

30:6D-9.1 to 30:6D-9.8 et al.

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2017 **CHAPTER:** 238

NJSA: 30:6D-9.1 to 30:6D-9.8 et al. (Provides protections for individuals with developmental disabilities; upgrades crimes committed against such individuals; and improves transparency and accountability in investigations of abuse, neglect, and exploitation of such individuals; designated as "Stephen Komninos" Law)

BILL NO: A2503 (Substituted for S516)

SPONSOR(S) Vainieri Huttler and others

DATE INTRODUCED: 2/4/2016

COMMITTEE: **ASSEMBLY:** Human Services
Appropriations

SENATE: Health, Human Services & Senior Citizens
Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 7/31/2017

SENATE: 10/5/2017

DATE OF APPROVAL: 10/6/2017

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL

(Assembly Committee Substitute (Second Reprint) enacted) Yes

A2503

SPONSOR'S STATEMENT: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Human Services
Appropriations

SENATE: Yes Health, H.S. & Senior Citizens
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 11/1/2016
6/20/2017
10/5/2017

S516

SPONSOR'S STATEMENT: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Health, H.S. & Senior Citizens
Budget & Appropriations

(continued)

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No
LEGISLATIVE FISCAL ESTIMATE: Yes 6/20/2017

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Greater oversight for residential facilities serving disabled residents," NJ Spotlight, August 7, 2017
"Christie mandates group home checks after man's death," Associated Press State Wire: New Jersey, October 6, 2017
"Christie Signs Stephen Komninos Law," WBGO.org, October 6, 2017
"NJ Senate approves new regulations for group homes pays tribute to Whelan," Burlington County Times, October 6, 2017
"Death prompts lawmakers to OK tougher scrutiny on group homes," The Star-Ledger, October 6, 2017
"A decade after disabled man's death, Christie signs law to make group homes safer," nj.com October 6, 2017
"10 years after man's death, Christie signs group-home law," The Star-Ledger, October 7, 2017
"State's disabled get more protection," The Record, October 7, 2017
"Christie signs law toughening group home oversight," Burlington County Times, October 8, 2017

RH/CL

P.L. 2017, CHAPTER 238, *approved October 6, 2017*
Assembly Committee Substitute (*Second Reprint*)
for Assembly, No. 2503

1 AN ACT concerning individuals with developmental disabilities,
2 designated as Stephen Komninos' Law, supplementing ¹【Title】
3 ²【Titles 2C and¹】 Title² 30 of the Revised Statutes, and amending
4 ¹【P.L.2003, c.191 and P.L.2010, c.5】 various parts of the
5 statutory law¹.
6

7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*
9

10 ²【¹1. (New section) Endangering Welfare of Individuals with
11 Developmental Disabilities.

12 a. A caregiver or other person who has a legal duty to care for
13 an individual with a developmental disability, or who has assumed
14 responsibility for the care of a individual with a developmental
15 disability, and who subjects the individual with a developmental
16 disability to abuse, neglect, or exploitation, is guilty of a crime of
17 the second degree. Any other person who engages in conduct or
18 who causes harm as described in this section to an individual with a
19 developmental disability is guilty of a crime of the third degree.

20 b. As used in this section:

21 “Abuse,” “caregiver,” “exploitation,” and “neglect” each mean
22 the same as those terms are defined by section 2 of P.L.2010, c.5
23 (C.30:6D-74).

24 “Developmental disability” means the same as that term is
25 defined by section 3 of P.L.1977, c.82 (C.30:6D-3).¹²

26
27 ²【¹2.】 ¹2. (New section) As used in sections ²【2】 ¹2 through
28 ²【7】 ⁶ of P.L. , c. (C.) (pending before the Legislature as
29 this bill):

30 “Abuse” means the same as that term is defined by section 2 of
31 P.L.2010, c.5 (C.30:6D-74).

32 “Commissioner” means the Commissioner of Human Services.

EXPLANATION – Matter enclosed in bold-faced brackets 【thus】 in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted May 15, 2017.

² Assembly amendments adopted in accordance with Governor's recommendations July 31, 2017.

1 "Community-based residential program" or "residential program"
2 means a group home or supervised apartment, which is licensed and
3 regulated by the department.

4 "Day program" means a program that is certified to provide day
5 habilitation services or sheltered workshops for individuals with
6 developmental disabilities.

7 "Department" means the Department of Human Services.

8 "Department employee" means a direct employee of the
9 Department of Human Services, or an employee of a department-
10 funded case management agency.

11 "Developmental disability" means the same as that term is
12 defined by section 3 of P.L.1977, c.82 (C.30:6D-3).

13 "Direct care staff member" means a person 18 years of age or
14 older who is employed by a program, facility, or living arrangement
15 identified in subsection a. of section ²[6] ⁵ of P.L. , c. (C.)
16 (pending before the Legislature as this bill), and who may come
17 into direct contact with individuals with developmental disabilities
18 during the course of such employment.

19 "Exploitation" means the same as that term is defined by section
20 2 of P.L.2010, c.5 (C.30:6D-74).

21 "Group home" means a living arrangement that is operated in a
22 residence or residences leased or owned by a licensee; which
23 provides the opportunity for individuals with developmental
24 disabilities to live together in a home, sharing in chores and the
25 overall management of the residence; and in which staff provides
26 supervision, training, or assistance in a variety of forms and
27 intensity as required to assist the individuals ²as they move toward
28 independence².

29 "Licensee" means an individual, partnership, or corporation that
30 is licensed by the department, and is responsible for providing
31 services associated with the operation of a community-based
32 residential program.

33 "Major physical injury" means an injury that requires treatment
34 that can only be performed at a general hospital or special hospital
35 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), and which
36 may additionally include admission to the hospital for further
37 treatment or observation.

38 "Minor physical injury" means an injury that does not constitute
39 a major physical injury or a moderate physical injury, and which
40 can be treated with basic first aid, and without the assistance of a
41 health care professional.

42 "Moderate physical injury" means an injury that does not
43 constitute a major injury, but which requires treatment, beyond
44 basic first aid, that can only be performed by a health care
45 professional.

46 "Neglect" means the same as that term is defined by section 2 of
47 P.L.2010, c.5 (C.30:6D-74).

1 “Program” means any program that is licensed or funded by the
2 department for the purpose of providing services to individuals with
3 developmental disabilities. “Program” includes, but is not limited
4 to, a day program or a community-based residential program.

5 “Supervised apartment” means an apartment that is occupied by
6 individuals with developmental disabilities; is leased or owned by a
7 licensee; and in which staff provides supervision, guidance, and
8 training, as needed, to assist individual occupants in the activities of
9 daily living, in accordance with each individual's needs and targeted
10 future goals.¹

11
12 ¹[1.]²[3.]¹ 2.² (New section) ¹a.¹ The ¹[Commissioner of
13 Human Services] commissioner¹, or the commissioner's designee,
14 shall designate employees of the Department of Human Services,
15 ²[who are not employees of a State developmental center ^{1,1} but]²
16 ¹who¹ may be case managers employed by the department or an
17 agency under contract with the department, ¹[as applicable,] to
18 annually¹ conduct ¹[six unannounced] not less than two¹ site visits
19 ¹[annually] of every community-based residential program ²[and
20 every day program]², in order¹ to ¹[randomly check] evaluate¹
21 whether the individuals with developmental disabilities who are
22 receiving services from ¹[a] each such¹ program ¹[as defined in
23 ^{section 2 of P.L.2010, c.5 (C.30:6D-74)]¹ ²[, facility, or living}
24 ^{arrangement licensed or funded by the department, other than a}
25 ^{community care residence which is subject to visits pursuant to}
26 <sup>section 7 of P.L.2012, c.69 (C.30:6D-5.13),]² are at risk of, or are
27 being subjected to, abuse, neglect, or exploitation by a caregiver,
28 and report the ¹[same] results of each site visit¹ pursuant to section
29 3 of P.L.2010, c.5 (C.30:6D-75).</sup>

30 ¹b. (1) In the case of a community-based residential program
31 that is a group home, not less than two annual site visits that are
32 conducted for each such group home shall be unannounced site
33 visits conducted by a department employee who is assigned to a
34 resident of the group home.

35 (2) In the case of a community-based residential program that is
36 a supervised apartment, not less than two annual site visits that are
37 conducted for each such supervised apartment shall be unannounced
38 site visits of the apartment, which shall be conducted by a
39 department employee who is unaffiliated and unfamiliar with the
40 assigned case.

41 ²[(3) In the case of a day program, not less than one annual site
42 visit that is conducted for each day habilitation service provider and
43 each sheltered workshop provider shall be an unannounced site visit
44 conducted by a department employee who is assigned to a
45 participant in the day program; and not less than one annual site
46 visits shall be an unannounced site visit conducted by a department

1 employee who is unaffiliated and unfamiliar with the assigned
2 case.]²

3 c. Nothing in this section shall be interpreted to authorize a
4 staff member or agent of a community-based residential program
5 ²[, or a staff member or agent of a day program,]² to perform the
6 site visits required by this section.¹

7
8 ¹[²]²[⁴.¹] ³.² (New section) a. ¹[The Commissioner of
9 Human Services, or the commissioner's designee, shall designate
10 staff to notify the guardian or authorized family member, as defined
11 in section 2 of P.L.2010, c.5 (C.30:6D-74), of an individual with a
12 developmental disability receiving services from a program as
13 defined in section 2 of P.L.2010, c.5 (C.30:6D-74), facility,
14 community care residence, or living arrangement licensed or funded
15 by the department of any physical injury to the individual with a
16 developmental disability, as soon as possible, but no later than 60
17 minutes after the occurrence of the injury.

18 b.]¹ A provider or licensee ¹[, as applicable,]¹ of a ²community-
19 based residential program or day² program ¹[as defined in section 2
20 of P.L.2010, c.5 (C.30:6D-74)]¹ ²[, facility, community care
21 residence, or living arrangement licensed or funded by the
22 department ¹,¹]² shall ¹[notify the guardian or authorized family
23 member of] provide notification, in accordance with the provisions
24 of subsection b. of this section, of any major physical injury,
25 moderate physical injury, or minor physical injury, as prescribed by
26 department regulation, that is suffered by¹ an individual with a
27 developmental disability ¹who is¹ receiving services from the
28 provider or licensee ¹[of any physical injury to the individual with
29 a developmental disability] .

30 b. Except as otherwise provided by subsection c. of this
31 section, the notification required under this section shall be
32 provided:

33 (1)¹ as soon as possible, but no later than ²[60 minutes] two
34 hours² after the occurrence of the injury ², except that if there is an
35 extraordinary circumstance that prevents such notification, the
36 provider or licensee shall provide notification as soon as possible,
37 but no later than eight hours after the occurrence of the injury and
38 shall provide a written, detailed explanation of the extraordinary
39 circumstance causing the delay to the commissioner and to the
40 guardian of the injured individual with a developmental disability
41 or, if there is no guardian of the individual, to a family member who
42 requests such notification, within 14 days of the incident² ¹].

43 c. Notifications pursuant to this section shall be in person] ;

44 (2) to the guardian of the injured individual with a
45 developmental disability, or, if there is no guardian of the

1 individual, to a family member who requests such notification
2 ²unless the individual has expressly prohibited the family member
3 from receiving such notification² ; and

4 (3) through in-person means¹ ²[,]² or by telephone ²[, and ¹also
5 through email or¹ other electronic means]² ¹[shall be used to
6 follow up the telephoned] . Electronic means may be used to
7 engage in follow-up communications after the initial¹ notification.

8 ¹c. Notwithstanding the provisions of this section to the
9 contrary, notification pursuant to this section shall not be required if
10 the guardian or family member expresses, in a written document
11 filed with the caretaker, that they do not want to receive notification
12 of injury pursuant to this section.¹

13
14 ¹[3.] ²[5.1] 4.² (New section) Within 48 hours ¹[of] after¹
15 receipt of a report of an incident involving ¹[abuse or neglect, as
16 those terms are defined in section 2 of P.L.2010, c.5 (C.30:6D-74),
17 or physical injury in a program as defined in section 2 of P.L.2010,
18 c.5 (C.30:6D-74), facility, community care residence, or living
19 arrangement licensed or funded by the Department of Human
20 Service for an individual with a developmental disability, the
21 Commissioner of Human Services] moderate physical injury, major
22 physical injury, or abuse, neglect, or exploitation in a State
23 developmental center ²[,]² or² community-based residential
24 program, ²[or day program,]² the commissioner¹ shall send an
25 employee of the department, who is not an employee of a State
26 developmental center ¹,¹ but ¹who¹ may be a case manager
27 employed ¹either¹ by the department ¹,¹ or ¹by¹ an agency under
28 contract with the department, ¹[as applicable,]¹ to the location of
29 the reported incident ¹, in order¹ to verify the level of severity of
30 the incident. ¹In investigating the incident, the department shall
31 comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-
32 76).¹

33
34 ¹[4.] ²[6.1] 5.² (New section) a. ¹[As a condition of] (1) A
35 person applying for¹ employment as a direct care staff member ¹[,
36 as defined in subsection g. of this section,]¹ at a program ¹[as
37 defined in section 2 of P.L.2010, c.5 (C.30:6D-74)]¹ , facility ¹, or
38 living arrangement licensed or funded by the department,¹ other
39 than a developmental center ¹[which] that¹ is ¹already¹ subject to
40 ¹[drug testing pursuant to] the provisions of¹ section 1 of P.L.2009,
41 c.220 (C.30:4-3.27), ¹[or living arrangement licensed or funded by
42 the Department of Human Services, an applicant for such
43 employment]¹ shall consent to and undergo drug testing for

1 controlled dangerous substances ¹ **[**. The drug testing shall be at the
2 expense of the applicant **]** as a condition of such employment¹.

3 ¹(2)¹ If a person applying for employment pursuant to this
4 subsection, on or after the effective date of P.L. , c. (C.)
5 (pending before the Legislature as this bill), tests positive for the
6 unlawful use of any controlled dangerous substance, or refuses to
7 submit to drug testing ¹as required by this subsection¹, the person
8 shall be removed from consideration for employment.

9 b. ¹**[**A person who is **]** (1) Direct care staff members¹ employed
10 ¹**[**as a direct care staff member pursuant to **]** at a program, facility,
11 or living arrangement identified in subsection a. of¹ this section ¹,¹
12 shall be subject ¹, during the course of employment,¹ to ¹random¹
13 drug testing for controlled dangerous substances ¹**[**which shall
14 occur randomly and at **]**, as provided by this subsection.

15 (2) At¹ least once a year ¹, the employing program, facility, or
16 living arrangement shall require one or more of the direct care staff
17 members employed thereby to undergo random drug testing for
18 controlled dangerous substances. The person who is responsible for
19 the overall operation of the program, facility, or living arrangement
20 shall have the discretion to determine the total number of direct care
21 staff members who will be required to undergo random drug testing,
22 each year, pursuant to this subsection¹.

23 c. ¹**[**A person who is employed as **]** In addition to the annual
24 performance of random drug testing, as provided by subsection b. of
25 this section, a program, facility, or living arrangement identified in
26 subsection a. of this section may additionally require¹ a direct care
27 staff member ¹**[**may be required **]** employed thereby¹ to undergo
28 drug testing for controlled dangerous substances ¹, at any time,¹ if
29 the direct care staff member's immediate supervisor has reasonable
30 suspicion to believe that the staff member is illegally using a
31 controlled dangerous substance, based on the staff member's visible
32 impairment or professional misconduct which relates adversely to
33 patient care or safety. The supervisor shall report this information
34 to his immediate supervisor in a form and manner specified by the
35 commissioner, and ¹,¹ if the ¹**[**supervisor **]** latter¹ concurs that there
36 is reasonable suspicion to believe that a direct care staff member is
37 illegally using a controlled dangerous substance, that supervisor
38 shall notify the person ¹who is¹ responsible for the overall operation
39 of the ¹**[**agency under contract with the department to provide
40 services to individuals with developmental disabilities **]** program,
41 facility, or living arrangement¹, and request ¹written¹ approval ¹**[**in
42 writing for ordering **]** therefrom to order¹ the direct care staff
43 member to undergo drug testing ¹**[**. The drug **]** pursuant to this
44 subsection. Drug¹ testing ¹under this subsection¹ shall not be
45 ordered without the written approval of the person ¹who is¹

1 responsible for the overall operation of the 1[agency] program,
2 facility, or living arrangement¹.

3 d. 1[A] If a¹ direct care staff member 1[who] is subjected to a
4 drug test under subsection b. or c. of this section, and¹ tests positive
5 for the unlawful use of any controlled dangerous substance ¹, the
6 direct care staff member¹ may be referred for treatment services or
7 terminated from employment. A direct care staff member who
8 refuses to submit to drug testing ¹, as required by subsection b. or c.
9 of this section,¹ shall be terminated from employment.

10 e. 1[The] Any¹ drug testing 1[required] performed¹ pursuant
11 to 1[subsections b. and c. of]¹ this section shall be 1done¹ at the
12 expense of 1[the agency under contract with]¹ the department.

13 f. 1[The agency under contract with the department] Any
14 program, facility, or living arrangement identified in subsection a.
15 of this section, which employs a direct care staff member,¹ shall
16 notify 1[all direct care] the¹ staff 1[members] member¹ of the
17 provisions of this section.

18 ¹[g. As used in this section, "direct care staff member" means a
19 person 18 years of age or older who is employed by a public or
20 private agency under contract with the department to provide
21 services to individuals with developmental disabilities receiving
22 services from the department and includes those employed persons
23 who may come into direct contact with individuals with
24 developmental disabilities.]¹

25

26 ²[17.] 6.2 (New section) a. Each State developmental center
27 shall biannually schedule a meeting with parents and guardians of
28 individuals with developmental disabilities residing in the
29 developmental center, in order to provide an opportunity for parents
30 and guardians to share experiences about the individuals.

31 b. The provider of a community-based residential program
32 shall request contact information from each parent or guardian of an
33 individual with a developmental disability who is residing in the
34 residential program, and shall advise the parent or guardian that, if
35 the parent or guardian agrees, the provider will exchange contact
36 information with other parents and guardians of individuals with
37 developmental disabilities residing in the residential program, in
38 order to provide an opportunity for parents and guardians to share
39 experiences about the individuals.

40 c. The provider of a day program shall request contact
41 information from each parent or guardian of an individual with a
42 developmental disability who is participating in the day program,
43 and shall advise the parent or guardian that, if the parent or
44 guardian agrees, the provider will exchange contact information
45 with other parents and guardians of individuals with developmental

1 disabilities who are participating in the same program, in order to
2 provide an opportunity for parents and guardians to share
3 experiences about the individuals.¹

4
5 ¹[5.] ²[8.1] 7.² Section 4 of P.L.2003, c.191 (C.30:6D-5.4) is
6 amended to read as follows:

7 4. a. ¹[A] Any¹ member of the staff at a facility for persons
8 with developmental disabilities or ¹[a facility]¹ for persons with
9 traumatic brain injury ¹[or a] , and any¹ member of the staff at a
10 public or private agency ¹,¹ who violates the provisions of section 3
11 of **[this act]** P.L.2003, c.191 (C.30:6D-5.3) shall be liable to a civil
12 penalty of \$5,000 for the first offense, \$10,000 for the second
13 offense, and \$25,000 for the third and each subsequent offense, to
14 be sued for and collected in a summary proceeding by the
15 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
16 P.L.1999, c.274 (C.2A:58-10 et seq.).

17 b. A penalty collected pursuant to this section shall be
18 dedicated to providing funding for training caregivers, as defined in
19 section 2 of P.L.2010, c.5 (C.30:6D-74), and for ¹site¹ visits
20 conducted pursuant to P.L. , c. (C.) (pending before the
21 Legislature as this bill).

22 (cf: P.L.2003, c.191, s.4)

23

24 ¹[6.] ²[9.1] 8.² Section 2 of P.L.2010, c.5 (C.30:6D-74) is
25 amended to read as follows:

26 2. As used in **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.):

27 "Abuse" means wrongfully inflicting or allowing to be inflicted
28 physical abuse, sexual abuse, or verbal or psychological abuse or
29 mistreatment by a caregiver upon an individual with a
30 developmental disability.

