
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)