following receipt of written

138 notification by an authorized agency of the substantiation of abuse or
139 neglect by [an] a former employee who has been terminated or
140 separated from employment for such abuse or neglect, an employer
141 shall submit to the department the name of such former employee and
142 such other information as the department may request. Upon receipt
143 of notification of such termination or separation, the department shall
144 conduct a hearing in accordance with sections 4-177 to 4-181a,
145 inclusive, governing contested cases. The department shall not place
146 [an individual's] a former employee's name on the registry until the
147 department has completed the hearing and the hearing has resulted in
148 a decision to place the [individual's] former employee's name on the
149 registry.

150 (f) The department shall remove [an] a former employee's name
151 from the registry if an arbitration or a legal proceeding results in a
152 finding that the former employee was unfairly terminated from
153 employment.

154 (g) No employer shall be liable in any civil action for damages
155 brought by an employee, former employee or an applicant for
156 employment whose name appears on the registry established by this
157 section arising out of the conduct of the employer in (1) making any
158 report in good faith pursuant to subsection (e) of this section, (2)
159 testifying under oath in any administrative or judicial proceeding
160 arising from such report, (3) refusing to hire or to retain any
161 [individual] person whose name appears on the registry established
162 under this section, or (4) taking any other action to conform to the
163 requirements of this section. The immunity provided in this subsection
164 shall not apply to gross negligence or to wilful or wanton misconduct.

165 Sec. 4. Section 17a-247c of the general statutes is repealed and the
166 following is substituted in lieu thereof (*Effective October 1, 2014*):

167 (a) No employer shall hire [an individual] a person whose name
168 appears on the registry and no employer shall retain an [individual]
169 employee after receiving notice that [an individual's] his or her name
170 so appears.

171 (b) The department shall, on at least a semiannual basis, issue a
172 notice to employers containing the name of each [individual] former
173 employee placed on the registry and the identifying information
174 pertaining to such [individual] former employee as provided in
175 subsection (d) of section 17a-247b, as amended by this act.

176 Sec. 5. Section 46a-11a of the 2014 supplement to the general statutes
177 is repealed and the following is substituted in lieu thereof (*Effective*
178 *October 1, 2014*):

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

181 (1) "Abuse" means the wilful infliction of physical pain or injury or
182 the wilful deprivation by a caretaker of services which are necessary to
183 the person's health or safety;

184 (2) "Neglect" means a situation where a person with intellectual
185 disability either is living alone and is not able to provide for himself or
186 herself the services which are necessary to maintain his or her physical
187 and mental health or is not receiving such necessary services from the
188 caretaker;

189 (3) "Caretaker" means a person who has the responsibility for the
190 care of a person with intellectual disability as a result of a family
191 relationship or who has assumed the responsibility for the care of the
192 person with intellectual disability voluntarily, by contract or by order
193 of a court of competent jurisdiction. Neither a guardian nor a
194 conservator need be a caretaker;

195 (4) "Conservator" means a conservator of the person or of the estate
196 appointed pursuant to section 45a-644 to 45a-662, inclusive;

197 (5) "Director" means the director of the Office of Protection and
198 Advocacy for Persons with Disabilities;

199 (6) "Facility" means any public or private hospital, nursing home
200 facility, residential care home, training school, regional facility, group

201 home, community companion home, school or other program serving
202 persons with intellectual disability;

203 (7) "Guardian" means the guardian or limited guardian of a person
204 with intellectual disability appointed pursuant to sections 45a-669 to
205 45a-684, inclusive;

206 (8) "Person with intellectual disability" means a person who: (A)
207 Has intellectual disability, as provided in section 1-1g, (B) is at least the
208 age of eighteen and under the age of sixty, except_z for purposes of
209 subsection (b) of section 46a-11c, is eighteen years of age or older, and
210 (C) is substantially unable to protect himself or herself from abuse and
211 includes all such persons living in residential facilities under the
212 jurisdiction of the Department of Developmental Services;

213 (9) "Protective services" means services provided by the state or any
214 other governmental or private organization or individual which are
215 necessary to prevent abuse or neglect. Such services may include the
216 provision of medical care for physical and mental health needs; the
217 provision of support services in the facility, including the time limited
218 placement of department staff in such facility; the relocation of a
219 person with intellectual disability to a facility able to offer such care
220 pursuant to section 17a-210, 17a-274 or 17a-277, as applicable;
221 assistance in personal hygiene; food; clothing; adequately heated and
222 ventilated shelter; protection from health and safety hazards;
223 protection from maltreatment, the result of which includes, but is not
224 limited to, malnutrition, deprivation of necessities or physical
225 punishment; and transportation necessary to secure any of the above-
226 stated services, except that this term shall not include taking such
227 person into custody without consent; [and]