31 ²["Authorized family member" means a relative of ¹[the] an¹
32 individual with a developmental disability ¹who is¹ authorized by
33 the individual's guardian, or by the individual if the individual is his
34 own guardian, to receive information pursuant to P.L.2010, c.5
35 (C.30:6D-73 et seq.).]²

36 "Caregiver" means a person who receives State funding, directly
37 or indirectly, in whole or in part, to provide services or supports, or
38 both, to an individual with a developmental disability; except that
39 "caregiver" shall not include an immediate family member of a
40 person with a developmental disability.

41 "Central registry" means the Central Registry of Offenders
42 Against Individuals with Developmental Disabilities established
43 pursuant to **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.).

44 "Commissioner" means the Commissioner of Human Services.

45 "Department" means the Department of Human Services.

1 "Developmental disability" means ¹**[developmental disability]**
2 the same¹ as ¹that term is¹ defined ¹**[in] by¹** section 3 of P.L.1977,
3 c.82 (C.30:6D-3).

4 "Exploitation" means the act or process of a caregiver using an
5 individual with a developmental disability or his resources for
6 another person's profit or advantage.

7 "Intimate parts" means the following body parts of a person:
8 sexual organs, genital area, anal area, inner thigh, groin, buttock, or
9 breast.

10 "Lewdness" means the exposing of the genitals for the purpose
11 of arousing or gratifying the sexual desire of a caregiver or an
12 individual with a developmental disability, or any flagrantly lewd
13 and offensive act which the caregiver knows or reasonably expects
14 is likely to be observed by an individual with a developmental
15 disability.

16 "Neglect" shall consist of any of the following acts by a
17 caregiver on an individual with a developmental disability: willfully
18 failing to provide proper and sufficient food, clothing, maintenance,
19 medical care, or a clean and proper home; or ¹**[failure] failing¹**
20 do or permit to be done any act necessary for the well-being of an
21 individual with a developmental disability.

22 "Physical abuse" means a physical act directed at an individual
23 with a developmental disability by a caregiver of a type that causes
24 one or more of the following: pain, injury, anguish, or suffering.
25 Such acts include, but are not limited to, the individual with a
26 developmental disability being kicked, pinched, bitten, punched,
27 slapped, hit, pushed, dragged, or struck with a thrown or held
28 object.

29 "Program" means any program ¹that is¹ licensed or funded by the
30 department ¹**[that provides]** for the purpose of providing¹ services
31 to individuals with developmental disabilities ¹**[and]** . "Program"¹
32 includes ¹, but is not limited to,¹ a day program ¹or a community-
33 based residential program, as those terms are defined by section
34 ²**[2] 1²** of P.L. , c. (C.) (pending before the Legislature as
35 this bill)¹.

36 "Sexual abuse" means an act or attempted act of lewdness, sexual
37 contact, or sexual penetration between a caregiver and an individual
38 with a developmental disability. Any form of sexual contact or
39 activity between a caregiver and an individual with a developmental
40 disability, absent marriage, domestic partnership, or civil union, is
41 sexual abuse, regardless of whether the individual with a
42 developmental disability gives consent or the caregiver is on or off
43 duty.

44 "Sexual contact" means an intentional touching by a caregiver or
45 individual with a developmental disability, either directly or
46 through clothing, of the intimate parts of the individual with a

1 developmental disability or the caregiver for the purpose of
2 sexually arousing or sexually gratifying the caregiver. Sexual
3 contact of the caregiver with himself must be in view of the
4 individual with a developmental disability whom the caregiver
5 knows to be present.

6 "Sexual penetration" means vaginal intercourse, cunnilingus,
7 fellatio, or anal intercourse between a caregiver and an individual
8 with a developmental disability or insertion of the hand, finger, or
9 object into the anus or vagina, either by the caregiver or upon the
10 caregiver's instruction.

11 "Verbal or psychological abuse or mistreatment" means any
12 verbal or non-verbal act or omission by a caregiver that inflicts one
13 or more of the following: emotional harm; mental distress; or
14 invocation of fear, humiliation, intimidation, or degradation to an
15 individual with a developmental disability. Examples include, but
16 are not limited to: bullying; ignoring need; verbal assault; use of
17 racial or ethnic slurs; or intimidating gestures, such as shaking a fist
18 at an individual with a developmental disability.

19 (cf: P.L.2010, c.5, s.2)

20

21 ¹~~7.~~ ²~~10.1~~ ^{9.2} Section 3 of P.L.2010, c.5 (C.30:6D-75) is
22 amended to read as follows:

23 3. a. (1) A case manager or case manager's supervisor in the
24 department, a person employed or volunteering in a program,
25 facility, community care residence, or living arrangement licensed
26 or funded by the department, a person conducting ¹[an
27 unannounced] a¹ site visit pursuant to section ¹~~1~~ ²~~3~~ ² of
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 or a person providing community-based services with indirect State
30 funding to a person with a developmental disability, as applicable,
31 having reasonable cause to believe that an individual with a
32 developmental disability has been subjected to abuse, neglect, or
33 exploitation by a caregiver ^{1,1} shall report the same immediately to
34 the department by telephone or otherwise ¹[, and the department
35 shall notify, as] .

36 (2) ²[As¹ soon as possible ^{1,1} but no later than 60 minutes after
37 the occurrence of the abuse, neglect, or exploitation, the
38 department shall provide notice of the incident to the¹ guardian or
39 authorized family member of the individual with a developmental
40 disability who was the subject of the abuse, neglect, or exploitation.

41 ¹~~[(2) Such] (3)]² A¹ report ¹made pursuant to paragraph (1) of
42 this subsection¹ , where possible, shall contain ¹: (a)¹ the name and
43 address of the individual with a developmental disability ¹[and] ,
44 as well as the name and address of¹ the caregiver responsible for the
45 care, custody, or control of the individual with a developmental
46 disability, and the guardian, or other person having custody and~~

1 control of the individual ^{1,1} and ¹ **[,]** (b) ¹ if known, the condition of
2 the individual with a developmental disability, the nature and
3 possible extent of the individual's injuries, maltreatment, abuse,
4 neglect ^{1,1} or exploitation, including any evidence of previous
5 injuries, maltreatment, abuse, neglect, or exploitation, and any other
6 information that the person believes may be helpful with respect to
7 the injuries, maltreatment, abuse, neglect, or exploitation of the
8 individual with a developmental disability and the identity of the
9 alleged offender.

10 b. Within the department, the commissioner shall:

11 (1) maintain a unit to receive and prioritize ¹ **[such]** ¹ reports **[,]**
12 ¹that are filed pursuant to this section¹ ;

13 (2) provide for verification of the unit's prioritization of the
14 reports by sending an employee or case manager to the appropriate
15 location within 48 hours to verify the level of severity of the report,
16 ¹ **[pursuant to]** as provided by¹ section ¹ **[3]** ² **[5]** ⁴ of P.L. _____,

17 c. (C. _____) (pending before the Legislature as this bill);

18 (3) initiate appropriate responses through timely and appropriate
19 investigative activities **[,]**;

20 (4) alert appropriate staff **[,]**; and

21 (5) ensure that findings are reported in a uniform and timely
22 manner.

23 c. (1) A person employed or volunteering in a program,
24 facility, community care residence, or living arrangement licensed
25 or funded by the department, or a person providing community-
26 based services with indirect State funding to a person with a
27 developmental disability, as applicable, who fails to report an act of
28 abuse, neglect, or exploitation against an individual with a
29 developmental disability while having reasonable cause to believe
30 that such an act has been committed, is a disorderly person.

31 (2) A case manager or case manager's supervisor in the
32 department who fails to report an act of abuse, neglect, or
33 exploitation of an individual with a developmental disability while
34 having reasonable cause to believe that such an act has been
35 committed, shall be guilty of a **[disorderly person's offense]** crime
36 of the fourth degree, unless the abuse, neglect, or exploitation
37 results in the death of an individual with a developmental disability,
38 in which case the case manager or case manager's supervisor shall
39 be guilty of a crime of the **[fourth]** third degree.

40 d. In addition to any penalty imposed pursuant to this section, a
41 person convicted under this section shall be subject to a penalty in
42 the amount of \$350 for each day that the abuse, neglect, or
43 exploitation was not reported, payable to the Treasurer of the State
44 of New Jersey, which shall be used by the department to fund the
45 provision of food and care to individuals with developmental
46 disabilities residing in community care residences.

1 e. A case manager or case manager's supervisor ^{1,1} or a
2 caregiver suspected of abuse, neglect, or exploitation of an
3 individual with a developmental disability ^{1,1} who is charged with
4 failure to report an act of abuse, neglect, or exploitation of an
5 individual with a developmental disability while having reasonable
6 cause to believe that such an act has been committed, shall be
7 temporarily reassigned to duties that do not involve contact with
8 individuals with developmental disabilities or other vulnerable
9 populations ^{1,1} and shall be terminated from employment if
10 convicted.

11 In the case of a case manager or case manager's supervisor ^{1,1} or
12 ^{1of1} a caregiver suspected of abuse, neglect, or exploitation who is
13 employed by the department, the case manager **[or]**, supervisor, or
14 caregiver shall retain any available right of review by the Civil
15 Service Commission.

16 (cf: P.L.2012, c.69, s.9)

17

18 ^{1[8.]} ^{2[11.1]} ^{10.2} Section 4 of P.L.2010, c.5 (C.30:6D-76) is
19 amended to read as follows:

20 4. a. Upon receipt of a report pursuant to section 3 of **[this**
21 **act]** P.L.2010, c.5 (C.30:6D-75), the department shall designate an
22 entity, as established by the commissioner, that shall immediately
23 take such action as shall be necessary to ensure the safety of the
24 individual with a developmental disability and to that end may
25 request appropriate assistance from local and State law enforcement
26 officials or contact Adult Protective Services to provide assistance
27 in accordance with the provisions of P.L.1993, c.249 (C.52:27D-
28 406 et seq.). The guardian of the individual with a developmental
29 disability ^{1[also]} ¹ shall ^{1also} ¹ be authorized to request appropriate
30 assistance from local and State law enforcement officials.
31 ² [Assistance from local and State law enforcement officials
32 pursuant to this subsection shall be provided by such an official
33 who has undergone education or training in working with
34 individuals with developmental disabilities.]²

35 b. ¹⁽¹⁾ ¹ The commissioner shall adopt rules and regulations
36 necessary to provide for an investigation of a reported incident and
37 subsequent substantiation or non-substantiation of an allegation of
38 abuse, neglect, or exploitation of an individual with a
39 developmental disability by a caregiver, **[by]** which shall include:

40 ^{1[(1)]} ^{1(a)} ¹ maintaining **[a Special Response Unit]** an Office of
41 Investigations to investigate serious unusual incidents, as defined
42 by applicable rules and regulations, in facilities or **[community]**
43 programs licensed, contracted, or regulated by the department and
44 to investigate incidents that occur in State developmental centers;

45 ¹ and

1 (2) (b)¹ providing ¹[an opportunity for a] the ¹guardian ²[or
 2 authorized family member]² ¹of the individual with prior notice of
 3 the commencement of an investigation under this section, and
 4 providing an opportunity for the guardian ²[or authorized family
 5 member]², ¹as appropriate, ¹to submit information to facilitate an
 6 investigation, ²[to ¹represent the individual, ¹[and] to ¹be
 7 informed of the progress of the investigation]² ¹[which shall
 8 include a requirement that the department provide a] ²[, to be
 9 present while the individual is being interviewed, and to terminate
 10 the interview at any time, unless it would impede the investigation]
 11 except that if there is no guardian, a family member of the
 12 individual may submit information, unless the individual has
 13 expressly prohibited the family member from doing so²; and

14 (c) providing ²[the ¹guardian or authorized family member ¹of
 15 the individual ¹with a written progress report ¹[of] that shows ¹the
 16 status of ¹[an] the ¹investigation, ¹[including] and includes ¹any
 17 medical records or reports about the individual, within seven
 18 calendar days of the incident ¹, ¹and weekly thereafter.

19 ¹(2) Before commencing an investigation in response to a report
 20 of alleged abuse, neglect, or exploitation, the department shall first
 21 notify the guardian or authorized family member of the alleged
 22 victim, either in person or by telephone, that an investigation will
 23 be undertaken pursuant to this section. The department shall also
 24 notify the guardian or authorized family member before any
 25 investigative interview of the alleged victim is commenced. The
 26 guardian or authorized family member, upon request, shall be
 27 permitted to attend or observe the investigative interview of the
 28 person the guardian or family member represents, unless the
 29 attendance or observation would impede the investigation. If the
 30 guardian or authorized family member expressly requests, at any
 31 time, that the department terminate an interview that has been
 32 commenced under this section, the department, and its Office of
 33 Investigations, shall immediately comply with the request, unless
 34 it] that a guardian of an individual with a developmental disability,
 35 upon request, may be permitted to attend the investigative interview
 36 of the individual the guardian represents and to terminate the
 37 interview of the individual the guardian represents, unless the
 38 attendance or termination² would impede the investigation.

39 ²[(3)¹] (2)² During its investigation of an allegation of abuse,
 40 neglect, or exploitation of an individual with a developmental
 41 disability by a caregiver, the [Special Response Unit] Office of
 42 Investigations shall make a good faith effort to notify the caregiver
 43 of the possibility of the caregiver's inclusion on the registry, and
 44 give the caregiver an opportunity to respond to the department
 45 concerning the allegation. ¹[A guardian of an individual with a

1 developmental disability, upon request, may be permitted to attend
2 or observe the investigation, unless the attendance or observation
3 would impede the investigation.]¹

4 c. The **【Special Response Unit】** Office of Investigations, the
5 department, or other investigating entity shall forward to the
6 commissioner, or the commissioner's designee, a substantiated
7 incident of abuse, neglect, or exploitation of an individual with a
8 developmental disability for inclusion of an offending caregiver on
9 the central registry. The **【Special Response Unit】** Office of
10 Investigations, the department, or other investigating entity shall
11 also forward to the commissioner, or the commissioner's designee,
12 all unsubstantiated incidents of abuse, neglect, or exploitation of an
13 individual with a developmental disability. As soon as possible,
14 and no later than ¹**【14】** ²**【seven¹】** 14² days after receipt of the
15 incident of abuse, neglect, or exploitation, the commissioner or the
16 commissioner's designee shall review the incident. The offending
17 caregiver of a substantiated incident shall be included on the central
18 registry as expeditiously as possible. The **【Special Response Unit】**
19 Office of Investigations shall retain a record of all unsubstantiated
20 incidents.

21 d. Upon the initiation of an investigation, the department shall:
22 (1) ensure that any communication concerning the alleged abuse,
23 neglect, or exploitation of an individual with a developmental
24 disability between a caregiver, case manager of the caregiver, the
25 case manager's supervisor, or a person at the appropriate Regional
26 Office of the Division of Developmental Disabilities is identified,
27 safeguarded from loss or destruction, and maintained in a secure
28 location; and (2) contact the Office of the Attorney General, which
29 shall determine whether to participate in the investigation.

30 e. ¹**【The】¹ 【Special Response Unit】** ¹(1) No later than ²**【14】**
31 30² days after an investigation under this section is concluded, the¹
32 Office of Investigations shall issue a written report of the
33 investigation that includes the conclusions of the unit, the rationale
34 for the ¹**【conclusion】** conclusions¹, and a detailed summary of any
35 communication secured pursuant to subsection d. of this section.
36 The report shall also include an assessment of the role of any case
37 manager of a caregiver or the case manager's supervisor, if
38 applicable, in the allegation of abuse, neglect, or exploitation, and a
39 recommendation about whether any civil or criminal action should
40 be brought against the case manager or supervisor. The report shall
41 be made part of the record for review in any civil or criminal
42 proceeding that may ensue.

43 ¹(2)¹ A written summary of the **【conclusions of the】**
44 investigation, ¹**【including any medical records or reports about the**
45 individual with a developmental disability】 as provided for in
46 paragraph (3) of this subsection¹ , shall be provided to the guardian

1 ²[or authorized family member]² of the individual with a
2 developmental disability who is the subject of the alleged abuse,
3 neglect, or exploitation ¹; however, the actual records and reports of
4 an investigation shall also be provided to a guardian or ²[authorized
5 family member] other person who is responsible for the welfare of
6 the individual with a developmental disability² if the information is
7 needed in connection with the provision of care, treatment,
8 assessment, evaluation, or supervision to the individual; and the
9 provision of information is in the best interests of the individual
10 with a developmental disability, as determined by the Division of
11 Developmental Disabilities ²[, or by the individual's guardian or
12 authorized family member]².

13 (3) The written summary of an investigation of an alleged
14 incident of abuse, neglect, or exploitation shall include, but need
15 not be limited to:

16 (a) the name of the individual with a developmental disability
17 who is the subject of the alleged abuse, neglect, or exploitation;

18 (b) the date of the incident, or the date the incident was reported
19 if the incident date is unknown;

20 (c) whether the incident is an allegation of abuse, neglect, or
21 exploitation;

22 (d) the incident number;

23 (e) a summary of the allegation of abuse, neglect, or
24 exploitation;

25 (f) a finding that the incident is substantiated or
26 unsubstantiated;

27 (g) the rationale for the finding and, if the incident is
28 substantiated, a description of the action or inaction that
29 precipitated the finding;

30 (h) if known at the time of issuing the summary, whether or not
31 criminal charges against the alleged offending caregiver are
32 pending; and

33 (i) whether remedial action was taken¹.

34 ²(4) If there is no guardian of the individual with a
35 developmental disability who is the subject of the alleged abuse,
36 neglect, or exploitation, the written summary described in
37 paragraph (3) of this subsection shall be provided to a family
38 member of the individual who requests such summary, unless the
39 individual has expressly prohibited the family member from
40 receiving such summary.²

41 f. A licensed provider in another state shall be permitted access
42 to the central registry.

43 (cf: P.L.2012, c.69, s.10)

44

45 ¹[9.] ²[12.1] 11.² Section 5 of P.L.2010, c.5 (C.30:6D-77) is
46 amended to read as follows:

1 5. a. There is established a Central Registry of Offenders
2 Against Individuals with Developmental Disabilities in the
3 department.

4 b. The commissioner shall adopt rules and regulations that
5 define the procedures and standards for inclusion of an offending
6 caregiver on the central registry, and for notification of such
7 inclusion to the caregiver and to the guardian ²[or authorized
8 family member]² of the individual with a developmental disability
9 who was the subject of the abuse, neglect, or exploitation that led to
10 the caregiver's inclusion on the central registry. The commissioner
11 or the commissioner's designee shall designate staff to notify the
12 guardian ²[or authorized family member]² of the individual of any
13 action taken by the department to remediate a condition that may
14 have contributed to the occurrence of the abuse, neglect, or
15 exploitation of the individual. ²If the individual with a
16 developmental disability has no guardian, notification pursuant to
17 this subsection shall be given to a family member who requests
18 such notification, unless the individual has expressly prohibited the
19 family member from receiving such notification.²

20 (1) For inclusion on the central registry in the case of a
21 substantiated incident of abuse, the caregiver shall have acted with
22 intent, recklessness, or careless disregard to cause or potentially
23 cause injury to an individual with a developmental disability.

24 (2) For inclusion on the central registry in the case of a
25 substantiated incident of neglect, the caregiver shall have acted with
26 gross negligence, recklessness, or in a pattern of behavior that
27 causes or potentially causes harm to an individual with a
28 developmental disability.

29 (3) In the case of a substantiated incident of exploitation, the
30 commissioner shall establish a dollar amount for inclusion on the
31 central registry.

32 c. The commissioner also shall adopt rules and regulations:

33 (1) necessary to provide for an appeals process, through the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.), of the commissioner's determination to include an alleged
36 offending caregiver's name on the central registry. The
37 commissioner's determination shall be a final agency decision
38 subject to review by the Appellate Division of the Superior Court;

39 (2) concerning the dissemination of information in the central
40 registry;

41 (3) that will prohibit persons included on the central registry
42 from employment in facilities or programs of the Division of
43 Developmental Disabilities in the department and those facilities or
44 programs licensed, contracted, or regulated by the department, or
45 from providing community-based services with indirect State

1 funding to ¹**[persons]** individuals¹ with developmental disabilities;
2 and

3 (4) necessary to provide for the removal of a person's name
4 from the central registry. A person may apply for removal of his
5 name to the commissioner after a period of five years of being
6 placed on the central registry. The person shall affirmatively
7 demonstrate to the commissioner clear and convincing evidence of
8 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
9 1 et seq.) as a guide.

