

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 14-165—sHB 5456

Public Health Committee

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 act creates a process for investigating claims of abuse or neglect of people with autism spectrum disorder. The Office of Protection and Advocacy for Persons with Disabilities (OPA), Department of Children and Families, and Department of Social Services investigate claims of abuse or neglect (depending on the person’s age and needs), but under prior law, certain individuals with autism spectrum disorder were not specifically covered by any investigative process.

The act grants specific authority to the Department of Developmental Services (DDS) to investigate reports of abuse or neglect of individuals ages 18 to 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 occupations, must report to OPA suspected abuse or neglect of individuals with intellectual disabilities. The act requires any such mandated reporter to also report to OPA suspected abuse or neglect of a person receiving division services or funding. It makes conforming changes that require these mandated reporters to follow the same procedures as when reporting other suspected cases of abuse or neglect. This includes filing a report that indicates their belief that the person they suspect is being abused or neglected receives services or funding from the division, among other things.

The act also expands the definition of abuse, for the purposes of DDS’ (1) abuse and neglect registry and (2) investigations to include financial exploitation and 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 an individual who DDS licenses or funds.

By law, charitable organizations that recruit volunteers to support programs for people with intellectual disabilities may access the registry to conduct background checks on volunteers. The act extends access for this purpose to charitable organizations supporting programs for people with autism spectrum disorder. As under existing law, these organizations must apply to and get approval from the DDS commissioner before accessing the registry.

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Existing law prohibits DDS, and any individual or agency it licenses or funds, from hiring someone who is on the registry or retaining an employee after receiving notice that he or she is on the registry.

EFFECTIVE DATE: October 1, 2014

§§ 1 & 2 — DDS REPORT AND INVESTIGATION PROCESS

Investigation Process

The act establishes the process that DDS must follow when investigating claims of abuse or neglect of people receiving division services.

Under the act, an investigation of suspected abuse or neglect must include a (1) visit to the reportedly abused or neglected person's residence and (2) consultation with people knowledgeable about the facts surrounding the allegation. The act 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 act specifies that DDS must keep confidential any records received in this manner.

The act 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, unless the parent or guardian is, or is 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 act does not specify who receives or acts on the recommendations.

The act allows the commissioner to provide additional information about the investigation to the parents or guardian of an allegedly abused individual if he deems the parents or guardian entitled to the information. The act does not specify what the additional information may be or what criteria the commissioner must use to determine whether the parents or guardian 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 act exempts both the original abuse and neglect report and the investigative report that includes findings and recommendations from disclosure under the Freedom of Information Act. The act 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 proceeding.

§§ 5-7 — OPA REPORT AND INVESTIGATION PROCESS

By law, certain people, by virtue of their occupations, must report suspected abuse or neglect of individuals with intellectual disabilities to OPA (see BACKGROUND). The act requires mandated reporters to also report suspected cases of abuse or neglect of individuals receiving division services or funding

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regardless of whether they have intellectual disabilities. As under existing law, the mandated reporter must (1) report abuse as soon as practicable but within 72 hours after having reasonable cause to suspect or believe there has been abuse or neglect and (2) provide a written follow-up report within five days after the initial report.

The act requires OPA, upon receiving a report of suspected abuse or neglect of an individual receiving division services, to make an initial determination of whether the (1) individual receives services from the division and (2) report warrants investigation. If so, OPA must cause DDS to conduct a prompt and thorough investigation.

The act 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 DEFINITIONS

Under prior law, “abuse” meant a DDS employee (or an employee of any agency, organization, or individual licensed or funded by DDS) willfully (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 act expands abuse, for the purposes of the abuse and neglect registry and DDS investigations, 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 his or her ability to consent, and an employee or (b) an employee encouraging an individual to engage in sexual activity.

By law, unchanged by the act, “neglect” means an employee’s failure, through action or inaction, to provide an individual receiving DDS services or funding with the services necessary to his or her physical and mental health and safety.

BACKGROUND

Intellectual Disability

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.

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