228 (10) "Commissioner" means the Commissioner of Developmental
229 Services; and

230 (11) "Individual who receives services from the Department of
231 Developmental Services' Division of Autism Spectrum Disorder
232 Services" means an individual eighteen years of age to sixty years of

233 age, inclusive, who receives funding or services from the Department
234 of Developmental Services' Division of Autism Spectrum Disorder
235 Services.

236 Sec. 6. Section 46a-11b of the 2014 supplement to the general statutes
237 is repealed and the following is substituted in lieu thereof (*Effective*
238 *October 1, 2014*):

239 (a) Any physician or surgeon licensed under the provisions of
240 chapter 370, any resident physician or intern in any hospital in this
241 state, whether or not so licensed, any registered nurse, any person paid
242 for caring for persons in any facility and any licensed practical nurse,
243 medical examiner, dental hygienist, dentist, occupational therapist,
244 optometrist, chiropractor, psychologist, podiatrist, social worker,
245 school teacher, school principal, school guidance counselor, school
246 paraprofessional, mental health professional, physician assistant,
247 licensed or certified substance abuse counselor, licensed marital and
248 family therapist, speech and language pathologist, clergyman, police
249 officer, pharmacist, physical therapist, licensed professional counselor
250 or sexual assault counselor or domestic violence counselor, as defined
251 in section 52-146k, who has reasonable cause to suspect or believe that
252 any person with intellectual disability or any individual who receives
253 services from the Department of Developmental Services' Division of
254 Autism Spectrum Disorder Services has been abused or neglected
255 shall, as soon as practicable but not later than seventy-two hours after
256 such person has reasonable cause to suspect or believe that a person
257 with intellectual disability or any individual who receives services
258 from the Department of Developmental Services' Division of Autism
259 Spectrum Disorder Services has been abused or neglected, report such
260 information or cause a report to be made in any reasonable manner to
261 the director or persons the director designates to receive such reports.
262 Such initial report shall be followed up by a written report not later
263 than five calendar days after the initial report was made. Any person
264 required to report under this subsection who fails to make such report
265 shall be fined not more than five hundred dollars.

266 (b) Such report shall contain the name and address of the allegedly
267 abused or neglected person, a statement from the person making the
268 report indicating his or her belief that such person has intellectual
269 disability or receives funding or services from the Department of
270 Developmental Services' Division of Autism Spectrum Disorder
271 Services, information supporting the supposition that such person is
272 substantially unable to protect himself or herself from abuse or neglect,
273 information regarding the nature and extent of the abuse or neglect
274 and any other information [which] that the person making such report
275 believes might be helpful in an investigation of the case and the
276 protection of such person with intellectual disability or who receives
277 funding or services from the Department of Developmental Services'
278 Division of Autism Spectrum Disorder Services.

279 (c) Each facility, as defined in section 46a-11a, as amended by this
280 act, shall inform residents of their rights and the staff of their
281 responsibility to report abuse or neglect and shall establish appropriate
282 policies and procedures to facilitate such reporting.

283 (d) Any other person having reasonable cause to believe that a
284 person with intellectual disability or an individual who receives
285 services from the Department of Developmental Services' Division of
286 Autism Spectrum Disorder Services is being or has been abused or
287 neglected may report such information, in any reasonable manner, to
288 the director or to [his] the director's designee.

289 (e) Any person who makes any report pursuant to sections 46a-11a
290 to 46a-11g, inclusive, as amended by this act, or who testifies in any
291 administrative or judicial proceeding arising from such report shall be
292 immune from any civil or criminal liability on account of such report
293 or testimony, except for liability for perjury, unless such person acted
294 in bad faith or with malicious purpose. Any person who obstructs,
295 hinders or endangers any person reporting or investigating abuse or
296 neglect or providing protective services or who makes a report in bad
297 faith or with malicious purpose and who is not subject to any other
298 penalty shall be fined not more than five hundred dollars. No resident

299 or employee of a facility, as defined in section 46a-11a, as amended by
300 this act, shall be subject to reprisal or discharge because of his actions
301 in reporting pursuant to sections 46a-11a to 46a-11g, inclusive, as
302 amended by this act.