10 d. The commissioner may adopt rules and regulations that will
11 allow bona fide employers serving vulnerable populations to inquire
12 of the department if potential or current employees are included on
13 the central registry, consistent with federal and State privacy and
14 confidentiality laws.

15 e. No information received in the central registry shall be
16 considered as a public or government record within the meaning of
17 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
18 al.).

19 (cf: P.L.2010, c.5, s.5)

20

21 ¹**[10.]** ²**[13.1]** 12.² Section 6 of P.L.2010, c.5 (C.30:6D-78) is
22 amended to read as follows:

23 6. ¹a.¹ All records of a report made pursuant to **[this act]**
24 section 3 of P.L.2010, c.5 (C.30:6D-75), all information obtained by
25 the department in investigating such reports, and all reports of
26 findings forwarded to the central registry pursuant to **[this act]**
27 P.L.2010, c.5 (C.30:6D-73 et seq.) shall be kept confidential and
28 may be disclosed only ¹:

29 ⁽¹⁾¹ insofar as information is shared with a guardian in
30 connection with a guardian's attendance ¹at ²**[,]** ¹or observation of
31 ¹¹² an investigative interview pursuant to subsection b. of section
32 4 of P.L.2010, c.5 (C.30:6D-76) ¹; ¹or

33 ⁽²⁾¹ under circumstances expressly authorized by ¹paragraph
34 (2) of subsection e. of section 4 of P.L.2010, c.5 (C.30:6D-76), or
35 by¹ rules and regulations promulgated by the commissioner.

36 ¹b.¹ The department shall only disclose information that is
37 relevant to the purpose for which the information is required ¹**[or,**
38 pursuant to subsection b. of section 4 of P.L.2010, c.5 (C.30:6D-
39 76), is shared in connection with a guardian's attendance or
40 observation of an investigative interview or in connection with a
41 progress report]¹; except that the department shall not disclose
42 information which would likely endanger the life, safety, or
43 physical or emotional well-being of an individual with a
44 developmental disability or the life or safety of any other person, or
45 which may compromise the integrity of a department investigation,
46 civil or criminal investigation, or judicial proceeding. If the

1 department denies access to specific information on this basis, the
2 requesting entity may seek disclosure through the Superior Court.
3 Nothing in **【this act】** P.L.2010, c.5 (C.30:6D-73 et seq.) shall be
4 construed to permit the disclosure of any information deemed
5 confidential by federal or State law.
6 (cf: P.L.2010, c.5, s.6)

7
8 ²13. The Department of Human Services shall post a copy of
9 P.L. , c. (C.) (pending before the Legislature as this bill) on
10 its website.²

11
12 ¹**【11.】** 14.¹ The Commissioner of Human Services, pursuant to
13 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.), shall adopt rules and regulations necessary to effectuate the
15 purposes of this act.

16
17 ¹**【12.】** 15.¹ This act shall take effect on the first day of the
18 seventh month next following the date of enactment, but the
19 Commissioner of Human Services may take such anticipatory
20 administrative action in advance thereof as shall be necessary for
21 the implementation of this act.

22
23
24 _____
25
26 Provides protections for individuals with developmental
27 disabilities; upgrades crimes committed against such individuals;
28 and improves transparency and accountability in investigations of
29 abuse, neglect, and exploitation of such individuals; designated as
30 "Stephen Komninos' Law."

ASSEMBLY, No. 2503

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Co-Sponsored by:

Assemblymen Schaer, Holley and Eustace

SYNOPSIS

Provides protections for individuals with developmental disabilities through accountability and transparency; designated as “Stephen Komninos’ Law.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/16/2016)

A2503 VAINIERI HUTTLE, MOSQUERA

2

1 AN ACT concerning individuals with developmental disabilities,
2 designated as Stephen Komninos' Law, supplementing Title 30
3 of the Revised Statutes, and amending P.L.2010, c.5.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) The Commissioner of Human Services, or the
9 commissioner's designee, shall designate employees of the
10 Department of Human Services, who are not employees of a State
11 developmental center but may be case managers employed by the
12 department or an agency under contract with the department, as
13 applicable, to conduct at least three unannounced site visits
14 annually to randomly check whether the individuals with
15 developmental disabilities who are receiving services from a
16 program, facility, or living arrangement licensed or funded by the
17 department, other than a community care residence which is subject
18 to visits pursuant to section 7 of P.L.2012, c.69 (C.30:6D-5.13), are
19 at risk of, or are being subjected to, abuse, neglect, or exploitation
20 by a caregiver, and report the same pursuant to section 3 of
21 P.L.2010, c.5 (C.30:6D-75).

22

23 2. (New section) a. The Commissioner of Human Services, or
24 the commissioner's designee, shall designate staff to notify the
25 guardian or authorized family member of an individual with a
26 developmental disability receiving services from a program,
27 facility, community care residence, or living arrangement licensed
28 or funded by the department of any physical injury to the individual
29 with a developmental disability, as soon as possible, but no later
30 than 24 hours after the occurrence of the injury.

31 b. A provider or licensee, as applicable, of a program, facility,
32 community care residence, or living arrangement licensed or funded
33 by the department shall notify the guardian or authorized family
34 member of an individual with a developmental disability receiving
35 services from the provider or licensee of any physical injury to the
36 individual with a developmental disability as soon as possible, but
37 not more than two hours after the occurrence of the injury, unless
38 there is an extraordinary circumstance which prevents such
39 notification in which case the provider or licensee shall notify the
40 guardian or authorized family member as soon as possible, but not
41 more than eight hours after the occurrence of the injury.

42 c. Notifications pursuant to this section shall be in person, or
43 by telephone, and other electronic means shall be used to follow up
44 the telephoned notification.

45 d. As used in this section "authorized family member" means a

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 relative of the individual with a developmental disability authorized
2 by the individual's guardian, or by the individual if the individual is
3 his own guardian, to receive information pursuant to this section.

4
5 3. (New section) Within 48 hours of receipt of a report of an
6 incident involving physical injury, or abuse or neglect as those
7 terms are defined in section 2 of P.L.2010, c.5 (C.30:6D-74), in a
8 program, facility, community care residence, or living arrangement
9 licensed or funded by the Department of Human Service for an
10 individual with a developmental disability, the Commissioner of
11 Human Services shall send an employee of the department, who is
12 not an employee of a State developmental center but may be a case
13 manager employed by the department or an agency under contract
14 with the department, as applicable, to the location of the reported
15 incident to verify the level of severity of the incident.

16
17 4. Section 2 of P.L.2010, c.5 (C.30:6D-74) is amended to read
18 as follows:

19 2. As used in this act:

20 "Abuse" means wrongfully inflicting or allowing to be inflicted
21 physical abuse, sexual abuse, or verbal or psychological abuse or
22 mistreatment by a caregiver upon an individual with a
23 developmental disability.

24 "Authorized family member" means a relative of the individual
25 with a developmental disability authorized by the individual's
26 guardian, or by the individual if the individual is his own guardian,
27 to receive information pursuant to P.L.2010, c.5 (C.30:6D-73 et
28 seq.).

29 "Caregiver" means a person who receives State funding, directly
30 or indirectly, in whole or in part, to provide services or supports, or
31 both, to an individual with a developmental disability; except that
32 "caregiver" shall not include an immediate family member of a
33 person with a developmental disability.

34 "Central registry" means the Central Registry of Offenders
35 Against Individuals with Developmental Disabilities established
36 pursuant to **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.).

37 "Commissioner" means the Commissioner of Human Services.

38 "Department" means the Department of Human Services.

39 "Developmental disability" means developmental disability as
40 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

41 "Exploitation" means the act or process of a caregiver using an
42 individual with a developmental disability or his resources for
43 another person's profit or advantage.

44 "Intimate parts" means the following body parts of a person:
45 sexual organs, genital area, anal area, inner thigh, groin, buttock, or
46 breast.

47 "Lewdness" means the exposing of the genitals for the purpose
48 of arousing or gratifying the sexual desire of a caregiver or an

1 individual with a developmental disability, or any flagrantly lewd
2 and offensive act which the caregiver knows or reasonably expects
3 is likely to be observed by an individual with a developmental
4 disability.

5 "Neglect" shall consist of any of the following acts by a
6 caregiver on an individual with a developmental disability: willfully
7 failing to provide proper and sufficient food, clothing, maintenance,
8 medical care, or a clean and proper home; or failure to do or permit
9 to be done any act necessary for the well-being of an individual
10 with a developmental disability.

11 "Physical abuse" means a physical act directed at an individual
12 with a developmental disability by a caregiver of a type that causes
13 one or more of the following: pain, injury, anguish, or suffering.
14 Such acts include, but are not limited to, the individual with a
15 developmental disability being kicked, pinched, bitten, punched,
16 slapped, hit, pushed, dragged, or struck with a thrown or held
17 object.

18 "Sexual abuse" means an act or attempted act of lewdness, sexual
19 contact, or sexual penetration between a caregiver and an individual
20 with a developmental disability. Any form of sexual contact or
21 activity between a caregiver and an individual with a developmental
22 disability, absent marriage, domestic partnership, or civil union, is
23 sexual abuse, regardless of whether the individual with a
24 developmental disability gives consent or the caregiver is on or off
25 duty.

26 "Sexual contact" means an intentional touching by a caregiver or
27 individual with a developmental disability, either directly or
28 through clothing, of the intimate parts of the individual with a
29 developmental disability or the caregiver for the purpose of
30 sexually arousing or sexually gratifying the caregiver. Sexual
31 contact of the caregiver with himself must be in view of the
32 individual with a developmental disability whom the caregiver
33 knows to be present.

34 "Sexual penetration" means vaginal intercourse, cunnilingus,
35 fellatio, or anal intercourse between a caregiver and an individual
36 with a developmental disability or insertion of the hand, finger, or
37 object into the anus or vagina, either by the caregiver or upon the
38 caregiver's instruction.

39 "Verbal or psychological abuse or mistreatment" means any
40 verbal or non-verbal act or omission by a caregiver that inflicts one
41 or more of the following: emotional harm; mental distress; or
42 invocation of fear, humiliation, intimidation, or degradation to an
43 individual with a developmental disability. Examples include, but
44 are not limited to: bullying; ignoring need; verbal assault; use of
45 racial or ethnic slurs; or intimidating gestures, such as shaking a fist
46 at an individual with a developmental disability.

47 (cf: P.L.2010, c.5, s.2)

1 5. Section 3 of P.L.2010, c.5 (C.30:6D-75) is amended to read
2 as follows:

3 3. a. (1) A case manager or case manager's supervisor in the
4 department, a person employed or volunteering in a program,
5 facility, community care residence, or living arrangement licensed
6 or funded by the department, a person conducting an unannounced
7 site visit pursuant to section 1 of P.L. , c. (C.) (pending
8 before the Legislature as this bill), or a person providing
9 community-based services with indirect State funding to a person
10 with a developmental disability, as applicable, having reasonable
11 cause to believe that an individual with a developmental disability
12 has been subjected to abuse, neglect, or exploitation by a caregiver
13 shall report the same immediately to the department by telephone or
14 otherwise, and if appropriate the department shall notify, as soon as
15 possible but no later than 24 hours after the occurrence of the abuse,
16 neglect, or exploitation, the guardian or authorized family member
17 of the individual with a developmental disability who was the
18 subject of the abuse, neglect, or exploitation.

19 (2) Such report, where possible, shall contain the name and
20 address of the individual with a developmental disability and the
21 caregiver responsible for the care, custody, or control of the
22 individual with a developmental disability, and the guardian, or
23 other person having custody and control of the individual and, if
24 known, the condition of the individual with a developmental
25 disability, the nature and possible extent of the individual's injuries,
26 maltreatment, abuse, neglect or exploitation, including any evidence
27 of previous injuries, maltreatment, abuse, neglect, or exploitation,
28 and any other information that the person believes may be helpful
29 with respect to the injuries, maltreatment, abuse, neglect, or
30 exploitation of the individual with a developmental disability and
31 the identity of the alleged offender.

32 b. Within the department, the commissioner shall:

33 (1) maintain a unit to receive and prioritize such reports [,];

34 (2) provide for verification of the unit's prioritization of the
35 reports by sending an employee or case manager to the appropriate
36 location within 48 hours to verify the level of severity of the report,
37 pursuant to section 3 of P.L. , c. (C.) (pending before the
38 Legislature as this bill);

39 (3) initiate appropriate responses through timely and appropriate
40 investigative activities [,];

41 (4) alert appropriate staff [,]; and

42 (5) ensure that findings are reported in a uniform and timely
43 manner.

44 c. (1) A person employed or volunteering in a program,
45 facility, community care residence, or living arrangement licensed
46 or funded by the department, or a person providing community-
47 based services with indirect State funding to a person with a
48 developmental disability, as applicable, who fails to report an act of

1 abuse, neglect, or exploitation against an individual with a
2 developmental disability while having reasonable cause to believe
3 that such an act has been committed, is a disorderly person.

4 (2) A case manager or case manager's supervisor in the
5 department who fails to report an act of abuse, neglect, or
6 exploitation of an individual with a developmental disability while
7 having reasonable cause to believe that such an act has been
8 committed, shall be guilty of a **【disorderly person's offense】** crime
9 of the fourth degree, unless the abuse, neglect, or exploitation
10 results in the death of an individual with a developmental disability,
11 in which case the case manager or case manager's supervisor shall
12 be guilty of a crime of the **【fourth】** third degree.

13 d. In addition to any penalty imposed pursuant to this section, a
14 person convicted under this section shall be subject to a penalty in
15 the amount of \$350 for each day that the abuse, neglect, or
16 exploitation was not reported, payable to the Treasurer of the State
17 of New Jersey, which shall be used by the department to fund the
18 provision of food and care to individuals with developmental
19 disabilities residing in community care residences.

20 e. A case manager or case manager's supervisor who is charged
21 with failure to report an act of abuse, neglect, or exploitation of an
22 individual with a developmental disability while having reasonable
23 cause to believe that such an act has been committed, shall be
24 temporarily reassigned to duties that do not involve contact with
25 individuals with developmental disabilities or other vulnerable
26 populations and shall be terminated from employment if convicted.

27 In the case of a case manager or case manager's supervisor who
28 is employed by the department, the case manager or supervisor shall
29 retain any available right of review by the Civil Service
30 Commission.

31 (cf: P.L.2012, c.69, s.9)

32

33 6. Section 4 of P.L.2010, c.5 (C.30:6D-76) is amended to read
34 as follows:

35 4. a. Upon receipt of a report pursuant to section 3 of **【this**
36 **act】** P.L.2010, c.5 (C.30:6D-75), the department shall designate an
37 entity, as established by the commissioner, that shall immediately
38 take such action as shall be necessary to ensure the safety of the
39 individual with a developmental disability and to that end may
40 request appropriate assistance from local and State law enforcement
41 officials or contact Adult Protective Services to provide assistance
42 in accordance with the provisions of P.L.1993, c.249 (C.52:27D-
43 406 et seq.). The guardian of the individual with a developmental
44 disability also shall be authorized to request appropriate assistance
45 from local and State law enforcement officials.

46 b. The commissioner shall adopt rules and regulations
47 necessary to provide for an investigation of a reported incident and
48 subsequent substantiation or non-substantiation of an allegation of

1 abuse, neglect, or exploitation of an individual with a
2 developmental disability by a caregiver, **[by]** which shall include:
3 (1) maintaining a Special Response Unit to investigate serious
4 unusual incidents, as defined by applicable rules and regulations, in
5 facilities or community programs licensed, contracted, or regulated
6 by the department and a unit to investigate incidents that occur in
7 State developmental centers; and (2) providing an opportunity for a
8 guardian or authorized family member to submit information to
9 facilitate an investigation and to represent the individual and be
10 informed of the progress of the investigation. During its
11 investigation of an allegation of abuse, neglect, or exploitation of an
12 individual with a developmental disability by a caregiver, the
13 Special Response Unit or the unit designated to investigate
14 incidents that occur in a State developmental center, as applicable,
15 shall make a good faith effort to notify the caregiver of the
16 possibility of the caregiver's inclusion on the registry, and give the
17 caregiver an opportunity to respond to the department concerning
18 the allegation. A guardian of an individual with a developmental
19 disability, upon request, may be permitted to attend or observe the
20 investigation, unless the attendance or observation would impede
21 the investigation.

22 c. The Special Response Unit, the department, or other
23 investigating entity shall forward to the commissioner, or the
24 commissioner's designee, a substantiated incident of abuse, neglect,
25 or exploitation of an individual with a developmental disability for
26 inclusion of an offending caregiver on the central registry. The
27 Special Response Unit, the department, or other investigating entity
28 shall also forward to the commissioner, or the commissioner's
29 designee, all unsubstantiated incidents of abuse, neglect, or
30 exploitation of an individual with a developmental disability. As
31 soon as possible, and no later than 14 days after receipt of the
32 incident of abuse, neglect, or exploitation, the commissioner or the
33 commissioner's designee shall review the incident. The offending
34 caregiver of a substantiated incident shall be included on the central
35 registry as expeditiously as possible. The Special Response Unit
36 shall retain a record of all unsubstantiated incidents.

37 d. Upon the initiation of an investigation, the department shall:
38 (1) ensure that any communication concerning the alleged abuse,
39 neglect, or exploitation of an individual with a developmental
40 disability between a caregiver, case manager of the caregiver, the
41 case manager's supervisor, or a person at the appropriate Regional
42 Office of the Division of Developmental Disabilities is identified,
43 safeguarded from loss or destruction, and maintained in a secure
44 location; and (2) contact the Office of the Attorney General, which
45 shall determine whether to participate in the investigation.

46 e. The Special Response Unit shall issue a written report of the
47 investigation that includes the conclusions of the unit, the rationale
48 for the conclusion, and a detailed summary of any communication

1 secured pursuant to subsection d. of this section. The report shall
2 also include an assessment of the role of any case manager of a
3 caregiver or the case manager's supervisor, if applicable, in the
4 allegation of abuse, neglect, or exploitation, and a recommendation
5 about whether any civil or criminal action should be brought against
6 the case manager or supervisor. The report shall be made part of
7 the record for review in any civil or criminal proceeding that may
8 ensue.

9 A written summary of the conclusions of the investigation shall
10 be provided to the guardian or authorized family member of the
11 individual with a developmental disability who is the subject of the
12 alleged abuse, neglect, or exploitation.

13 f. A licensed provider in another state shall be permitted access
14 to the central registry.
15 (cf: P.L.2012, c.69, s.10)
16

17 7. Section 5 of P.L.2010, c.5 (C.30:6D-77) is amended to read
18 as follows:

19 5. a. There is established a Central Registry of Offenders
20 Against Individuals with Developmental Disabilities in the
21 department.

22 b. The commissioner shall adopt rules and regulations that
23 define the procedures and standards for inclusion of an offending
24 caregiver on the central registry, and for notification of such
25 inclusion to the caregiver and to the guardian or authorized family
26 member of the individual with a developmental disability who was
27 the subject of the abuse, neglect, or exploitation that led to the
28 caregiver's inclusion on the central registry. The commissioner or
29 the commissioner's designee shall designate staff to notify the
30 guardian or authorized family member of the individual of any
31 action taken by the department to remediate a condition that may
32 have contributed to the occurrence of the abuse, neglect, or
33 exploitation of the individual.

34 (1) For inclusion on the central registry in the case of a
35 substantiated incident of abuse, the caregiver shall have acted with
36 intent, recklessness, or careless disregard to cause or potentially
37 cause injury to an individual with a developmental disability.

38 (2) For inclusion on the central registry in the case of a
39 substantiated incident of neglect, the caregiver shall have acted with
40 gross negligence, recklessness, or in a pattern of behavior that
41 causes or potentially causes harm to an individual with a
42 developmental disability.

43 (3) In the case of a substantiated incident of exploitation, the
44 commissioner shall establish a dollar amount for inclusion on the
45 central registry.

