



Substitute House Bill No. 5456

Public Act No. 14-165

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:

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 Section 17a-247a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

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

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

(2) "Authorized agency" means any agency authorized in accordance with the general statutes to conduct abuse and neglect investigations and responsible for issuing or carrying out protective services for persons with intellectual disability or individuals receiving

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services or funding from the department's Division of Autism Spectrum Disorder Services.

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

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

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

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

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

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

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

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

(10) "Psychological abuse" means an act intended to (A) humiliate, intimidate, degrade or demean an individual who receives services or funding from the department, (B) inflict emotional harm or invoke fear

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in such individual, or (C) otherwise negatively impact the mental health of such individual.

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

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

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

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

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

(b) (1) The commissioner may investigate any reports alleging abuse or neglect of an individual who receives services from the department's Division of Autism Spectrum Disorder Services. Such investigation shall include a visit to the residence of the individual reported to have been abused or neglected and consultation with

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persons having knowledge of the facts surrounding such allegation. All state, local and private agencies shall have a duty to cooperate with any such investigation, including the release of complete records of such individual for review, inspection and copying, except where such individual refuses to permit his or her record to be released. All such records shall be kept confidential by the department.

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

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

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

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(a) The Department of Developmental Services shall establish and maintain a registry of [individuals] former employees who have been terminated or separated from employment as a result of substantiated abuse or neglect. The department shall, for the purposes of maintaining the registry, be capable of responding to inquiries in accordance with subsection (c) of this section as to whether [an individual] a former employee has been terminated or separated from employment as a result of substantiated abuse or neglect. Such capability may include response by telephone voice mail or other automated response for initial inquiries.

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

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

(d) The department shall limit responses to requests for identifying

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information from the registry established under this section to (1) identification of the [individual] former employee terminated or separated from employment for substantiated abuse or neglect, and (2) the type of abuse or neglect so substantiated.

(e) Not later than five business days following receipt of written notification by an authorized agency of the substantiation of abuse or neglect by [an] a former employee who has been terminated or separated from employment for such abuse or neglect, an employer shall submit to the department the name of such former employee and such other information as the department may request. Upon receipt of notification of such termination or separation, the department shall conduct a hearing in accordance with sections 4-177 to 4-181a, inclusive, governing contested cases. The department shall not place [an individual's] a former employee's name on the registry until the department has completed the hearing and the hearing has resulted in a decision to place the [individual's] former employee's name on the registry.

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

(g) No employer shall be liable in any civil action for damages brought by an employee, former employee or an applicant for employment whose name appears on the registry established by this section arising out of the conduct of the employer in (1) making any report in good faith pursuant to subsection (e) of this section, (2) testifying under oath in any administrative or judicial proceeding arising from such report, (3) refusing to hire or to retain any [individual] person whose name appears on the registry established under this section, or (4) taking any other action to conform to the requirements of this section. The immunity provided in this subsection

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shall not apply to gross negligence or to wilful or wanton misconduct.

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

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

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

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

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

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

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

(3) "Caretaker" means a person who has the responsibility for the care of a person with intellectual disability as a result of a family

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relationship or who has assumed the responsibility for the care of the person with intellectual disability voluntarily, by contract or by order of a court of competent jurisdiction. Neither a guardian nor a conservator need be a caretaker;

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

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

(6) "Facility" means any public or private hospital, nursing home facility, residential care home, training school, regional facility, group home, community companion home, school or other program serving persons with intellectual disability;

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

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

(9) "Protective services" means services provided by the state or any other governmental or private organization or individual which are necessary to prevent abuse or neglect. Such services may include the provision of medical care for physical and mental health needs; the provision of support services in the facility, including the time limited placement of department staff in such facility; the relocation of a person with intellectual disability to a facility able to offer such care

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pursuant to section 17a-210, 17a-274 or 17a-277, as applicable; assistance in personal hygiene; food; clothing; adequately heated and ventilated shelter; protection from health and safety hazards; protection from maltreatment, the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment; and transportation necessary to secure any of the above-stated services, except that this term shall not include taking such person into custody without consent; [and]

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

(11) "Individual who receives services from the Department of Developmental Services' Division of Autism Spectrum Disorder Services" means an individual eighteen years of age to sixty years of age, inclusive, who receives funding or services from the Department of Developmental Services' Division of Autism Spectrum Disorder Services.