303 (f) For purposes of said sections, the treatment of any person with
304 intellectual disability or any individual who receives services from the
305 Department of Developmental Services' Division of Autism Spectrum
306 Disorder Services by a Christian Science practitioner, in lieu of
307 treatment by a licensed practitioner of the healing arts, shall not of
308 itself constitute grounds for the implementation of protective services.

309 (g) When the director of the Office of Protection and Advocacy for
310 Persons with Disabilities or persons designated by said director are
311 required to investigate or monitor abuse or neglect reports that are
312 referred to the Office of Protection and Advocacy for Persons with
313 Disabilities from another agency, all provisions of this section shall
314 apply to any investigation or monitoring of such case or report.

315 Sec. 7. Section 46a-11c of the general statutes is repealed and the
316 following is substituted in lieu thereof (*Effective October 1, 2014*):

317 (a) The director, upon receiving a report that a person with
318 intellectual disability allegedly is being or has been abused or
319 neglected, shall make an initial determination whether such person has
320 intellectual disability, shall determine if the report warrants
321 investigation and shall cause, in cases that so warrant, a prompt,
322 thorough evaluation to be made to determine whether the person has
323 intellectual disability and has been abused or neglected. For the
324 purposes of sections 46a-11a to 46a-11g, inclusive, as amended by this
325 act, the determination of intellectual disability may be made by means
326 of a review of records and shall not require the director to conduct a
327 full psychological examination of the person. Any delay in making
328 such determination of intellectual disability shall not delay the
329 investigation of abuse or neglect or recommendation of provision of
330 protective services. The evaluation shall include a visit to the named
331 person with intellectual disability and consultation with those

332 individuals having knowledge of the facts of the particular case. All
333 state, local and private agencies shall have a duty to cooperate with
334 any investigation conducted by the Office of Protection and Advocacy
335 for Persons with Disabilities under this section, including the release of
336 complete client records for review, inspection and copying, except
337 where the person with intellectual disability refuses to permit his or
338 her record to be released. The director shall have subpoena powers to
339 compel any information related to such investigation. All client records
340 shall be kept confidential by said office. Upon completion of the
341 evaluation of each case, written findings shall be prepared which shall
342 include a determination of whether abuse or neglect has occurred and
343 recommendations as to whether protective services are needed. The
344 director, except in cases where the parent or guardian is the alleged
345 perpetrator of abuse or is residing with the alleged perpetrator, shall
346 notify the parents or guardian, if any, of the person with intellectual
347 disability if a report of abuse or neglect is made which the director
348 determines warrants investigation. The director shall provide the
349 parents or guardians who the director determines are entitled to such
350 information with further information upon request. The person filing
351 the report of abuse or neglect shall be notified of the findings upon
352 request.

353 (b) The director, upon receiving a report that an individual who
354 receives services from the Department of Developmental Services'
355 Division of Autism Spectrum Disorder Services, allegedly is being or
356 has been abused or neglected, shall make an initial determination
357 whether such individual receives funding or services from said
358 division, shall determine if the report warrants investigation and shall
359 cause, in cases that so warrant, a prompt, thorough evaluation, as
360 described in subsection (b) of section 2 of this act, to be made by the
361 Department of Developmental Services to determine whether the
362 individual has been abused or neglected.

363 [(b)] (c) In cases where there is a death of a person with intellectual
364 disability for whom the Department of Developmental Services has
365 direct or oversight responsibility for medical care, and there is

366 reasonable cause to suspect or believe that such death may be due to
 367 abuse or neglect, the Commissioner of Developmental Services shall
 368 notify the director or the director's designee not later than twenty-four
 369 hours after the commissioner determines that there is reasonable cause
 370 to suspect or believe that such death may be due to abuse or neglect
 371 and the director shall conduct an investigation to determine whether
 372 abuse or neglect occurred, except as may be otherwise required by
 373 court order. The director, in consultation with the Commissioner of
 374 Developmental Services, shall establish protocols for conducting such
 375 investigations.

376 [(c)] (d) The director shall maintain a state-wide registry of the
 377 reports received, the evaluation and findings and actions
 378 recommended.