46 c. The commissioner also shall adopt rules and regulations:

47 (1) necessary to provide for an appeals process, through the
48 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), of the commissioner's determination to include an alleged
2 offending caregiver's name on the central registry. The
3 commissioner's determination shall be a final agency decision
4 subject to review by the Appellate Division of the Superior Court;

5 (2) concerning the dissemination of information in the central
6 registry;

7 (3) that will prohibit persons included on the central registry
8 from employment in facilities or programs of the Division of
9 Developmental Disabilities in the department and those facilities or
10 programs licensed, contracted, or regulated by the department, or
11 from providing community-based services with indirect State
12 funding to persons with developmental disabilities; and

13 (4) necessary to provide for the removal of a person's name
14 from the central registry. A person may apply for removal of his
15 name to the commissioner after a period of five years of being
16 placed on the central registry. The person shall affirmatively
17 demonstrate to the commissioner clear and convincing evidence of
18 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
19 1 et seq.) as a guide.

20 d. The commissioner may adopt rules and regulations that will
21 allow bona fide employers serving vulnerable populations to inquire
22 of the department if potential or current employees are included on
23 the central registry, consistent with federal and State privacy and
24 confidentiality laws.

25 e. No information received in the central registry shall be
26 considered as a public or government record within the meaning of
27 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
28 al.).

29 (cf: P.L.2010, c.5, s.5)

30

31 8. Section 6 of P.L.2010, c.5 (C.30:6D-78) is amended to read
32 as follows:

33 6. All records of a report made pursuant to **【this act】** section 3
34 of P.L.2010, c.5 (C.30:6D-75), all information obtained by the
35 department in investigating such reports, and all reports of findings
36 forwarded to the central registry pursuant to **【this act】** P.L.2010, c.5
37 (C.30:6D-73 et seq.) shall be kept confidential and may be
38 disclosed only insofar as information is shared with a guardian in
39 connection with a guardian's attendance or observation of an
40 investigative interview pursuant to subsection b. of section 4 of
41 P.L.2010, c.5 (C.30:6D-76) or under circumstances expressly
42 authorized by rules and regulations promulgated by the
43 commissioner.

44 The department shall only disclose information that is relevant to
45 the purpose for which the information is required or is shared in
46 connection with a guardian's attendance or observation of an
47 investigative interview pursuant to subsection b. of section 4 of
48 P.L.2010, c.5 (C.30:6D-76); except that the department shall not

1 disclose information which would likely endanger the life, safety,
2 or physical or emotional well-being of an individual with a
3 developmental disability or the life or safety of any other person, or
4 which may compromise the integrity of a department investigation,
5 civil or criminal investigation, or judicial proceeding. If the
6 department denies access to specific information on this basis, the
7 requesting entity may seek disclosure through the Superior Court.
8 Nothing in **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.) shall be
9 construed to permit the disclosure of any information deemed
10 confidential by federal or State law.

11 (cf: P.L.2010, c.5, s.6)

12

13 9. The Commissioner of Human Services, pursuant to the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.), shall adopt rules and regulations necessary to effectuate the
16 purposes of this act.

17

18 10. This act shall take effect on the first day of the seventh
19 month next following the date of enactment, but the Commissioner
20 of Human Services may take such anticipatory administrative action
21 in advance thereof as shall be necessary for the implementation of
22 this act.

23

24

25

STATEMENT

26

27 This bill, which is designated as "Stephen Komninos' Law,"
28 improves protections for individuals with developmental disabilities
29 and provides for increased transparency of investigations conducted
30 in connection with an allegation of abuse, neglect, or exploitation of
31 individuals with developmental disabilities.

32

33 The bill requires the Commissioner of Human Services, or the
34 commissioner's designee, to designate employees of the Department
35 of Human Services (DHS), who are not employees of a State
36 developmental center but may be case managers employed by DHS,
37 or an agency under contract with DHS, to conduct at least three
38 unannounced site visits annually to randomly check whether the
39 individuals with developmental disabilities who are receiving
40 services from a program, facility, or living arrangement licensed or
41 funded by the department, other than a community care residence
42 which is subject to visits pursuant to section 7 of P.L.2012, c.69
43 (C.30:6D-5.13), are at risk of, or are being subjected to, abuse,
44 neglect, or exploitation by a caregiver, and report the same pursuant
45 to section 3 of P.L.2010, c.5 (C.30:6D-75), which is the law that
46 established the Central Registry of Offenders Against Individuals
47 with Developmental Disabilities (Central Registry). The Central
Registry is designed to prevent caregivers who become offenders

1 against individuals with developmental disabilities from working
2 with these individuals.

3 The Commissioner of Human Services, or the commissioner's
4 designee, is also required to designate staff to notify the guardian or
5 authorized family member of an individual with a developmental
6 disability receiving services from a program, facility, community
7 care residence, or living arrangement licensed or funded by the
8 department of any physical injury to the individual with a
9 developmental disability, as soon as possible, but no later than 24
10 hours after the occurrence of the injury. Additionally, a provider or
11 licensee, as applicable, is to notify the guardian or authorized
12 family member of an individual with a developmental disability
13 receiving services as soon as possible, but not more than two hours
14 after the occurrence of the injury, unless there is an extraordinary
15 circumstance which prevents such notification in which case the
16 provider or licensee is required to notify the guardian or authorized
17 family member as soon as possible, but not more than eight hours
18 after the occurrence of the injury. These notifications are to be in
19 person, or by telephone, and other electronic means are to be used
20 to follow up the telephoned notification.

21 Further, within 48 hours of receipt of a report of an incident
22 involving physical injury, or abuse or neglect in a program, facility,
23 community care residence, or living arrangement licensed or funded
24 by DHS for an individual with a developmental disability, the
25 Commissioner of Human Services is required to send an employee,
26 who is not an employee of a State developmental center but may be
27 a case manager employed by DHS or an agency under contract with
28 DHS, to the location to verify the level of severity.

29 The bill also amends the Central Registry law to: 1) authorize a
30 guardian to request appropriate assistance from local and State law
31 enforcement officials; 2) provide an opportunity for a guardian or
32 authorized family member to submit information to facilitate an
33 investigation, be informed of its progress, and represent an
34 individual; 3) permit a guardian, upon request, to attend or observe
35 the investigation unless attendance or observation would impede the
36 investigation; and 4) add a requirement for the guardian or
37 authorized family to be notified of an offending caregiver's
38 inclusion on the Central Registry and of action taken by DHS to
39 remediate a condition.

40 The bill further amends the law to change from a disorderly
41 persons offense (punishable by a term of imprisonment of up to six
42 months, a fine of up to \$1,000, or both) to a fourth degree crime
43 (punishable by a term of imprisonment of up to 18 months, a fine of
44 up to \$10,000, or both) the failure of a case manager or supervisor
45 to report an incident, and makes it a third degree crime (punishable
46 by a term of imprisonment of up to three to five years, a fine of up
47 to \$15,000, or both) rather than a fourth degree crime if the
48 unreported incident results in death.

1 Lastly, there are amendments to the confidentiality provisions of
2 the Central Registry law, section 6 of P.L.2010, c.5 (C.30:6D-78),
3 to make it consistent with the provisions in the bill which permit
4 attendance or observation of an investigation.

5 The bill is designated "Stephen Komninos' Law" to honor the
6 memory of Stephen, an individual with developmental disabilities
7 who tragically died at the age of 22. Stephen was a non-verbal
8 young man who was very sociable and suffered through many
9 substantiated incidents of abuse and neglect. The bill is intended to
10 encourage caregivers, supervisors, and managers of facilities, as
11 well as the appropriate funding, licensing, regulatory, and law
12 enforcement agencies to protect individuals with developmental
13 disabilities, by providing for more transparency in incident
14 reporting and investigations, the reporting of incidents in a more
15 timely manner, and an environment that does not tolerate abuse,
16 neglect, or exploitation of individuals with developmental
17 disabilities.

ASSEMBLY HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2503**

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 2016

The Assembly Human Services Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2503.

This committee substitute requires the Commissioner of Human Services, or the commissioner's designee, to designate employees of the Department of Human Services (DHS), who are not employees of a State developmental center but may be case managers employed by DHS, or an agency under contract with DHS, to conduct at least six unannounced site visits annually to randomly check whether the individuals with developmental disabilities who are receiving services from a program, facility, or living arrangement licensed or funded by the department are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver, and report the same pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75), which is the law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry). The Central Registry is designed to prevent caregivers who become offenders against individuals with developmental disabilities from working with these individuals.

The substitute would apply to caregiver abuse, neglect, or exploitation in day programs, sheltered workshops, group homes, apartments, supervised apartments, self-directed housing, campus housing, or developmental centers.

Under the substitute, the Commissioner of Human Services, or the commissioner's designee, is required to designate staff to notify the guardian or authorized family member of an individual with a developmental disability receiving services from a program, facility, community care residence, or living arrangement licensed or funded by the department of any physical injury to the individual with a developmental disability, as soon as possible, but no later than 60 minutes after the occurrence of the injury. Additionally, a provider or licensee is to notify the guardian or authorized family member of an individual with a developmental disability receiving services as soon as possible, but no later than 60 minutes after the occurrence of the injury. These notifications are to be in person, or by telephone, and other electronic means are to be used to follow up the telephoned notification.

Further, within 48 hours of receipt of a report of an incident involving physical injury, or abuse or neglect in a program, facility, community care residence, or living arrangement licensed or funded by DHS for an individual with a developmental disability, the Commissioner of Human Services is required to send an employee, who is not an employee of a State developmental center but may be a case manager employed by DHS or an agency under contract with DHS, to the location to verify the level of severity.

The substitute requires drug testing as a condition of employment as a direct care staff member at a program, facility, or living arrangement licensed or funded by DHS. This testing would be paid for by the applicant for employment.

There also is a requirement for random drug testing of direct care staff members, which would occur at least once a year, and for drug testing if a direct care staff member's immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous substance, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. The supervisor is to report this information to his immediate supervisor and if the supervisor concurs that there is reasonable suspicion to believe that a direct care staff member is illegally using a controlled dangerous substance, that supervisor would notify the person responsible for the overall operation of the agency under contract with DHS to provide services to individuals with developmental disabilities. The drug testing would not be ordered without the written approval of the person responsible for the overall operation of the agency. A direct care staff member who tests positive for the unlawful use of any controlled dangerous substance may be referred for treatment services or terminated from employment, and if a direct care staff member refuses to submit to the drug testing he would be terminated from employment. This testing would be at the expense of the agency under contract with DHS. These drug testing provisions are similar to those required under current law for direct care staff at developmental centers.

The substitute also amends the Central Registry law to include a definition of "program" which specifies that the term includes day programs, and: 1) authorizes a guardian to request appropriate assistance from local and State law enforcement officials who have undergone training in working with individuals with developmental disabilities; 2) provides an opportunity for a guardian or authorized family member to submit information to facilitate an investigation, represent an individual, and be informed of progress of the investigation via a written progress report of the status of an investigation, including any medical records or reports about the individual, within seven calendar days of the incident and weekly thereafter, 3) permits a guardian, upon request, to attend or observe the investigation unless attendance or observation would impede the

investigation; 4) provides that written summaries of the investigation, which are provided to guardians or authorized family members, are to include any medical records or reports about the individual; and 5) adds a requirement for the guardian or authorized family to be notified of an offending caregiver's inclusion on the Central Registry and of action taken by DHS to remediate a condition. Other amendments to this law include: changing from a disorderly persons offense (punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both) to a fourth degree crime (punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both) the failure of a case manager or supervisor to report an incident; making it a third degree crime (punishable by a term of imprisonment of up to three to five years, a fine of up to \$15,000, or both) rather than a fourth degree crime if the unreported incident results in death; and providing for a caregiver to be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities or other vulnerable populations.

Lastly, the substitute revises the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) to require penalties collected under that law to be used for caregiver training and visits conducted under this bill.

This substitute provides protections for individuals with developmental disabilities through accountability and transparency, and is designated as "Stephen Komninos' Law" to honor the memory of Stephen J. Komninos, an individual with developmental disabilities who died at the age of 22 while under the care of a private licensed facility for individuals with developmental disabilities. Stephen was a non-verbal young man who was very sociable and suffered through many substantiated incidents of abuse and neglect by caregivers. Tragically, the last incident resulted in his death. This substitute is intended to encourage caregivers, supervisors, and managers of facilities, as well as the appropriate funding, licensing, regulatory, and law enforcement agencies to protect individuals with developmental disabilities, by providing for more transparency in incident reporting and investigations, the reporting of incidents in a more timely manner, and an environment that does not tolerate abuse, neglect, or exploitation of individuals with developmental disabilities.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2503

STATE OF NEW JERSEY

DATED: OCTOBER 27, 2016

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2503 (ACS).

This bill requires the Commissioner of Human Services, or the commissioner's designee, to designate employees of the Department of Human Services (DHS), who are not employees of a State developmental center but may be case managers employed by DHS, or an agency under contract with DHS, to conduct at least six unannounced site visits annually to randomly check whether the individuals with developmental disabilities who are receiving services from a program, facility, or living arrangement licensed or funded by the department are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver, and report the same pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75), which is the law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry). The Central Registry is designed to prevent caregivers who become offenders against individuals with developmental disabilities from working with these individuals.

The bill applies to caregiver abuse, neglect, or exploitation in day programs, sheltered workshops, group homes, apartments, supervised apartments, self-directed housing, campus housing, or developmental centers.

Under the bill, the Commissioner of Human Services, or the commissioner's designee, is required to designate staff to notify the guardian or authorized family member of an individual with a developmental disability receiving services from a program, facility, community care residence, or living arrangement licensed or funded by the department of any physical injury to the individual with a developmental disability, as soon as possible, but no later than 60 minutes after the occurrence of the injury. Additionally, a provider or licensee is to notify the guardian or authorized family member of an individual with a developmental disability receiving services as soon as possible, but no later than 60 minutes after the occurrence of the injury. The bills requires that these notifications be in person, or by telephone, and that other electronic means be used to follow up the telephoned notification.

Further, the bill requires that within 48 hours of receipt of a report of an incident involving physical injury, or abuse or neglect in a program, facility, community care residence, or living arrangement licensed or funded by DHS for an individual with a developmental disability, the Commissioner of Human Services send an employee, who is not an employee of a State developmental center but may be a case manager employed by DHS or an agency under contract with DHS, to the location to verify the level of severity.

The bill requires drug testing, to be paid for by the applicant, as a condition of employment as a direct care staff member at a program, facility, or living arrangement licensed or funded by DHS.

The bill also requires random drug testing of direct care staff members, to occur at least once a year, and for drug testing if a direct care staff member's immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous bill, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. The bill requires the supervisor to report this information to his immediate supervisor and if the supervisor concurs that there is reasonable suspicion to believe that a direct care staff member is illegally using a controlled dangerous substance, that supervisor would notify the person responsible for the overall operation of the agency under contract with DHS to provide services to individuals with developmental disabilities. Under the bill, the drug testing would not be ordered without the written approval of the person responsible for the overall operation of the agency. The bill provides that a direct care staff member who tests positive for the unlawful use of any controlled dangerous substance may be referred for treatment services or terminated from employment, and if a direct care staff member refuses to submit to the drug testing he would be terminated from employment. Under the bill, this testing is to be at the expense of the agency under contract with DHS. These drug testing provisions are similar to those required under current law for direct care staff at developmental centers.

The bill also amends the Central Registry law to include a definition of "program" which specifies that the term includes day programs, and: 1) authorizes a guardian to request appropriate assistance from local and State law enforcement officials who have undergone training in working with individuals with developmental disabilities; 2) provides an opportunity for a guardian or authorized family member to submit information to facilitate an investigation, represent an individual, and be informed of progress of the investigation via a written progress report of the status of an investigation, including any medical records or reports about the individual, within seven calendar days of the incident and weekly thereafter, 3) permits a guardian, upon request, to attend or observe the investigation unless attendance or observation would impede the

investigation; 4) provides that written summaries of the investigation, which are provided to guardians or authorized family members, are to include any medical records or reports about the individual; and 5) adds a requirement for the guardian or authorized family to be notified of an offending caregiver's inclusion on the Central Registry and of action taken by DHS to remediate a condition. Other changes to the law provided in the bill include: changing from a disorderly persons offense (punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both) to a fourth degree crime (punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both) the failure of a case manager or supervisor to report an incident; making it a third degree crime (punishable by a term of imprisonment of up to three to five years, a fine of up to \$15,000, or both) rather than a fourth degree crime if the unreported incident results in death; and providing for a caregiver to be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities or other vulnerable populations.

Lastly, the bill revises the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) to require that penalties collected under that law be used for caregiver training and visits conducted under this bill.

This bill provides protections for individuals with developmental disabilities through accountability and transparency, and is designated as "Stephen Komninos' Law" to honor the memory of Stephen J. Komninos, an individual with developmental disabilities who died at the age of 22 while under the care of a private licensed facility for individuals with developmental disabilities. Stephen was a non-verbal young man who was very sociable and suffered through many substantiated incidents of abuse and neglect by caregivers. Tragically, the last incident resulted in his death. This bill is intended to encourage caregivers, supervisors, and managers of facilities, as well as the appropriate funding, licensing, regulatory, and law enforcement agencies to protect individuals with developmental disabilities, by providing for more transparency in incident reporting and investigations, the reporting of incidents in a more timely manner, and an environment that does not tolerate abuse, neglect, or exploitation of individuals with developmental disabilities.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS, likely in the millions of dollars. The specific magnitude of these increased costs, and the extent to which they might be absorbed within existing funding, would depend upon the specific manner in which DHS implements the law, and cannot be independently determined by the OLS.

The bill may result in a small increase in revenue resulting from increased fines imposed on case workers who fail to report incidents of abuse, neglect, or exploitation, but may also result in increased costs to incarcerate these individuals for longer prison terms that are authorized under current law, depending upon the sentences imposed.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2503

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 15, 2017

The Senate Health, Human Services and Senior Citizens Committee reports without recommendation and with committee amendments Assembly Bill No. 2503 (ACS).

As amended by the committee, this bill would improve protections for individuals with developmental disabilities and provide for increased transparency and accountability in investigations that are conducted in association with an allegation of abuse, neglect, or exploitation of an individual with a developmental disability. The bill would also enhance the criminal penalties that are associated with certain crimes committed against persons with developmental disabilities, and it would establish a new offense of endangering the welfare of an individual with a developmental disability. The bill is intended to encourage caregivers, supervisors, and managers of facilities, as well as the appropriate funding, licensing, regulatory, and law enforcement agencies, to protect individuals with developmental disabilities, by providing more transparency in incident reporting and investigation, requiring the timely reporting of incidents, and facilitating the establishment of an environment wherein the abuse, neglect, or exploitation of individuals with developmental disabilities is not tolerated.

The bill defines “developmental disability” in the same way the term is defined by section 3 of P.L.1977, c.82 (C.30:6D-3). Specifically, a developmental disability is “a severe, chronic disability of a person which:

- (1) is attributable to a mental or physical impairment or combination of mental or physical impairments;
- (2) is manifest before age 22;
- (3) is likely to continue indefinitely;
- (4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and

(5) reflects the need for a combination and sequence of special inter-disciplinary or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

“Developmental disability” includes, but is not limited to severe disabilities attributable to, an intellectual disability, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.”

Increased Criminal Penalties

The bill would establish two new grades of offenses that involve endangering the welfare of an individual with a developmental disability. Under the bill’s provisions, a caregiver or other person who has a legal duty for the care of a person with a developmental disability, or who has assumed responsibility for the care of a person with a developmental disability, and who subjects the person with a developmental disability to abuse, neglect, or exploitation, would be guilty of a crime of the second degree. Any other person who engages in such conduct would be guilty of a crime of the third degree. For the purposes of this offense, the terms “abuse,” “caregiver,” “exploitation,” and “neglect,” would have the same meaning ascribed to those terms in section 2 of P.L.2010, c.5 (C.30:6D-74).

The bill would further amend the law at section 3 of P.L.2010, c.5 (C.30:6D-75) to upgrade certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability. Specifically, the bill would provide that a case manager or case manager’s supervisor who fails to report an act of abuse, neglect, or exploitation will be guilty of a crime of the fourth degree (as opposed to a disorderly person’s offense), unless the abuse, neglect, or exploitation results in the death of an individual with a developmental disability, in which case the case manager or supervisor will be guilty of a crime of the third degree (as opposed to a crime of the fourth degree). The bill would further specify that a caregiver suspected of abuse, neglect, or exploitation of an individual with a developmental disability, who is charged with a failure to report, is to be temporarily reassigned to duties that do not involve contact with such individuals. Such a caregiver, if employed by the Department of Human Services (DHS), would retain a right of review by the Civil Service Commission. (The law currently provides for the temporary reassignment of case managers and case manager supervisors who fail to report, but it does not address caregivers who are suspected of abuse, neglect, or exploitation.)