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

(a) Any physician or surgeon licensed under the provisions of chapter 370, any resident physician or intern in any hospital in this state, whether or not so licensed, any registered nurse, any person paid for caring for persons in any facility and any licensed practical nurse, medical examiner, dental hygienist, dentist, occupational therapist, optometrist, chiropractor, psychologist, podiatrist, social worker, school teacher, school principal, school guidance counselor, school paraprofessional, mental health professional, physician assistant, licensed or certified substance abuse counselor, licensed marital and family therapist, speech and language pathologist, clergyman, police officer, pharmacist, physical therapist, licensed professional counselor

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or sexual assault counselor or domestic violence counselor, as defined in section 52-146k, who has reasonable cause to suspect or believe that any person with intellectual disability or any individual who receives services from the Department of Developmental Services' Division of Autism Spectrum Disorder Services has been abused or neglected shall, as soon as practicable but not later than seventy-two hours after such person has reasonable cause to suspect or believe that a person with intellectual disability or any individual who receives services from the Department of Developmental Services' Division of Autism Spectrum Disorder Services has been abused or neglected, report such information or cause a report to be made in any reasonable manner to the director or persons the director designates to receive such reports. Such initial report shall be followed up by a written report not later than five calendar days after the initial report was made. Any person required to report under this subsection who fails to make such report shall be fined not more than five hundred dollars.

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

(c) Each facility, as defined in section 46a-11a, as amended by this act, shall inform residents of their rights and the staff of their

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responsibility to report abuse or neglect and shall establish appropriate policies and procedures to facilitate such reporting.

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

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

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

(g) When the director of the Office of Protection and Advocacy for Persons with Disabilities or persons designated by said director are

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required to investigate or monitor abuse or neglect reports that are referred to the Office of Protection and Advocacy for Persons with Disabilities from another agency, all provisions of this section shall apply to any investigation or monitoring of such case or report.

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

(a) The director, upon receiving a report that a person with intellectual disability allegedly is being or has been abused or neglected, shall make an initial determination whether such person has intellectual disability, shall determine if the report warrants investigation and shall cause, in cases that so warrant, a prompt, thorough evaluation to be made to determine whether the person has intellectual disability and has been abused or neglected. For the purposes of sections 46a-11a to 46a-11g, inclusive, as amended by this act, the determination of intellectual disability may be made by means of a review of records and shall not require the director to conduct a full psychological examination of the person. Any delay in making such determination of intellectual disability shall not delay the investigation of abuse or neglect or recommendation of provision of protective services. The evaluation shall include a visit to the named person with intellectual disability and consultation with those individuals having knowledge of the facts of the particular case. All state, local and private agencies shall have a duty to cooperate with any investigation conducted by the Office of Protection and Advocacy for Persons with Disabilities under this section, including the release of complete client records for review, inspection and copying, except where the person with intellectual disability refuses to permit his or her record to be released. The director shall have subpoena powers to compel any information related to such investigation. All client records shall be kept confidential by said office. Upon completion of the evaluation of each case, written findings shall be prepared which shall

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include a determination of whether abuse or neglect has occurred and recommendations as to whether protective services are needed. The director, except in cases where the parent or guardian is the alleged perpetrator of abuse or is residing with the alleged perpetrator, shall notify the parents or guardian, if any, of the person with intellectual disability if a report of abuse or neglect is made which the director determines warrants investigation. The director shall provide the parents or guardians who the director determines are entitled to such information with further information upon request. The person filing the report of abuse or neglect shall be notified of the findings upon request.

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

~~[(b)]~~ (c) In cases where there is a death of a person with intellectual disability for whom the Department of Developmental Services has direct or oversight responsibility for medical care, and there is reasonable cause to suspect or believe that such death may be due to abuse or neglect, the Commissioner of Developmental Services shall notify the director or the director's designee not later than twenty-four hours after the commissioner determines that there is reasonable cause to suspect or believe that such death may be due to abuse or neglect and the director shall conduct an investigation to determine whether abuse or neglect occurred, except as may be otherwise required by

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court order. The director, in consultation with the Commissioner of Developmental Services, shall establish protocols for conducting such investigations.

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

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

Approved June 11, 2014