379 [(d)] (e) Neither the original report nor the evaluation report of the
 380 investigator which includes findings and recommendations shall be
 381 deemed a public record for purposes of section 1-210. The name of the
 382 person making the original report shall not be disclosed to any person
 383 unless the person making the original report consents to such
 384 disclosure or unless a judicial proceeding results therefrom.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	17a-247a
Sec. 2	October 1, 2014	New section
Sec. 3	October 1, 2014	17a-247b
Sec. 4	October 1, 2014	17a-247c
Sec. 5	October 1, 2014	46a-11a
Sec. 6	October 1, 2014	46a-11b
Sec. 7	October 1, 2014	46a-11c

Statement of Legislative Commissioners:

Throughout section 2, the phrase "the individual who is the subject of the allegation" was changed to "such individual", "evaluation" was changed to "investigation", and "report" was changed to "allegation", for clarity and internal consistency; in section 2(a), subdivisions (1) and (2) were deleted to avoid repetition; in section 2(b)(2), the phrase "of

whether" was changed to "as to whether", for internal consistency, the phrase "written findings shall be prepared" was changed to "the commissioner shall prepare written findings", for clarity and the phrase "of the individual reported to be abused or neglected" was inserted after "parent or guardian", for clarity; in section 6(b), the phrase "receives services from" was changed to "receives funding or services from", for internal consistency; and in section 7(b), the phrase "as described in subsection (b) of section 2 of this act" was inserted after "thorough investigation", for clarity.

PH *Joint Favorable Subst.*

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.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill, which expands the Department of Developmental Services' (DDS) authority to investigate allegations of abuse to include adults served by the agency's Division of Autism Services, does not result in a cost to the agency. The Division of Autism Services currently serves 76 adults and the agency's existing investigators are anticipated to handle any investigations that may arise without incurring additional costs. There is no fiscal impact to the Office of Protection and Advocacy to report complaints with merit to DDS.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 5456*****AN ACT CONCERNING MANDATORY REPORTING OF ABUSE AND NEGLECT OF INDIVIDUALS WITH AUTISM SPECTRUM DISORDER, THE DEFINITION OF ABUSE, AND THE DEPARTMENT OF DEVELOPMENTAL SERVICES ABUSE AND NEGLECT REGISTRY.*****SUMMARY:**

This bill creates a process for investigating claims of abuse of people with autism spectrum disorder. Currently, the Office of Protection and Advocacy for Persons with Disabilities (OPA), the Department of Children and Families, and the Department of Social Services investigate claims of abuse (depending on the age and needs of the person). Certain autism spectrum disorder individuals are not specifically covered by any investigative process.

The bill grants specific authority to the Department of Developmental Disabilities (DDS) to investigate reports of abuse of individuals ages 18-60 with autism spectrum disorder receiving services from DDS's Division of Autism Spectrum Disorder Services (the "division") made against a DDS employee or an employee of any agency, organization, or individual licensed or funded by DDS. By law, DDS has general authority to conduct investigations, but the law provides no process.

By law, certain people, by virtue of their job title, must report suspected abuse to OPA. The bill requires any such mandated reporter to report suspected abuse of a person receiving division services or funding to OPA. It makes conforming changes that require mandated reporters to follow the same procedures as when reporting other suspected cases of abuse. This includes filing a report that indicates their belief that the person they suspect is being abused receives

services or funding from the division, among other things.

The bill also expands DDS’s abuse and neglect registry definition of abuse to include (1) financial exploitation and (2) psychological, verbal, and sexual abuse. By law, DDS maintains a registry of the names of any person who has been fired from his or her job because of a substantiated abuse complaint against them. These are people who were employed by DDS or an agency, organization, or individual who DDS licenses or funds.

EFFECTIVE DATE: October 1, 2014

§§ 1-2 — DDS REPORT AND INVESTIGATION PROCESS

Investigation Process

The bill establishes the process that DDS must follow in investigating abuse of people receiving services from the division.

Under the bill, an investigation of suspected abuse must include (1) visiting the reportedly abused or neglected person’s residence and (2) consulting with people knowledgeable about the facts surrounding the allegation. The bill requires all state, local, and private agencies to cooperate with the investigation, including releasing to DDS the individual under investigation’s complete records, unless he or she refuses such a release. It is not clear what records can be requested. The bill specifies that DDS must keep confidential any records received in this manner.