Under the State’s criminal code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine up to \$150,000, or both; a crime of the third degree is punishable by a term of imprisonment of three to five years or a fine up to \$15,000, or both; a crime of the fourth degree is punishable by a term

of imprisonment of up to 18 months or a fine up to \$10,000, or both; and a disorderly persons offense is punishable by a term of imprisonment of up to six months or a fine of up to \$1,000 or both.

Finally, the bill would revise the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) in order to specify that any penalties collected thereunder are to be used for caregiver training and site visits conducted under the bill's other provisions

Site Visits

This bill would establish a system for the regular site visitation of all community-based residential programs and day programs that provide services to individuals with developmental disabilities. "Community-based residential program" is defined by the bill to include any group home or supervised apartment that is licensed and regulated by the department; while a "day program" is defined to include those programs that are certified to provide day habilitation services or sheltered workshops for individuals with developmental disabilities.

Specifically, the bill would require the Commissioner of Human Services, or the commissioner's designee, to ensure that case managers: annually conduct not less than two site visits of each and every community-based residential program and day program, in order to evaluate whether the individuals with developmental disabilities who are receiving services from each such program are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the department, in accordance with the State law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry Law).

For a group home, not less than two site visits would need to be unannounced site visits that are conducted by a department employee who is assigned to a resident of the group home. "Department employee" is defined to include a direct employee of the DHS, or an employee of a department-funded case management agency. For a supervised apartment, not less than two site visits would need to be unannounced site visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day habilitation services provider or a sheltered workshop provider, not less than one site visit would need to be an unannounced site visit conducted by a department employee who is assigned to a participant in the day program; and not less than one site visit would need to be an unannounced site visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case.

Notice of Physical Injury, Abuse, Neglect, and Exploitation

The bill would also require certain notifications to be provided to guardians or family members whenever an injury is suffered by an

individual with a developmental disability who is receiving services from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded by the department. Notification of injury to the guardian or family member would be required regardless of the injury's severity (i.e., regardless of whether the injury constitutes a major, moderate, or minor injury).

Notification of injury would be provided by the provider or licensee of the program, facility, community care residence, or living arrangement where the individual with developmental disabilities is located at the time of injury. Such notification would need to be provided to the guardian of the individual, or, if there is no guardian, to a family member who requests such notification, and is to be provided: 1) as soon as possible, but no later than 60 minutes after the occurrence of the injury; and 3) through in-person means, or by telephone, and also through email or other electronic means. Electronic means may be used to engage in follow-up communications after the initial notification.

Notwithstanding these requirements, notification of injury would not be required if the guardian or family member expresses, in a written document filed with the caretaker, that they do not want to receive notification of injury under the bill.

The bill would further amend section 3 of P.L.2010, c.5 (C.30:6D-75), the State's Central Registry Law, which pertains to the reporting of incidents involving the abuse, neglect, or exploitation of an individual with a developmental disability. These amendments would specify that the department is to provide notice of an incident involving abuse, neglect, or exploitation of such an individual, to the guardian or authorized family member, as soon as possible, but no later than 60 minutes after the occurrence of the abuse, neglect, or exploitation.

Verification/Investigation of Major or Moderate Physical Injury, and of Abuse, Neglect, or Exploitation

The bill would provide that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, in a community-based residential program, or in a day program, the department is to send an employee (who is not an employee of a State developmental center, but who may be a case manager) to verify the level of severity of the incident. In investigating the incident, the department would be required to comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-76) (the Central Registry Law), which provide requirements in association with the commencement and continuation of an investigation into the abuse, neglect, or exploitation of an individual with a developmental disability.

Drug Testing Requirements

The bill would require the drug testing of all direct care staff members – i.e., persons 18 years of age or older, who are employed by a community-based residential program, a day program, a facility, or a living arrangement licensed or funded by the department, and who may come into direct contact with individuals with developmental disabilities during the course of such employment. The expenses associated with drug testing, under the bill's provisions, are to be paid by the department.

The bill requires direct care staff members to undergo an initial drug test, prior to employment, as well as a random drug test once a year during the course of employment. In addition, the bill provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test in cases where the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. In such a case, the bill requires the supervisor to report this information to his immediate supervisor, and, if the latter concurs that there is reasonable suspicion to believe that the direct care staff member is illegally using a controlled dangerous substance, that supervisor will be required to notify the person responsible for the overall operation of the program, facility, or living arrangement. Such drug testing would not be ordered without the written approval of the person responsible for the overall operation of the program, facility, or living arrangement. A direct care staff member who is employed by a program, facility, or living arrangement, and who tests positive for the unlawful use of any controlled dangerous substance drug test, may be referred for treatment services or terminated from employment; however, if the staff member refuses to submit to the drug testing, termination from employment will be required.

Support System for Parents and Guardians

The bill would attempt to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center.

In particular, the bill would require each developmental center to biannually schedule a meeting with the parents and guardians of those individuals with developmental disabilities who are residing in the center, in order to provide an opportunity for the parents and guardians to share experiences about the individuals. Similarly, the bill would require the provider of a community-based residential program to request contact information from each parent or guardian of an individual with a developmental disability who is residing at the group home or supervised apartment, as the case may be, and advise those parents and guardians that, if they agree, the provider will exchange

their contact information with the parents and guardians of other individuals residing in the residential program, in order to provide an opportunity for the parents and guardians to share their experiences about the individuals. The provider of a day program is also required to request the same contact information from the parents or guardians of individuals with developmental disabilities who are participating in day habilitation services or sheltered workshops, and to advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents or guardians of other individuals participating in the day program, in order to provide an opportunity for parents and guardians to share their experiences.

Expansion and Clarification of Central Registry Law

The Central Registry Law is designed to prevent caregivers who commit offenses against individuals with developmental disabilities from working with these individuals. To that end, the law provides procedures for the reporting and investigation of incidents of abuse, neglect, and exploitation, which are committed by caregivers against individuals with developmental disabilities.

This bill would amend the Central Registry Law to define the term “program,” consistently with the other provisions of the bill, to include day programs and community-based residential programs that are licensed or funded by the department. The bill would also amend the Central Registry Law to: 1) permit the guardian or authorized family member of an individual with a developmental disability to request investigatory assistance from local and State law enforcement officials who have undergone training in working with individuals with developmental disabilities; 2) require the Commissioner of Human Services to commence a review/investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident; 3) require the commissioner to provide the guardian or authorized family member of an individual with a developmental disability with prior notice, either in person or by phone, that an investigation into abuse, neglect, or exploitation of the individual will be commenced; 4) require the commissioner to provide the guardian or authorized family member, as appropriate, with the opportunity to submit information to facilitate the investigation, to represent the individual during the course of the investigation, to be informed of the progress of the investigation through the receipt of regular progress reports (which include the represented individual’s relevant medical records), and to attend or observe an investigative interview of the person they represent, unless the attendance or observation would impede the investigation; and 6) require the Office of Investigations to issue a written report no later than 14 days after the conclusion of an investigation into an incident of alleged abuse, neglect, or exploitation. If the guardian or authorized family member expressly requests, at any time, that the department terminate an investigative interview of the

person they represent, the department, and its Office of Investigations, will be required to immediately comply with the request, unless it would impede the investigation.

The bill would also amend the confidentiality provisions of the Central Registry Law, in order to authorize disclosure of investigative records and reports to the guardian or authorized family member of an individual with a developmental disability if: such information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of such detailed information is in the best interests of the individual, as determined by DDD, or by the individual's guardian or authorized family member. The bill would further provide that any written summary of the investigation (which the law already requires be provided to the guardian or authorized family member) is to include the following information, at a minimum: 1) the name of the individual with a developmental disability who is the subject of the allegation; 2) the date of the incident, or the date reported if the incident date is unknown; 3) whether the incident is an allegation of abuse, neglect, or exploitation; 4) the incident number; 5) a summary of the allegation; 6) a finding that the incident is substantiated or unsubstantiated; 7) the rationale for the finding and, if a substantiated incident, a description of the action or inaction that precipitated the finding; 8) if known at the time of issuing the summary, whether or not criminal charges against the alleged offending caregiver are pending; and 9) whether remedial action was taken.

Bill Designation

This bill is designated as "Stephen Komninos' Law" to honor the memory of Stephen J. Komninos, an individual with developmental disabilities who died at the age of 22 while under the care of a private licensed facility for individuals with developmental disabilities. Stephen was a non-verbal young man who was very sociable and suffered through many substantiated incidents of abuse and neglect by caregivers. Tragically, the last incident resulted in his death. This bill is intended to facilitate the enhanced protection of individuals with developmental disabilities, like Stephen, by requiring more transparency in incident reporting and investigations; by requiring more timely reporting and the issuance of prompt notification to the parents and guardians of individuals with developmental disabilities who suffer injury, abuse, neglect, or exploitation; and by promoting the establishment and maintenance of a Statewide policy and environment that does not tolerate the abuse, neglect, or exploitation of individuals with developmental disabilities.

Committee Amendments

The committee amended the bill to:

- add a new provision establishing a new offense of endangering the welfare of an individual with a developmental disability, which would constitute a second degree crime if committed by a caregiver, and a third degree crime if committed by any other individual;
- add a new centralized definitional section that incorporates definitions for all of the pertinent terms used throughout sections 2 through 7 of the bill;
- require the Department of Human Services to annually conduct not less than two site visits of every community-based residential program and every day program (as opposed to the six site visits that were originally required under the bill);
- specify that not less than two site visits conducted for each group home are to be unannounced site visits conducted by a department employee assigned to the resident of the group home; and not less than two site visits conducted for each supervised apartment are to be unannounced visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case;
- specify that not less than one of the annual site visits conducted for each day habilitation provider and each sheltered workshop provider is to be an unannounced site visit conducted by a department employee assigned to a participant in the day program; and that not less than one of the annual site visits is to be an unannounced site visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case;
- specify that nothing in the site visit section of the bill may be construed to authorize a staff member or agent of a community-based residential program, or a staff member or agent of a day program, to perform the site visits required by the bill;
- require the provider or licensee of a program, facility, community care residence, or living arrangement licensed or funded by the department to provide notice to the parents or guardian of an individual with developmental disabilities who suffers major, moderate, or minor injury (as opposed to requiring both the provider and the department to provide such notice);
- specify that notice of injury is to be provided within 60 minutes to the guardian or authorized family member of the injured individual, through in-person means, or by telephone, and also through email or other electronic means; and specify that electronic means may be used to engage in follow-up communications;
- specify that notice of injury shall not be required if the guardian or family member expressly indicates, in writing, that they do not want to receive notification;
- specify that a department employee is to be sent to the location of an incident involving moderate or major physical injury, or abuse, neglect, or exploitation in a State developmental center, community-based residential program, or day program, within 48 hours after receipt of an incident report;

- specifically require the department to comply with the State’s Central Registry Law when investigating incidents involving moderate or major injury, or abuse, neglect, or exploitation;
- clarify the bill’s drug testing requirements, in order to make it clear that a drug test is required for each direct care staff member as a condition of employment; that one or more direct care staff members are to be subject to random drug testing on an annual basis after hiring; and that a direct care staff member may be subject to an additional drug test if there is reasonable suspicion to believe that the staff member is illegally using a controlled substance;
- clarify that expenses associated with drug testing are to be paid by the department;
- insert a new section requiring State developmental centers to set up biannual meetings with parents and guardians to share experiences, and requiring community-based residential programs and day programs to request contact information from parents and guardians and obtain their consent to share the information with other similarly-situated parents and guardians for the purposes of sharing their experiences;
- add community-based residential programs to the definition of “program” that is being added to new section 10 of the bill, which amends section 2 of P.L.2010, c.5 (C.30:6D-74);
- specify that the guardian or authorized family member of an individual with a developmental disability who is the subject of an investigation into injury, abuse, neglect, or exploitation, is to be given prior notice of the commencement of the investigation, is to be given prior notice of any investigatory interview of the individual, as well as the opportunity to be present while the individual is being interviewed, unless that would impede the investigation, and is authorized to terminate the interview at any time, unless termination would impede the investigation;
- specify that a departmental review of an incident involving abuse, neglect, or exploitation of an individual with a developmental disability is to be commenced no later than seven days after receipt of the incident report;
- clarify that the Office of Investigations is to issue a written report of the investigation no later than 14 days after the investigation is concluded;
- specify the information that is to be included in the written summary of an investigation that is provided to the guardian or authorized family member of the individual who is the subject of the investigation;
- state that the actual records and reports of the investigation (in addition to the written summary of investigation) may also be provided to the guardian or authorized family member if the information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of

information is in the best interests of the individual, as determined by the Division of Developmental Disabilities, or by the individual's guardian or family member;

- revise the title of the bill to accurately reflect the statutory titles being supplemented, and the sections of law being amended, thereby;

- revise the bill synopsis to accurately reflect the varied purposes of the bill; and

- make technical changes to the previously-existing provisions of the bill.

As reported by the committee, Assembly Bill No. 2503 (ACS)(1R) is identical to Senate Bill No. 516(1R), which the committee also reported favorably on this date.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2503

STATE OF NEW JERSEY

DATED: JUNE 1, 2017

The Senate Budget and Appropriations Committee reports Assembly Bill No. 2503 (ACS/1R).

This bill would improve protections for individuals with developmental disabilities and provide for increased transparency and accountability in investigations that are conducted in association with an allegation of abuse, neglect, or exploitation of an individual with a developmental disability. The bill would also enhance the criminal penalties that are associated with certain crimes committed against persons with developmental disabilities, and it would establish a new offense of endangering the welfare of an individual with a developmental disability. The bill is intended to encourage caregivers, supervisors, and managers of facilities, as well as the appropriate funding, licensing, regulatory, and law enforcement agencies, to protect individuals with developmental disabilities, by providing more transparency in incident reporting and investigation, requiring the timely reporting of incidents, and facilitating the establishment of an environment wherein the abuse, neglect, or exploitation of individuals with developmental disabilities is not tolerated.

The bill defines “developmental disability” in the same way the term is defined by section 3 of P.L.1977, c.82 (C.30:6D-3). Specifically, a developmental disability is “a severe, chronic disability of a person which:

(1) is attributable to a mental or physical impairment or combination of mental or physical impairments;

(2) is manifest before age 22;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and

(5) reflects the need for a combination and sequence of special inter-disciplinary or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

“Developmental disability” includes, but is not limited to, severe disabilities attributable to an intellectual disability, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

Increased Criminal Penalties

The bill would establish two new grades of offenses that involve endangering the welfare of an individual with a developmental disability. Under the bill’s provisions, a caregiver or other person who has a legal duty for the care of a person with a developmental disability, or who has assumed responsibility for the care of a person with a developmental disability, and who subjects the person with a developmental disability to abuse, neglect, or exploitation, would be guilty of a crime of the second degree. Any other person who engages in such conduct would be guilty of a crime of the third degree. For the purposes of this offense, the terms “abuse,” “caregiver,” “exploitation,” and “neglect,” would have the same meaning ascribed to those terms in section 2 of P.L.2010, c.5 (C.30:6D-74).

The bill would further amend the law at section 3 of P.L.2010, c.5 (C.30:6D-75) to upgrade certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability. Specifically, the bill would provide that a case manager or case manager’s supervisor who fails to report an act of abuse, neglect, or exploitation will be guilty of a crime of the fourth degree (as opposed to a disorderly person’s offense), unless the abuse, neglect, or exploitation results in the death of an individual with a developmental disability, in which case the case manager or supervisor will be guilty of a crime of the third degree (as opposed to a crime of the fourth degree). The bill would further specify that a caregiver suspected of abuse, neglect, or exploitation of an individual with a developmental disability, who is charged with a failure to report, is to be temporarily reassigned to duties that do not involve contact with such individuals. Such a caregiver, if employed by the Department of Human Services (DHS), would retain a right of review by the Civil Service Commission. (The law currently provides for the temporary reassignment of case managers and case manager supervisors who fail to report, but it does not address caregivers who are suspected of abuse, neglect, or exploitation.)

Under the State’s criminal code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine up to \$150,000, or both; a crime of the third degree is punishable by a term of imprisonment of three to five years or a fine up to \$15,000, or both; a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months or a fine up to \$10,000, or both; and a disorderly persons offense is punishable by a term of imprisonment of up to six months or a fine of up to \$1,000 or both.

Finally, the bill would revise the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) in order to specify that any penalties collected thereunder are to be used for caregiver training and site visits conducted under the bill's other provisions

Site Visits

This bill would establish a system for the regular site visitation of all community-based residential programs and day programs that provide services to individuals with developmental disabilities. "Community-based residential program" is defined by the bill to include any group home or supervised apartment that is licensed and regulated by the department; while a "day program" is defined to include those programs that are certified to provide day habilitation services or sheltered workshops for individuals with developmental disabilities.

Specifically, the bill would require the Commissioner of Human Services, or the commissioner's designee, to ensure that case managers: annually conduct not less than two site visits of each and every community-based residential program and day program, in order to evaluate whether the individuals with developmental disabilities who are receiving services from each such program are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the department, in accordance with the State law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry Law).

For a group home, not less than two site visits would need to be unannounced site visits that are conducted by a department employee who is assigned to a resident of the group home. "Department employee" is defined to include a direct employee of the DHS, or an employee of a department-funded case management agency. For a supervised apartment, not less than two site visits would need to be unannounced site visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day habilitation services provider or a sheltered workshop provider, not less than one site visit would need to be an unannounced site visit conducted by a department employee who is assigned to a participant in the day program; and not less than one site visit would need to be an unannounced site visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case.

Notice of Physical Injury, Abuse, Neglect, and Exploitation

The bill would also require certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded

by the department. Notification of injury to the guardian or family member would be required regardless of the injury's severity (i.e., regardless of whether the injury constitutes a major, moderate, or minor injury).

Notification of injury would be provided by the provider or licensee of the program, facility, community care residence, or living arrangement where the individual with developmental disabilities is located at the time of injury. Such notification would need to be provided to the guardian of the individual, or, if there is no guardian, to a family member who requests such notification, and is to be provided: 1) as soon as possible, but no later than 60 minutes after the occurrence of the injury; and 3) through in-person means, or by telephone, and also through email or other electronic means. Electronic means may be used to engage in follow-up communications after the initial notification.

Notwithstanding these requirements, notification of injury would not be required if the guardian or family member expresses, in a written document filed with the caretaker, that they do not want to receive notification of injury under the bill.

The bill would further amend section 3 of P.L.2010, c.5 (C.30:6D-75), the State's Central Registry Law, which pertains to the reporting of incidents involving the abuse, neglect, or exploitation of an individual with a developmental disability. These amendments would specify that the department is to provide notice of an incident involving abuse, neglect, or exploitation of such an individual, to the guardian or authorized family member, as soon as possible, but no later than 60 minutes after the occurrence of the abuse, neglect, or exploitation.

Verification/Investigation of Major or Moderate Physical Injury, and of Abuse, Neglect, or Exploitation

The bill would provide that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, in a community-based residential program, or in a day program, the department is to send an employee (who is not an employee of a State developmental center, but who may be a case manager) to verify the level of severity of the incident. In investigating the incident, the department would be required to comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-76) (the Central Registry Law), which provide requirements in association with the commencement and continuation of an investigation into the abuse, neglect, or exploitation of an individual with a developmental disability.

Drug Testing Requirements

The bill would require the drug testing of direct care staff members – i.e., persons 18 years of age or older, who are employed by a

community-based residential program, a day program, a facility, or a living arrangement licensed or funded by the department, and who may come into direct contact with individuals with developmental disabilities during the course of such employment. The expenses associated with drug testing, under the bill's provisions, are to be paid by the department.

The bill requires all direct care staff members to undergo an initial drug test, prior to employment. It further provides that a program, facility, or living arrangement must require one or more of the direct care staff members employed thereby to undergo a random drug test once a year, as part of the regular course of employment. The person who is responsible for the overall management of the program, facility, or living arrangement will have the discretion to determine the total number of direct care staff member employees who will be required to undergo random drug testing each year. Finally, the bill provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test in cases where the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. In such a case, the bill requires the supervisor to report this information to his immediate supervisor, and, if the latter concurs that there is reasonable suspicion to believe that the direct care staff member is illegally using a controlled dangerous substance, that supervisor will be required to notify the person responsible for the overall operation of the program, facility, or living arrangement. Such drug testing would not be ordered without the written approval of the person responsible for the overall operation of the program, facility, or living arrangement. A direct care staff member who is employed by a program, facility, or living arrangement, and who tests positive for the unlawful use of any controlled dangerous substance drug test, may be referred for treatment services or terminated from employment; however, if the staff member refuses to submit to the drug testing, termination from employment will be required.