The bill requires DDS to notify certain individuals involved in the investigation, but is ambiguous as to whether the notification requirements apply to the parents of the alleged victim or of the alleged perpetrator. Presumably, the bill requires DDS to notify the alleged victim’s parents or guardian if a report of abuse or neglect is made that DDS determines warrants an investigation. Under the bill, DDS is not required to notify the parents or guardian if they are, or are living with, the alleged perpetrator.

Upon completing the investigation, the DDS commissioner must

prepare written findings, including a determination whether abuse or neglect occurred and recommendations on whether protective services are needed. The bill does not specify who receives or acts on the recommendations.

The bill allows the parents or guardian of an allegedly abused individual to request additional information concerning the investigation. The commissioner may approve such a request if she deems the parents or guardian entitled to the information. It is not clear what the additional information may be or by what criteria the commissioner uses to determine whether they are entitled to it.

Upon request, the person filing the original report of suspected abuse or neglect and the OPA director must be notified of the investigation's findings.

Investigative Report Confidentiality

The bill exempts both the original abuse report and the investigative report that includes findings and recommendations from disclosure under the Freedom of Information Act. The bill specifies that the name of the person who originally reported the abuse may not be disclosed unless (1) he or she consents or (2) the investigation results in a "judicial procedure".

§§ 5-7 — OPA REPORT AND INVESTIGATION PROCESS

By law, mandated reporters must report suspected abuse of individuals with intellectual disabilities to OPA (see BACKGROUND). The bill requires mandated reporters to also report suspected cases of abuse of individuals receiving division services or funding regardless of whether they have intellectual disabilities. As under current law, a mandated reporter must report abuse as soon as practicable but within 72 hours after having reasonable cause to suspect or believe there has been abuse. (There are also mandated reporter laws for other vulnerable populations).

The bill requires OPA, upon receiving a report of suspected abuse of an individual receiving division services, to make an initial

determination of whether the (1) individual receives services from the division and (2) the report warrants investigation. If so, OPA must “cause” DDS to conduct a prompt and thorough investigation. It is not clear how one agency causes another to investigate, especially when the bill’s provision giving investigative authority does not require DDS to investigate.

By law, unchanged by the bill, OPA can only investigate abuse addressed under the mandated reporter laws, which is that which constitutes the wilful (1) infliction of physical pain or injury or (2) deprivation by a caretaker of services which are necessary to the person’s health or safety. The expanded definition of abuse under the bill (including financial exploitation and psychological, verbal, and sexual abuse) does not apply to OPA’s statutory authority. In practice, OPA refers reports (1) of financial, psychological, verbal, and sexual abuse or (2) about people receiving division services or funding to DDS, which investigates them under its general investigatory powers.

The bill specifies that an individual receiving division services or funding who chooses to receive treatment by a Christian Science practitioner may not, on that reason alone, require protective services (services necessary to prevent abuse or neglect).

§1 — DDS ABUSE AND NEGLECT REGISTRY DEFINITIONS

As under current law, the names of people against whom claims of abuse or neglect are substantiated must be placed on the registry following due process. By law, “abuse” means a DDS employee (or an employee of any agency, organization or individual licensed or funded by DDS) wilfully (1) inflicted physical pain or injury on any individual receiving services or funding from DDS or (2) deprived the person of services necessary to his or her physical and mental health and safety. The bill expands abuse, for the purposes of the registry only, to include the following behavior inflicted by an employee on such an individual:

1. financial exploitation, which is the theft, misappropriation, or unauthorized or improper use of property, money, or other

resources;

2. psychological abuse, which is an act intended to (a) humiliate, intimidate, degrade, or demean, (b) inflict emotional harm or invoke fear, or (c) otherwise negatively impact the person’s mental health;
3. verbal abuse, which is the use of offensive or intimidating language intended to provoke or cause distress; or
4. sexual abuse, which is (a) any sexual contact between an individual, regardless of their ability to consent, and an employee or (b) an employee encouraging an individual to engage in sexual activity.

By law, DDS and any individual or agency licensed or funded by DDS is barred from hiring someone who is on the registry, or retaining an employee after receiving notice that he or she is on the registry.

BACKGROUND

OPA generally defines “intellectual disability” as having an IQ score of 69 or below, and takes into account the degree to which an individual fails to meet the standards of personal independence and social responsibility expected for the individual’s age and cultural group.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 25 Nay 0 (03/27/2014)