The bill's drug testing requirements would not apply to direct care staff members who are employed in a State developmental center, since those actors are already subject to drug testing requirements under section 1 of P.L.2009, c.220 (C.30:4-3.27).

Support System for Parents and Guardians

The bill would attempt to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center.

In particular, the bill would require each developmental center to biannually schedule a meeting with the parents and guardians of those individuals with developmental disabilities who are residing in the

center, in order to provide an opportunity for the parents and guardians to share experiences about the individuals. Similarly, the bill would require the provider of a community-based residential program to request contact information from each parent or guardian of an individual with a developmental disability who is residing at the group home or supervised apartment, as the case may be, and advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents and guardians of other individuals residing in the residential program, in order to provide an opportunity for the parents and guardians to share their experiences about the individuals. The provider of a day program is also required to request the same contact information from the parents or guardians of individuals with developmental disabilities who are participating in day habilitation services or sheltered workshops, and to advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents or guardians of other individuals participating in the day program, in order to provide an opportunity for parents and guardians to share their experiences.

Expansion and Clarification of Central Registry Law

The Central Registry Law is designed to prevent caregivers who commit offenses against individuals with developmental disabilities from working with these individuals. To that end, the law provides procedures for the reporting and investigation of incidents of abuse, neglect, and exploitation, which are committed by caregivers against individuals with developmental disabilities.

This bill would amend the Central Registry Law to define the term “program,” consistently with the other provisions of the bill, to include day programs and community-based residential programs that are licensed or funded by the department. The bill would also amend the Central Registry Law to: 1) permit the guardian or authorized family member of an individual with a developmental disability to request investigatory assistance from local and State law enforcement officials who have undergone training in working with individuals with developmental disabilities; 2) require the Commissioner of Human Services to commence a review/investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident; 3) require the commissioner to provide the guardian or authorized family member of an individual with a developmental disability with prior notice, either in person or by phone, that an investigation into abuse, neglect, or exploitation of the individual will be commenced; 4) require the commissioner to provide the guardian or authorized family member, as appropriate, with the opportunity to submit information to facilitate the investigation, to represent the individual during the course of the investigation, to be informed of the progress of the investigation through the receipt of regular progress reports (which include the represented individual’s relevant medical

records), and to attend or observe an investigative interview of the person they represent, unless the attendance or observation would impede the investigation; and 5) require the Office of Investigations to issue a written report no later than 14 days after the conclusion of an investigation into an incident of alleged abuse, neglect, or exploitation. If the guardian or authorized family member expressly requests, at any time, that the department terminate an investigative interview of the person they represent, the department, and its Office of Investigations, will be required to immediately comply with the request, unless it would impede the investigation.

The bill would also amend the confidentiality provisions of the Central Registry Law, in order to authorize disclosure of investigative records and reports to the guardian or authorized family member of an individual with a developmental disability if: such information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of such detailed information is in the best interests of the individual, as determined by DDD, or by the individual's guardian or authorized family member. The bill would further provide that any written summary of the investigation (which the law already requires be provided to the guardian or authorized family member) is to include the following information, at a minimum: 1) the name of the individual with a developmental disability who is the subject of the allegation; 2) the date of the incident, or the date reported if the incident date is unknown; 3) whether the incident is an allegation of abuse, neglect, or exploitation; 4) the incident number; 5) a summary of the allegation; 6) a finding that the incident is substantiated or unsubstantiated; 7) the rationale for the finding and, if a substantiated incident, a description of the action or inaction that precipitated the finding; 8) if known at the time of issuing the summary, whether or not criminal charges against the alleged offending caregiver are pending; and 9) whether remedial action was taken.

Bill Designation

This bill is designated as "Stephen Komninos' Law" to honor the memory of Stephen J. Komninos, an individual with developmental disabilities who died at the age of 22 while under the care of a private licensed facility for individuals with developmental disabilities. Stephen was a non-verbal young man who was very sociable and suffered through many substantiated incidents of abuse and neglect by caregivers. Tragically, the last incident resulted in his death. This bill is intended to facilitate the enhanced protection of individuals with developmental disabilities, like Stephen, by requiring more transparency in incident reporting and investigations; by requiring more timely reporting and the issuance of prompt notification to the parents and guardians of individuals with developmental disabilities who suffer injury, abuse, neglect, or exploitation; and by promoting

the establishment and maintenance of a Statewide policy and environment that does not tolerate the abuse, neglect, or exploitation of individuals with developmental disabilities.

As reported, this bill is identical to Senate Bill No. 516 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that several provisions of the bill would significantly increase annual personnel and administrative expenditures at the Department of Human Services (DHS). The specific magnitude of the increase is uncertain, and may vary substantially depending on the manner in which the DHS would implement the bill.

Additional staff would be needed to conduct site visits and restructure the investigations process as required under the bill. Based on information provided by the Executive on an earlier version of the bill, the OLS assumes for purposes of illustrating the potential impact of the current legislation that 200 additional employees may have to be hired at a gross annual cost of approximately \$24 million. Federal Medicaid funds may offset a portion of these costs, leading to an estimated annual State cost of \$18 million. These estimates are highly uncertain and only serve as an illustrative example.

In addition, the OLS estimates that drug testing for applicants for employment as direct care staff may cost the State approximately \$600,000 annually. Indeterminate additional expenditures for the drug testing of certain current employees would also be required under the bill.

Moreover, the bill may result in a small recurring increase in State revenue resulting from increased fines and criminal penalties imposed on individuals who endanger the welfare of an individual with a developmental disability, or who fail to report incidents of abuse, neglect, or exploitation. However, the bill may also result in increased annual State costs to incarcerate these individuals for longer terms than are authorized under current law, depending upon the sentences imposed.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2503
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: NOVEMBER 1, 2016

SUMMARY

- Synopsis:** Provides protections for individuals with developmental disabilities through accountability and transparency; designated as "Stephen Komminos' Law."
- Type of Impact:** An expenditure increase from the General Fund or Casino Revenue Fund.
- Agencies Affected:** Department of Human Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>
State Cost	Indeterminate increase – See comments below.
State Revenue	Minimal increase – See comments below.

- The Office of Legislative Services (OLS) finds that several provisions of the substitute would significantly increase personnel and administrative expenditures at the Department of Human Services (DHS), likely in the millions of dollars. The specific magnitude of these increased costs, and the extent to which they might be absorbed within existing funding, would depend upon the specific manner in which DHS implements the law, and cannot be independently determined by the OLS.
- The substitute may result in a small increase in revenue resulting from increased fines imposed on case workers who fail to report incidents of abuse, neglect, or exploitation, but may also result in increased costs to incarcerate these individuals for longer prison terms that are authorized under current law, depending upon the sentences imposed.

BILL DESCRIPTION

The Assembly Committee Substitute for Assembly Bill No. 2503 of 2016 requires the Commissioner of Human Services, or the commissioner's designee, to designate employees of the DHS, who are not employees of a State developmental center but may be case managers

employed by DHS, or an agency under contract with DHS, to conduct at least six unannounced site visits annually to randomly check whether the individuals with developmental disabilities who are receiving services from a program, facility, or living arrangement licensed or funded by the department are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver, and report the same pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75), which is the law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry). The Central Registry is designed to prevent caregivers who become offenders against individuals with developmental disabilities from working with these individuals.

The substitute would apply to caregiver abuse, neglect, or exploitation in day programs, sheltered workshops, group homes, apartments, supervised apartments, self-directed housing, campus housing, or developmental centers.

Under the substitute, the Commissioner of Human Services, or the commissioner's designee, is required to designate staff to notify the guardian or authorized family member of an individual with a developmental disability receiving services from a program, facility, community care residence, or living arrangement licensed or funded by the department of any physical injury to the individual, as soon as possible, but no later than 60 minutes after the occurrence of the injury. Additionally, a provider or licensee is to notify the guardian or authorized family member of an individual with a developmental disability receiving services as soon as possible, but no later than 60 minutes after the occurrence of the injury. These notifications are to be in person, or by telephone, with other electronic means to be used to follow up the telephoned notification.

Further, within 48 hours of receipt of a report of an incident involving physical injury, or abuse or neglect in a program, facility, community care residence, or living arrangement licensed or funded by DHS for an individual with a developmental disability, the Commissioner of Human Services is required to send an employee, who is not an employee of a State developmental center but may be a case manager employed by DHS or an agency under contract with DHS, to the location to verify the level of severity.

The substitute requires drug testing as a condition of employment as a direct care staff member of a program, facility, or living arrangement licensed or funded by DHS. This testing would be paid for by the applicant for employment.

There also is a requirement for random drug testing of direct care staff members, which would occur at least once a year, and for drug testing if a direct care staff member's immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous substance, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. The supervisor is to report this information to his immediate supervisor and if the supervisor concurs that there is reasonable suspicion to believe that a direct care staff member is illegally using a controlled dangerous substance, that supervisor would notify the person responsible for the overall operation of the agency under contract with DHS to provide services to individuals with developmental disabilities. The drug testing would not be ordered without the written approval of the person responsible for the overall operation of the agency. A direct care staff member who tests positive for the unlawful use of any controlled dangerous substance may be referred for treatment services or terminated from employment, and if a direct care staff member refuses to submit to the drug testing he would be terminated. This testing would be at the expense of the agency under contract with DHS. These drug testing provisions are similar to those required under current law for direct care staff at developmental centers.

The substitute also amends the Central Registry law to include a definition of "program" which specifies that the term includes day programs, and: 1) authorizes a guardian to request appropriate assistance from local and State law enforcement officials who have undergone

training in working with individuals with developmental disabilities; 2) provides an opportunity for a guardian or authorized family member to submit information to facilitate an investigation, represent an individual, and be informed of progress of the investigation via a written progress report of the status of an investigation, including any medical records or reports about the individual, within seven calendar days of the incident and weekly thereafter, 3) permits a guardian, upon request, to attend or observe the investigation unless attendance or observation would impede the investigation; 4) provides that written summaries of the investigation, which are provided to guardians or authorized family members, are to include any medical records or reports about the individual; and 5) adds a requirement for the guardian or authorized family to be notified of an offending caregiver's inclusion on the Central Registry and of action taken by DHS to remediate a condition.

Other amendments to this law include: changing from a disorderly persons offense (punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both) to a fourth degree crime (punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both) the failure of a case manager or supervisor to report an incident; making it a third degree crime (punishable by a term of imprisonment of up to three to five years, a fine of up to \$15,000, or both) rather than a fourth degree crime if the unreported incident results in death; and providing for a caregiver to be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities or other vulnerable populations.

Lastly, the substitute revises the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) to require penalties collected under that law to be used for caregiver training and visits conducted under this bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that several provisions of the substitute would appear to significantly increase personnel and administrative expenditures at the DHS, but cannot independently estimate the fiscal impact of the substitute without information from the DHS on the manner in which it would implement the law.

The substitute would increase State costs under several of its provisions, including: the requirement that case workers conduct six unannounced site visits per year to programs, facilities, and living arrangements and conduct additional visits following the occurrence of an injury; the requirement that the Commissioner of Human Services designate staff responsible for notifying the guardian or authorized family member of an individual with a developmental disability of any physical injury to the individual; the need to enforce the requirement of programs, facilities, and living arrangements to notify the guardian or authorized family member of an individual with a developmental disability shortly after the occurrence of the injury; and the requirement to accommodate guardians or authorized family members who wish to contribute to and attend or observe investigations. The specific magnitude of these increased costs, and the extent to which they might be absorbed within existing funding, would depend upon the specific manner in which DHS implements the law, and cannot be independently

determined by the OLS. These requirements are quite substantial, and would likely increase State costs by several million dollars annually. Many, but not all, of these costs would be eligible for a 50 percent federal matching share under the Medicaid program.

It is also noted that the scope of the substitute is not explicitly limited to programs, facilities, or living arrangements that are licensed or contracted *specifically to provide* services to individuals with developmental disabilities; rather, it applies to programs, facilities, or living arrangements, licensed or funded by the DHS, *that provide* any services to individuals with developmental disabilities. The DHS licenses and funds tens of thousands of health care and social services providers, which generally cannot turn away a prospective client based on a developmental disability. The context and the statement seem to indicate that the intention of the substitute is to only apply to providers contracted with the Division of Developmental Disabilities (approximately 300 provider agencies), but the department could interpret the substitute more broadly to encompass hospitals, nursing homes, mental health and substance abuse disorder treatment providers, county welfare agencies, and others, as well. The OLS cannot independently determine how narrowly or broadly the DHS may interpret the language of the substitute, and therefore cannot estimate the number of additional site visits and other oversight and reporting activities that would be required, or the costs that would result.

The substitute requires direct care staff to submit to drug testing, at their own expense, as a condition of employment. The cost of this testing could discourage some job applicants in a market that already struggles to find sufficient qualified staff, but would not directly affect State finances unless providers must substantially alter their businesses or some cease operations.

The substitute may result in a small increase in revenue resulting from increased fines imposed on case workers who fail to report incidents of abuse, neglect, or exploitation, but may also result in increased costs to incarcerate these individuals for longer prison terms that are authorized under current law, depending upon the sentences imposed.

Section: Human Services

*Analyst: David Drescher
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2503

STATE OF NEW JERSEY

217th LEGISLATURE

DATED: JUNE 20, 2017

SUMMARY

- Synopsis:** Provides protections for individuals with developmental disabilities; upgrades crimes committed against such individuals; and improves transparency and accountability in investigations of abuse, neglect, and exploitation of such individuals; designated as "Stephen Komminos' Law."
- Type of Impact:** Annual State expenditure increase from General Fund and potentially Casino Revenue Fund, and annual State revenue increase to General Fund.
- Agencies Affected:** Department of Human Services; Judiciary; Department of Law and Public Safety; Office of the Public Defender; Department of Corrections; State Parole Board.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual Impact</u>
State Cost	Indeterminate increase – See comments below.
State Revenue	Indeterminate increase – See comments below.

- The Office of Legislative Services (OLS) determines that the bill would produce an indeterminate increase in the annual administrative expenditures of several State agencies, with the most significant increase accruing to the Department of Human Services (DHS). In addition, the bill would yield indeterminate annual State revenue increases from fines and penalties collected from individuals convicted of the bill's new and upgraded crimes.
- Several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS. The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS would implement the bill.
- Additional staff would be needed to conduct site visits and restructure the investigations process as required under the bill. Based on information provided by the Executive on an

earlier version of the bill, the OLS assumes for purposes of illustrating the potential impact of the current legislation that 200 additional DHS employees may have to be hired at a gross annual cost of approximately \$24 million. Federal Medicaid funds may offset a portion of these costs, leading to an estimated annual State cost in this example of \$18 million.

- The OLS estimates that drug testing for applicants for employment as direct care staff may cost the State approximately \$600,000 annually. Indeterminate additional expenditures for drug testing of certain current employees would also be required under the bill.
- The OLS estimates that the establishment of two new criminal offenses and the upgrades of certain existing offenses related to the abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver would increase the annual workload and operating expenditures of the Department of Law and Public Safety, the Judiciary, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The OLS cannot quantify the annual cost increases because of a lack of data on the number of cases that would be adjudicated under the new and upgraded offenses.

BILL DESCRIPTION

The First Reprint of the Assembly Committee Substitute for Assembly Bill No. 2503 of 2016, which is designated as "Stephen Komninos' Law," improves protections for individuals with developmental disabilities and provides for increased transparency and accountability in investigations of alleged abuse, neglect, or exploitation of such individuals.

The bill establishes two new grades of criminal offenses that involve endangering the welfare of an individual with a developmental disability. The bill also upgrades certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver.

In addition, the bill establishes a system for the regular site visitation of all community-based residential programs (i.e. group homes and supervised apartments) and day programs (including day habilitation programs and sheltered workshops) that provide services to individuals with developmental disabilities. Specifically, the bill requires that case managers annually conduct not fewer than two site visits of each community-based residential program and day program in order to evaluate whether the individuals with developmental disabilities are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the department. For a group home, not fewer than two site visits need to be unannounced visits conducted by a department employee who is assigned to a resident of the group home. For a supervised apartment, not fewer than two site visits need to be unannounced visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day program, at least one site visit needs to be an unannounced visit conducted by a department employee who is assigned to a participant in the day program; and at least one site visit needs to be an unannounced visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. A "department employee" may be a DHS employee or an employee of a department-funded case management agency.

The bill also requires certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded by the department. Notification of injury is

to be given by the provider or licensee of the program, facility, community care residence, or living arrangement where the injury occurred. Such notification needs to be provided to the guardian or family member who has requested such notifications no later than 60 minutes after the occurrence of the injury; and through in-person means, or by telephone, and also through email or other electronic means. Furthermore, the department is to provide notice of an incident involving abuse, neglect, or exploitation to the guardian or authorized family member no later than 60 minutes after the occurrence of the incident.

The bill also provides that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, community-based residential program, or day program, the department is to send an employee to verify the level of severity of the incident. In investigating the incident, the department is to comply with the Central Registry Law, which concerns investigations into the abuse, neglect, or exploitation of an individual with a developmental disability.

The bill further requires the drug testing of all direct care staff members who may come into direct contact with individuals with developmental disabilities during the course of their employment. The associated expenses are to be paid by the department. Direct care staff members are to undergo an initial drug test prior to employment. In addition, the employing program, facility, or living arrangement is to conduct at least once a year a random drug test of at least one employed direct care staff member. The bill also provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test when the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous substance.

The bill attempts to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center. In particular, the bill requires each developmental center to biannually schedule a meeting with the parents and guardians. Similarly, the bill requires programs to request contact information from each parent or guardian, and advise the parents and guardians that, if they agree, the provider will exchange their contact information with the parents and guardians of other individuals residing in the residential program.

The bill also requires the DHS to commence an investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident, and specifies several means by which guardians or family members must be informed and allowed to participate in the investigation. The bill also authorizes the disclosure of investigative records and reports to guardians or family members under certain circumstances.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive Branch has not submitted a formal, written fiscal note for this bill. However, the DHS provided information relevant to a previous iteration of the bill in response to OLS discussion points in May 2017. This information indicates that there are approximately 1,875 contracted programs that provide in-person/residential services to 8,975 individuals with developmental disabilities. An additional 16,500 individuals receive in-person/own-home services such as support coordination, individual supports, and community-based supports. For residential services, State case managers make four on-site visits per year, with monthly telephone contact between visits. Increasing this frequency to six on-site visits per year (which

was required by the version of the bill that was current at that time) would require a 50 percent increase in staff, or approximately 110 employees. Using a similar ratio for the own-home population would require an additional 200 new employees, bringing the total to over 300 contracted or State staff.

OFFICE OF LEGISLATIVE SERVICES

The OLS determines that the bill would produce an indeterminate increase in the annual administrative expenditures of several State agencies, with the most significant increase accruing to the DHS. In addition, the bill would yield indeterminate annual State revenue increases from fines and penalties collected from individuals convicted of the bill's new and upgraded crimes.

Department of Human Services: The OLS finds that several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS. The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS would implement the bill.

The largest fiscal impact is likely to be the requirement to conduct unannounced site visits to residential and day programs. The current system of provider oversight is primarily oriented around the individuals receiving services, not the providers. Division of Developmental Disabilities (DDD) case managers and support coordinators visit their individual clients quarterly, most often at the client's residence (which is a residential program for some consumers), but sometimes at a day program or other location agreeable to the affected parties. During these visits, the case manager's or support coordinator's responsibility is to their assigned client, not the entire program (though the case manager would be obligated to report any incidentally witnessed abuse, neglect, or exploitation). When visits occur at a program site, the provider is typically made aware in advance. Thus, the bill requires fewer site visits than are currently conducted, but the visits would be functionally different – they must be unannounced, and in certain cases must be conducted by personnel who are unfamiliar with the particular program they are visiting. Thus, it is not clear that the current system could be easily adapted to meet the requirements of the bill, and a significant increase in staff may be necessary to add these additional site visits to the current system of oversight. In practice, the DHS may redesign the current oversight system to incorporate the bill's requirements, minimizing redundancy in site visitation and reducing the number of new staff who may need to be hired.

The bill's new requirements related to the notification of guardians and family members of injuries and investigations would similarly require some redesign of DDD policies and procedures. In particular, changes in the investigations process appear to be likely to require significantly more staff in order to generate reports, redact private information, and incorporate family members' input in investigations. As in the case of the reorganization of the provider oversight system, the actual increase in State costs would depend on the specific way in which the DDD redesigns its system.

The Executive estimated that an earlier version of the bill would require as many as 310 additional employees (described above). Noting that this version of the bill requires fewer site visits than the version previously evaluated by the Executive, the OLS assumes for purposes of illustrating the potential impact of the legislation that 200 additional employees may have to be hired under this version of the bill, when including both site visitation and investigations staff. At an estimated average annual cost of \$120,000 per employee (including salary, fringe benefits, equipment, and travel costs), this would lead to \$24 million in additional annual expenses. Federal Medicaid matching funds can offset 50 percent of allowable costs, but some of the bill's anticipated expenditures are not obviously consistent with federal Medicaid rules, so

the actual proportion of costs that would be offset with federal funds would depend upon the way that the DHS would design the system and apply for the federal funds. A total federal contribution of one-third of total costs may be reasonable, resulting in a State cost in this example of \$18 million annually.

The drug testing requirements of the bill would also increase State costs. Available information suggests that there are approximately 23,000 direct care staff in DHS-funded programs for individuals with developmental disabilities in New Jersey. Representatives of provider agencies have testified to the Legislature that their staff turnover rates for direct care staff are as high as 44 percent, suggesting approximately 10,000 new hires each year. At an estimated cost of \$60 per test (based on a survey of commercially available employee drug testing services), this would cost the State around \$600,000 annually. Additional costs for drug testing of job applicants who are not hired, random testing of certain current employees required by the bill, and administration would add an indeterminate amount to this total.

New and Upgraded Criminal Offenses: The OLS estimates that the establishment of two new criminal offenses and the upgrades of certain existing criminal offenses related to the abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver would increase the annual workload and operating expenditures of the Department of Law and Public Safety, the Judiciary, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The OLS, however, cannot quantify the annual cost increases because of a lack of data on the number of cases that would be adjudicated under the new and upgraded offenses.

The OLS notes that Department of Corrections data indicate that the average annual per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$41,964. However, this cost would not be incurred unless the prison population increased by a number large enough for the department to increase bed space capacity, raising fixed costs. Additional costs to be incurred in housing a small number of additional inmates without increasing bed spaces would approximate \$8.45 per day, totaling \$3,084 annually per inmate in marginal costs for food, wage, and clothing.

Any additional State cost from establishing the new crimes and upgrading several others may be offset, in part, by fines and penalties imposed by the courts on defendants convicted of having committed the offenses; however, the State's ability to collect criminal fines and penalties has historically been limited.

Section: Human Services

*Analyst: David Drescher
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2503
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: OCTOBER 5, 2017

SUMMARY

- Synopsis:** Provides protections for individuals with developmental disabilities; upgrades crimes committed against such individuals; and improves transparency and accountability in investigations of abuse, neglect, and exploitation of such individuals; designated as "Stephen Komminos' Law."
- Type of Impact:** Annual State expenditure increase from General Fund and potentially Casino Revenue Fund, and annual State revenue increase to General Fund.
- Agencies Affected:** Department of Human Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual Impact</u>
State Cost	Indeterminate increase – See comments below.
State Revenue	Indeterminate increase – See comments below.

- The Office of Legislative Services (OLS) determines that several provisions of the bill would significantly increase personnel and administrative expenditures at the Department of Human Services (DHS). The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS implements the bill.
- Additional staff would be needed to conduct site visits and restructure the investigations process as required under the bill. Based on information provided by the Executive on an earlier version of the bill, the OLS assumes for purposes of illustrating the potential impact of the current legislation that 200 additional DHS employees may have to be hired at a gross annual cost of approximately \$24 million. Federal Medicaid funds may offset a portion of these costs, leading to an estimated annual State cost in this example of \$16 million.

- The OLS estimates that drug testing for applicants for employment as direct care staff may cost the State approximately \$600,000 annually. Indeterminate additional expenditures for drug testing of certain current employees would also be required under the bill.
- The legislation may result in an increase in revenue from increased civil penalties imposed on affected programs and employees. Currently, revenue from civil penalties related to the system of services for individuals with developmental disabilities represents a very small fraction of total funding for these services, so any marginal change resulting from the bill is likely to be minimal.

BILL DESCRIPTION

The Second Reprint of the Assembly Committee Substitute for Assembly Bill No. 2503 of 2016, which is designated as "Stephen Komninos' Law," improves protections for individuals with developmental disabilities and provides for increased transparency and accountability in investigations of alleged abuse, neglect, or exploitation of such individuals.

The bill establishes a system for the regular site visitation of all community-based residential programs (i.e. group homes and supervised apartments) that provide services to individuals with developmental disabilities. Specifically, the bill requires that DHS employees (or employees of contracted case management agencies) annually conduct not fewer than two site visits of each community-based residential program in order to evaluate whether the individuals with developmental disabilities receiving services there are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the DHS. For a group home, not fewer than two site visits need to be unannounced visits conducted by a department employee who is assigned to a resident of the group home. For a supervised apartment, not fewer than two site visits need to be unannounced visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case.

The bill also requires certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services from a community-based residential program. Notification of injury is to be given by the provider or licensee of the program where the injury occurred. Such notification needs to be provided to the guardian or family member who has requested such notifications no later than two hours after the occurrence of the injury, except if there is an extraordinary circumstance the notification may be provided up to eight hours later. Notification would be provided in-person or by telephone.

The bill also provides that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center or community-based residential program, the department is to send an employee or case manager under contract with the department to verify the level of severity of the incident. In investigating the incident, the department is to comply with the Central Registry Law, which concerns investigations into the abuse, neglect, or exploitation of an individual with a developmental disability.

The bill further requires the drug testing of all direct care staff members who may come into direct contact with individuals with developmental disabilities during the course of their employment. The associated expenses are to be paid by the DHS. Direct care staff members are to undergo an initial drug test prior to employment. In addition, the employing program, facility, or living arrangement is to conduct at least once a year a random drug test of at least one employed direct care staff member. The bill also provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test when the immediate supervisor

has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous substance.

The bill attempts to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program or a State developmental center. In particular, the bill requires each developmental center to biannually schedule a meeting with the parents and guardians. Similarly, the bill requires programs to request contact information from each parent or guardian, and advise the parents and guardians that, if they agree, the provider will exchange their contact information with the parents and guardians of other individuals residing in the residential program.

The bill also requires the DHS to commence an investigation of an incident of alleged abuse, neglect, or exploitation within 14 days after receiving notice of such incident, and specifies several means by which guardians or family members must be informed and allowed to participate in the investigation. The bill also authorizes the disclosure of investigative records and reports to guardians or family members under certain circumstances.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive Branch has not submitted a formal, written fiscal note for this bill. However, the DHS provided information relevant to a previous iteration of the bill in response to OLS discussion points in May 2017. This information indicates that there are approximately 1,875 contracted programs that provide in-person/residential services to 8,975 individuals with developmental disabilities. An additional 16,500 individuals receive in-person/own-home services such as support coordination, individual supports, and community-based supports. For residential services, State case managers make four on-site visits per year, with monthly telephone contact between visits. Increasing this frequency to six on-site visits per year (which was required by the version of the bill that was current at that time) would require a 50 percent increase in staff, or approximately 110 employees. Using a similar ratio for the own-home population would require an additional 200 new employees, bringing the total to over 300 contracted or State staff.

OFFICE OF LEGISLATIVE SERVICES

The OLS determines that several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS. The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS would implement the bill.

The largest fiscal impact is likely to be the requirement to conduct unannounced site visits to residential programs. The current system of provider oversight is primarily oriented around the individuals receiving services, not the providers. Division of Developmental Disabilities (DDD) case managers and support coordinators visit their individual clients quarterly, most often at the client's residence (which is a residential program for some consumers), but sometimes at a day program or other location agreeable to the affected parties. During these visits, the case manager's or support coordinator's responsibility is to their assigned client, not the entire program (though the case manager would be obligated to report any incidentally witnessed

abuse, neglect, or exploitation). When visits occur at a program site, the provider is typically made aware in advance. Thus, the bill requires fewer site visits than are currently conducted, but the visits would be functionally different – they must be unannounced, and in certain cases must be conducted by personnel who are unfamiliar with the particular program they are visiting. Thus, it is not clear that the current system could be easily adapted to meet the requirements of the bill, and a significant increase in staff may be necessary to add these additional site visits to the current system of oversight. In practice, the DHS may redesign the current oversight system to incorporate the bill's requirements, minimizing redundancy in site visitation and reducing the number of new staff who may need to be hired.

The bill's new requirements related to the notification of guardians and family members of injuries and investigations would similarly require some redesign of DDD policies and procedures. In particular, changes in the investigations process appear to be likely to require significantly more staff in order to generate reports, redact private information, and incorporate family members' input in investigations. As in the case of the reorganization of the provider oversight system, the actual increase in State costs would depend on the specific way in which the DDD redesigns its system.

The Executive estimated that an earlier version of the bill would require approximately 300 additional employees (described above). Because this version of the bill requires fewer site visits than the version previously evaluated by the Executive, the OLS assumes for purposes of illustrating the potential impact of the legislation that 200 additional employees may have to be hired under this version of the bill, when including both site visitation and investigations staff. At an estimated average annual cost of \$120,000 per employee (including salary, fringe benefits, equipment, and travel costs), this would lead to \$24 million in additional annual expenses. Federal Medicaid matching funds can offset 50 percent of allowable costs, but some of the bill's anticipated expenditures are not obviously consistent with federal Medicaid rules, so the actual proportion of costs that would be offset with federal funds would depend upon the way that the DHS would design the system and apply for the federal funds. A total federal contribution of one-third of total costs may be reasonable, resulting in a State cost in this example of \$16 million annually.

The drug testing requirements of the bill would also increase State costs. Available information suggests that there are approximately 23,000 direct care staff in DHS-funded programs for individuals with developmental disabilities in New Jersey. Representatives of provider agencies have testified to the Legislature that their staff turnover rates for direct care staff are as high as 44 percent, suggesting approximately 10,000 new hires each year. At an estimated cost of \$60 per test (based on a survey of commercially available employee drug testing services), this would cost the State around \$600,000 annually. Additional costs for drug testing of job applicants who are not hired, random testing of certain current employees required by the bill, and administration would add an indeterminate amount to this total.

The legislation may result in an increase in revenue from increased civil penalties imposed on programs and employees, if the new oversight system results in an increase in the number of incidents of misconduct being identified. Currently, revenue from civil penalties related to the system of care for individuals with developmental disabilities represents a very small fraction of total funding for these services, so any marginal change is likely to have a minimal effect.

Section: Human Services

*Analyst: David Drescher
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 516

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator JENNIFER BECK

District 11 (Monmouth)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Co-Sponsored by:

Senators T.Kean, Weinberg, Pou, Holzapfel and Bateman

SYNOPSIS

Provides protections for individuals with developmental disabilities through accountability and transparency; designated as "Stephen Komminos' Law."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/11/2017)

S516 BECK, SWEENEY

2

1 AN ACT concerning individuals with developmental disabilities,
2 designated as Stephen Komminos' Law, supplementing Title 30
3 of the Revised Statutes, and amending P.L.2010, c.5.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. (New section) a. The Commissioner of Human Services, or
9 the commissioner's designee, shall designate one or more members
10 of the public to serve as an advocate for individuals with
11 developmental disabilities and one or more staff members from the
12 Special Response Unit in the department, to participate in an
13 unannounced site visit conducted pursuant to this section.

14 b. An advocate and staff member designated pursuant to
15 subsection a. of this section and a member of a law enforcement
16 agency shall conduct at least six bi-monthly unannounced site visits
17 during a calendar year at a facility, as defined in section 3 of
18 P.L.1977, c.82 (C.30:6D-3), to check whether the individuals with
19 developmental disabilities who are receiving services from the
20 facility are at risk of, or are being subjected to, abuse, neglect, or
21 exploitation by a caregiver, and report the same pursuant to section
22 3 of P.L.2010, c.5 (C.30:6D-75).
23

24 2. (New section) a. The commissioner, or the commissioner's
25 designee, shall notify the guardian or authorized family member of
26 an individual with a developmental disability receiving services
27 from the Division of Developmental Disabilities of any injury to the
28 individual with a developmental disability, as soon as possible, but
29 no later than one hour after the occurrence of the injury.
30 Notification shall be in person, or by telephone and the use of other
31 electronic means to follow up the telephoned notification.

32 b. As used in this section "authorized family member" means a
33 relative of the individual with a developmental disability authorized
34 by the individual's guardian, or by the individual if the individual is
35 his own guardian, to receive information pursuant to this section.
36

37 3. (New section) a. Each State developmental center and
38 private licensed facility for persons with developmental disabilities
39 shall bi-annually host an event and invite parents and guardians of
40 individuals with developmental disabilities to the event in order to
41 provide an opportunity for parents and guardians to share
42 experiences about their family members and wards with
43 developmental disabilities.

44 b. The provider of a community residence for the
45 developmentally disabled, as defined in section 2 of P.L.1977, c.448

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (C.30:11B-2), shall request contact information from each parent or
2 guardian of an individual with a developmental disability residing
3 in the residence and advise the parent or guardian that, if the parent
4 or guardian agrees, the provider shall exchange contact information
5 with other parents and guardians of individuals with developmental
6 disabilities residing in the residence, in order to provide an
7 opportunity for parents and guardians to share experiences about
8 their family members and wards with developmental disabilities.
9

10 4. Section 2 of P.L.2010, c.5 (C.30:6D-74) is amended to read
11 as follows:

12 2. As used in this act:

13 "Abuse" means wrongfully inflicting or allowing to be inflicted
14 physical abuse, sexual abuse, or verbal or psychological abuse or
15 mistreatment by a caregiver upon an individual with a
16 developmental disability.

17 "Authorized family member" means a relative of the individual
18 with a developmental disability authorized by the individual's
19 guardian, or by the individual if the individual is his own guardian,
20 to receive information pursuant to P.L.2010, c.5 (C.30:6D-73 et
21 seq.).

22 "Caregiver" means a person who receives State funding, directly
23 or indirectly, in whole or in part, to provide services or supports, or
24 both, to an individual with a developmental disability; except that
25 "caregiver" shall not include an immediate family member of a
26 person with a developmental disability.

27 "Central registry" means the Central Registry of Offenders
28 Against Individuals with Developmental Disabilities established
29 pursuant to **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.).

30 "Commissioner" means the Commissioner of Human Services.

31 "Department" means the Department of Human Services.

32 "Developmental disability" means developmental disability as
33 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

34 "Exploitation" means the act or process of a caregiver using an
35 individual with a developmental disability or his resources for
36 another person's profit or advantage.

37 "Intimate parts" means the following body parts of a person:
38 sexual organs, genital area, anal area, inner thigh, groin, buttock, or
39 breast.

40 "Lewdness" means the exposing of the genitals for the purpose
41 of arousing or gratifying the sexual desire of a caregiver or an
42 individual with a developmental disability, or any flagrantly lewd
43 and offensive act which the caregiver knows or reasonably expects
44 is likely to be observed by an individual with a developmental
45 disability.

46 "Neglect" shall consist of any of the following acts by a
47 caregiver on an individual with a developmental disability: willfully
48 failing to provide proper and sufficient food, clothing, maintenance,

1 medical care, or a clean and proper home; or failure to do or permit
2 to be done any act necessary for the well-being of an individual
3 with a developmental disability.

4 "Physical abuse" means a physical act directed at an individual
5 with a developmental disability by a caregiver of a type that causes
6 one or more of the following: pain, injury, anguish, or suffering.
7 Such acts include, but are not limited to, the individual with a
8 developmental disability being kicked, pinched, bitten, punched,
9 slapped, hit, pushed, dragged, or struck with a thrown or held
10 object.

11 "Sexual abuse" means an act or attempted act of lewdness, sexual
12 contact, or sexual penetration between a caregiver and an individual
13 with a developmental disability. Any form of sexual contact or
14 activity between a caregiver and an individual with a developmental
15 disability, absent marriage, domestic partnership, or civil union, is
16 sexual abuse, regardless of whether the individual with a
17 developmental disability gives consent or the caregiver is on or off
18 duty.

19 "Sexual contact" means an intentional touching by a caregiver or
20 individual with a developmental disability, either directly or
21 through clothing, of the intimate parts of the individual with a
22 developmental disability or the caregiver for the purpose of
23 sexually arousing or sexually gratifying the caregiver. Sexual
24 contact of the caregiver with himself must be in view of the
25 individual with a developmental disability whom the caregiver
26 knows to be present.

27 "Sexual penetration" means vaginal intercourse, cunnilingus,
28 fellatio, or anal intercourse between a caregiver and an individual
29 with a developmental disability or insertion of the hand, finger, or
30 object into the anus or vagina, either by the caregiver or upon the
31 caregiver's instruction.

32 "Verbal or psychological abuse or mistreatment" means any
33 verbal or non-verbal act or omission by a caregiver that inflicts one
34 or more of the following: emotional harm; mental distress; or
35 invocation of fear, humiliation, intimidation, or degradation to an
36 individual with a developmental disability. Examples include, but
37 are not limited to: bullying; ignoring need; verbal assault; use of
38 racial or ethnic slurs; or intimidating gestures, such as shaking a fist
39 at an individual with a developmental disability.

40 (cf: P.L.2010, c.5, s.2)

41

42 5. Section 3 of P.L.2010, c.5 (C.30:6D-75) is amended to read
43 as follows:

44 3. a. (1) A case manager or case manager's supervisor in the
45 department, a person employed or volunteering in a program,
46 facility, community care residence, or living arrangement licensed
47 or funded by the department, a person conducting an unannounced
48 site visit pursuant to section 1 of P.L. , c. (C.) (pending

1 before the Legislature as this bill), or a person providing
2 community-based services with indirect State funding to a person
3 with a developmental disability, as applicable, having reasonable
4 cause to believe that an individual with a developmental disability
5 has been subjected to abuse, neglect, or exploitation by a caregiver
6 shall report the same immediately to the department by telephone or
7 otherwise, and if appropriate the department shall notify, no later
8 than one hour after the occurrence of the abuse, neglect, or
9 exploitation, the guardian or authorized family member of the
10 individual with a developmental disability who was the subject of
11 the abuse, neglect, or exploitation, as required by section 2 of
12 P.L. , c. (C.)(pending before the Legislature as this bill).

13 (2) Such report, where possible, shall contain the name and
14 address of the individual with a developmental disability and the
15 caregiver responsible for the care, custody, or control of the
16 individual with a developmental disability, and the guardian, or
17 other person having custody and control of the individual and, if
18 known, the condition of the individual with a developmental
19 disability, the nature and possible extent of the individual's injuries,
20 maltreatment, abuse, neglect or exploitation, including any evidence
21 of previous injuries, maltreatment, abuse, neglect, or exploitation,
22 and any other information that the person believes may be helpful
23 with respect to the injuries, maltreatment, abuse, neglect, or
24 exploitation of the individual with a developmental disability and
25 the identity of the alleged offender.

26 b. Within the department, the commissioner shall maintain a
27 unit to receive and prioritize such reports, initiate appropriate
28 responses through timely and appropriate investigative activities,
29 alert appropriate staff, and ensure that findings are reported in a
30 uniform and timely manner.

31 c. (1) A person employed or volunteering in a program,
32 facility, community care residence, or living arrangement licensed
33 or funded by the department, or a person providing community-
34 based services with indirect State funding to a person with a
35 developmental disability, as applicable, who fails to report an act of
36 abuse, neglect, or exploitation against an individual with a
37 developmental disability while having reasonable cause to believe
38 that such an act has been committed, is a disorderly person.

39 (2) A case manager or case manager's supervisor in the
40 department who fails to report an act of abuse, neglect, or
41 exploitation of an individual with a developmental disability while
42 having reasonable cause to believe that such an act has been
43 committed, shall be guilty of a **【disorderly person's offense】** crime
44 of the fourth degree, unless the abuse, neglect, or exploitation
45 results in the death of an individual with a developmental disability,
46 in which case the case manager or case manager's supervisor shall
47 be guilty of a crime of the **【fourth】** third degree.

1 d. In addition to any penalty imposed pursuant to this section, a
2 person convicted under this section shall be subject to a penalty in
3 the amount of \$350 for each day that the abuse, neglect, or
4 exploitation was not reported, payable to the Treasurer of the State
5 of New Jersey, which shall be used by the department to fund the
6 provision of food and care to individuals with developmental
7 disabilities residing in community care residences.

8 e. A case manager or case manager's supervisor who is charged
9 with failure to report an act of abuse, neglect, or exploitation of an
10 individual with a developmental disability while having reasonable
11 cause to believe that such an act has been committed, shall be
12 temporarily reassigned to duties that do not involve contact with
13 individuals with developmental disabilities or other vulnerable
14 populations and shall be terminated from employment if convicted.

15 In the case of a case manager or case manager's supervisor who
16 is employed by the department, the case manager or supervisor shall
17 retain any available right of review by the Civil Service
18 Commission.

19 (cf: P.L.2012, c.69, s.9)
20

21 6. Section 4 of P.L.2010, c.5 (C.30:6D-76) is amended to read
22 as follows:

23 4. a. Upon receipt of a report pursuant to section 3 of **[this**
24 **act]** P.L.2010, c.5 (C.30:6D-75), the department shall designate an
25 entity, as established by the commissioner, that shall immediately
26 take such action as shall be necessary to ensure the safety of the
27 individual with a developmental disability and to that end may
28 request appropriate assistance from local and State law enforcement
29 officials or contact Adult Protective Services to provide assistance
30 in accordance with the provisions of P.L.1993, c.249 (C.52:27D-
31 406 et seq.). The guardian of the individual with a developmental
32 disability also shall be authorized to request appropriate assistance
33 from local and State law enforcement officials.

34 b. The commissioner shall adopt rules and regulations
35 necessary to provide for an investigation of a reported incident and
36 subsequent substantiation or non-substantiation of an allegation of
37 abuse, neglect, or exploitation of an individual with a
38 developmental disability by a caregiver, **[by]** which shall include:
39 (1) maintaining a Special Response Unit to investigate serious
40 unusual incidents, as defined by applicable rules and regulations, in
41 facilities or community programs licensed, contracted, or regulated
42 by the department ; (2) notification of the name of the individual
43 who is investigating an incident that occurred at a developmental
44 center to the guardian or authorized family member of the
45 individual with a developmental disability who is the subject of the
46 incident; and (3) providing an opportunity for a guardian or
47 authorized family member to submit information to facilitate an
48 investigation. During its investigation of an allegation of abuse,

1 neglect, or exploitation of an individual with a developmental
2 disability by a caregiver, the Special Response Unit or the chief
3 executive officer of a developmental center or the officer's
4 designee, as applicable, shall make a good faith effort to notify the
5 caregiver of the possibility of the caregiver's inclusion on the
6 registry, and give the caregiver an opportunity to respond to the
7 department concerning the allegation. A guardian of an individual
8 with a developmental disability, upon request, shall be permitted to
9 attend, or observe if attendance would impede the investigation, an
10 investigative interview concerning an allegation of abuse, neglect,
11 or exploitation of the individual.

12 c. The Special Response Unit, the department, or other
13 investigating entity shall forward to the commissioner, or the
14 commissioner's designee, a substantiated incident of abuse, neglect,
15 or exploitation of an individual with a developmental disability for
16 inclusion of an offending caregiver on the central registry. The
17 Special Response Unit, the department, or other investigating entity
18 shall also forward to the commissioner, or the commissioner's
19 designee, all unsubstantiated incidents of abuse, neglect, or
20 exploitation of an individual with a developmental disability. As
21 soon as possible, and no later than 14 days after receipt of the
22 incident of abuse, neglect, or exploitation, the commissioner or the
23 commissioner's designee shall review the incident. The offending
24 caregiver of a substantiated incident shall be included on the central
25 registry as expeditiously as possible. The Special Response Unit
26 shall retain a record of all unsubstantiated incidents.

27 d. Upon the initiation of an investigation, the department shall:
28 (1) ensure that any communication concerning the alleged abuse,
29 neglect, or exploitation of an individual with a developmental
30 disability between a caregiver, case manager of the caregiver, the
31 case manager's supervisor, or a person at the appropriate Regional
32 Office of the Division of Developmental Disabilities is identified,
33 safeguarded from loss or destruction, and maintained in a secure
34 location; and (2) contact the Office of the Attorney General, which
35 shall determine whether to participate in the investigation.

36 e. (1) The Special Response Unit shall issue a written report of
37 the investigation that includes the conclusions of the unit, the
38 rationale for the conclusion, and a detailed summary of any
39 communication secured pursuant to subsection d. of this section.
40 The report shall also include an assessment of the role of any case
41 manager of a caregiver or the case manager's supervisor, if
42 applicable, in the allegation of abuse, neglect, or exploitation, and a
43 recommendation about whether any civil or criminal action should
44 be brought against the case manager or supervisor. The report shall
45 be made part of the record for review in any civil or criminal
46 proceeding that may ensue.

47 (2) A written summary of the conclusions of the investigation
48 shall be provided to the guardian or authorized family member of

1 the individual with a developmental disability who is the subject of
2 the alleged abuse, neglect, or exploitation; except that records and
3 reports of an investigation shall be provided to a guardian or other
4 person who is responsible for the welfare of the individual with a
5 developmental disability if: the information is needed in connection
6 with the provision of care, treatment, assessment, evaluation, or
7 supervision to the individual; and the provision of information is in
8 the best interests of the individual with a disability as determined by
9 the Division of Developmental Disabilities.

10 f. A licensed provider in another state shall be permitted access
11 to the central registry.
12 (cf: P.L.2012, c.69, s.10)

13

14 7. Section 5 of P.L.2010, c.5 (C.30:6D-77) is amended to read
15 as follows:

16 5. a. There is established a Central Registry of Offenders
17 Against Individuals with Developmental Disabilities in the
18 department.

19 b. The commissioner shall adopt rules and regulations that
20 define the procedures and standards for inclusion of an offending
21 caregiver on the central registry, and for notification of such
22 inclusion to the caregiver and to the guardian or authorized family
23 member of the individual with a developmental disability who was
24 the subject of the abuse, neglect, or exploitation that led to the
25 caregiver's inclusion on the central registry. The commissioner, or
26 the commissioner's designee, shall notify the guardian or authorized
27 family member of the individual of any action taken by the
28 department to remediate a condition that may have contributed to
29 the occurrence of the abuse, neglect, or exploitation of the
30 individual.

31 (1) For inclusion on the central registry in the case of a
32 substantiated incident of abuse, the caregiver shall have acted with
33 intent, recklessness, or careless disregard to cause or potentially
34 cause injury to an individual with a developmental disability.

35 (2) For inclusion on the central registry in the case of a
36 substantiated incident of neglect, the caregiver shall have acted with
37 gross negligence, recklessness, or in a pattern of behavior that
38 causes or potentially causes harm to an individual with a
39 developmental disability.

40 (3) In the case of a substantiated incident of exploitation, the
41 commissioner shall establish a dollar amount for inclusion on the
42 central registry.

43 c. The commissioner also shall adopt rules and regulations:

44 (1) necessary to provide for an appeals process, through the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), of the commissioner's determination to include an alleged
47 offending caregiver's name on the central registry. The

1 commissioner's determination shall be a final agency decision
2 subject to review by the Appellate Division of the Superior Court;

3 (2) concerning the dissemination of information in the central
4 registry;

5 (3) that will prohibit persons included on the central registry
6 from employment in facilities or programs of the Division of
7 Developmental Disabilities in the department and those facilities or
8 programs licensed, contracted, or regulated by the department, or
9 from providing community-based services with indirect State
10 funding to persons with developmental disabilities; and

11 (4) necessary to provide for the removal of a person's name
12 from the central registry. A person may apply for removal of his
13 name to the commissioner after a period of five years of being
14 placed on the central registry. The person shall affirmatively
15 demonstrate to the commissioner clear and convincing evidence of
16 rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-
17 1 et seq.) as a guide.

18 d. The commissioner may adopt rules and regulations that will
19 allow bona fide employers serving vulnerable populations to inquire
20 of the department if potential or current employees are included on
21 the central registry, consistent with federal and State privacy and
22 confidentiality laws.

23 e. No information received in the central registry shall be
24 considered as a public or government record within the meaning of
25 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
26 al.).

27 (cf: P.L.2010, c.5, s.5)

28

29 8. Section 6 of P.L.2010, c.5 (C.30:6D-78) is amended to read
30 as follows:

31 6. All records of a report made pursuant to **【this act】** section 3
32 of P.L.2010, c.5 (C.30:6D-75), all information obtained by the
33 department in investigating such reports, and all reports of findings
34 forwarded to the central registry pursuant to **【this act】** P.L.2010, c.5
35 (C.30:6D-73 et seq.) shall be kept confidential and may be
36 disclosed only:

37 a. insofar as information is shared with a guardian in
38 connection with a guardian's attendance at, or observation of, an
39 investigative interview as provided for in subsection b. of section 4
40 of P.L.2010, c.5 (C.30:6D-76); or

41 b. under circumstances expressly authorized by paragraph (2)
42 of subsection e. of section 4 of P.L.2010, c.5 (C.30:6D-76), or by
43 rules and regulations promulgated by the commissioner.

44 The department shall only disclose information that is relevant to
45 the purpose for which the information is required or is authorized as
46 provided for in subsections a. and b. of this section; except that the
47 department shall not disclose information which would likely
48 endanger the life, safety, or physical or emotional well-being of an

1 individual with a developmental disability or the life or safety of
2 any other person, or which may compromise the integrity of a
3 department investigation, civil or criminal investigation, or judicial
4 proceeding. If the department denies access to specific information
5 on this basis, the requesting entity may seek disclosure through the
6 Superior Court. Nothing in **【this act】** P.L.2010, c.5 (C.30:6D-73 et
7 seq.) shall be construed to permit the disclosure of any information
8 deemed confidential by federal or State law.

9 (cf: P.L.2010, c.5, s.6)

10

11 9. The Commissioner of Human Services, pursuant to the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
13 seq.), shall adopt rules and regulations necessary to effectuate the
14 purposes of this act.

15

16 10. This act shall take effect on the first day of the seventh
17 month next following the date of enactment, but the Commissioner
18 of Human Services may take such anticipatory administrative action
19 in advance thereof as shall be necessary for the implementation of
20 this act.

21

22

23

STATEMENT

24

25 This bill, which is designated as "Stephen Komninos' Law,"
26 improves protections for individuals with developmental disabilities
27 and provides for increased transparency of investigations conducted
28 in connection with an allegation of abuse, neglect, or exploitation of
29 individuals with developmental disabilities.

30 The bill provides for six bi-monthly unannounced site visits to be
31 conducted at a facility, which is defined pursuant to section 3 of
32 P.L.1977, c.82 (C30:6D-3) and includes facilities operated by any
33 public or private agency, organization, or institution for the
34 provision of services for individuals with developmental
35 disabilities. The Commissioner of Human Services, or the
36 commissioner's designee, is required to designate members of the
37 public to serve as advocates for individuals with developmental
38 disabilities and staff members from the Special Response Unit in
39 the Department of Human Services (DHS) to participate in the
40 visits. A member of a law enforcement agency also would
41 participate in the visits, which would be conducted to determine
42 whether individuals with developmental disabilities are at risk of, or
43 are being subjected to, abuse, neglect, or exploitation by a
44 caregiver. Persons conducting the visits are required to report to
45 DHS if they have reasonable cause to believe that an individual has
46 been subjected to abuse, neglect, or exploitation pursuant to section
47 3 of P.L.2010, c.5 (C.30:6D-75).

1 The bill also requires the commissioner, or the commissioner's
2 designee, to provide written notification to the guardian or an
3 authorized family member of an individual with a developmental
4 disability receiving services from the Division of Developmental
5 Disabilities of any injury to the individual with a developmental
6 disability, as soon as possible, but no later than one hour after the
7 occurrence of the injury. Notification is to be in person, or by
8 telephone and the use of other electronic means to follow up the
9 telephoned notification.

10 Additionally, a State developmental center and private licensed
11 facility for persons with developmental disabilities are to bi-
12 annually host an event in order to provide an opportunity for
13 parents and guardians to share experiences about their family
14 members and wards. To provide an opportunity for parents and
15 guardians of individuals with developmental disabilities residing in
16 community residence for the developmentally disabled also to share
17 their experiences, the bill requires a provider of these residences to
18 request contact information from each parent or guardian and advise
19 them that, if they agree, the contact information would be
20 exchanged with other parents and guardians of individuals with
21 developmental disabilities residing in the residence.

22 The bill also amends P.L.2010, c.5 (C.30:6D-73 et seq.), which
23 established the Central Registry of Offenders Against Individuals
24 with Developmental Disabilities (Central Registry) in DHS to
25 prevent caregivers who become offenders against individuals with
26 developmental disabilities from working with individuals with
27 developmental disabilities.

28 Specifically, the amendments to the Central Registry law permit
29 the guardian of an individual with a developmental disability to:
30 request assistance from local and State law enforcement officials to
31 ensure safety of an individual with a developmental disability in
32 connection with a report of abuse, neglect, or exploitation of an
33 individual with a developmental disability; attend or observe, if
34 attendance would impede an investigation, an investigative
35 interview, upon request; and be notified, along with an authorized
36 family member, of an offending caregiver's inclusion on the Central
37 Registry and of action taken by DHS to remediate a condition.
38 Under current law: only DHS may request assistance from law
39 enforcement officials; investigative interviews are not open to all
40 guardians; and the notifications to guardians or authorized family
41 members are not required.

42 The bill further amends the current law to: change from a
43 disorderly persons offense to a fourth degree crime the failure of a
44 case manager or supervisor to report an incident, and makes it a
45 third degree rather than a fourth degree crime if the unreported
46 incident results in death; require notification to the guardian or
47 authorized family member of the name of the individual who is
48 investigating an incident at a developmental center; and provide an

1 opportunity for a guardian or authorized family member to submit
2 information to facilitate an investigation.

3 The bill also amends the confidentiality provisions of the Central
4 Registry law to permit records and reports of an investigation to be
5 provided to a guardian or other person responsible for the welfare
6 of the individual with a developmental disability if: information is
7 needed in connection with caring for, treating, assessing,
8 evaluating, or supervising the individual; and providing information
9 is in the best interests of the individual, as determined by the
10 Division of Developmental Disabilities.

11 The bill is designated "Stephen Komninos' Law" to honor the
12 memory of Stephen, an individual with developmental disabilities
13 who died at the age of 22 while under the care of Bancroft
14 Neurohealth in Haddonfield, New Jersey, a private licensed facility
15 for persons with developmental disabilities. Stephen was a non-
16 verbal young man who was very sociable and suffered through
17 many substantiated incidents of abuse and neglect by caregivers.
18 Tragically, the last incident resulted in his death. The bill is
19 intended to encourage caregivers, supervisors, and managers of
20 facilities, as well as the appropriate funding, licensing, regulatory,
21 and law enforcement agencies to protect individuals with
22 developmental disabilities, by providing for more transparency in
23 incident reporting and investigations, the reporting of incidents in a
24 more timely manner, and an environment that does not tolerate
25 abuse, neglect, or exploitation of individuals with developmental
26 disabilities.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 516

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 15, 2017

The Senate Health, Human Services and Senior Citizens Committee reports without recommendation and with committee amendments Senate Bill No. 516.

As amended by the committee, this bill would improve protections for individuals with developmental disabilities and provide for increased transparency and accountability in investigations that are conducted in association with an allegation of abuse, neglect, or exploitation of an individual with a developmental disability. The bill would also enhance the criminal penalties that are associated with certain crimes committed against persons with developmental disabilities, and it would establish a new offense of endangering the welfare of an individual with a developmental disability. The bill is intended to encourage caregivers, supervisors, and managers of facilities, as well as the appropriate funding, licensing, regulatory, and law enforcement agencies, to protect individuals with developmental disabilities, by providing more transparency in incident reporting and investigation, requiring the timely reporting of incidents, and facilitating the establishment of an environment wherein the abuse, neglect, or exploitation of individuals with developmental disabilities is not tolerated.

The bill defines “developmental disability” in the same way the term is defined by section 3 of P.L.1977, c.82 (C.30:6D-3). Specifically, a developmental disability is “a severe, chronic disability of a person which:

- (1) is attributable to a mental or physical impairment or combination of mental or physical impairments;
- (2) is manifest before age 22;
- (3) is likely to continue indefinitely;
- (4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and
- (5) reflects the need for a combination and sequence of special inter-disciplinary or generic care, treatment, or other services that are

of lifelong or extended duration and are individually planned and coordinated.

“Developmental disability” includes, but is not limited to severe disabilities attributable to, an intellectual disability, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.”

Increased Criminal Penalties

The bill would establish two new grades of offenses that involve endangering the welfare of an individual with a developmental disability. Under the bill’s provisions, a caregiver or other person who has a legal duty for the care of a person with a developmental disability, or who has assumed responsibility for the care of a person with a developmental disability, and who subjects the person with a developmental disability to abuse, neglect, or exploitation, would be guilty of a crime of the second degree. Any other person who engages in such conduct would be guilty of a crime of the third degree. For the purposes of this offense, the terms “abuse,” “caregiver,” “exploitation,” and “neglect,” would have the same meaning ascribed to those terms in section 2 of P.L.2010, c.5 (C.30:6D-74).

The bill would further amend the law at section 3 of P.L.2010, c.5 (C.30:6D-75) to upgrade certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability. Specifically, the bill would provide that a case manager or case manager’s supervisor who fails to report an act of abuse, neglect, or exploitation will be guilty of a crime of the fourth degree (as opposed to a disorderly person’s offense), unless the abuse, neglect, or exploitation results in the death of an individual with a developmental disability, in which case the case manager or supervisor will be guilty of a crime of the third degree (as opposed to a crime of the fourth degree). The bill would further specify that a caregiver suspected of abuse, neglect, or exploitation of an individual with a developmental disability, who is charged with a failure to report, is to be temporarily reassigned to duties that do not involve contact with such individuals. Such a caregiver, if employed by the Department of Human Services (DHS), would retain a right of review by the Civil Service Commission. (The law currently provides for the temporary reassignment of case managers and case manager supervisors who fail to report, but it does not address caregivers who are suspected of abuse, neglect, or exploitation.)

Under the State’s criminal code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine up to \$150,000, or both; a crime of the third degree is punishable by a term of imprisonment of three to five years or a fine up to \$15,000, or both; a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months or a fine up to \$10,000, or both;

and a disorderly persons offense is punishable by a term of imprisonment of up to six months or a fine of up to \$1,000 or both.

Finally, the bill would revise the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) in order to specify that any penalties collected thereunder are to be used for caregiver training and site visits conducted under the bill's other provisions

Site Visits

This bill would establish a system for the regular site visitation of all community-based residential programs and day programs that provide services to individuals with developmental disabilities. "Community-based residential program" is defined by the bill to include any group home or supervised apartment that is licensed and regulated by the department; while a "day program" is defined to include those programs that are certified to provide day habilitation services or sheltered workshops for individuals with developmental disabilities.

Specifically, the bill would require the Commissioner of Human Services, or the commissioner's designee, to ensure that case managers: annually conduct not less than two site visits of each and every community-based residential program and day program, in order to evaluate whether the individuals with developmental disabilities who are receiving services from each such program are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the department, in accordance with the State law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry Law).

For a group home, not less than two site visits would need to be unannounced site visits that are conducted by a department employee who is assigned to a resident of the group home. "Department employee" is defined to include a direct employee of the DHS, or an employee of a department-funded case management agency. For a supervised apartment, not less than two site visits would need to be unannounced site visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day habilitation services provider or a sheltered workshop provider, not less than one site visit would need to be an unannounced site visit conducted by a department employee who is assigned to a participant in the day program; and not less than one site visit would need to be an unannounced site visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case.

Notice of Physical Injury, Abuse, Neglect, and Exploitation

The bill would also require certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services

from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded by the department. Notification of injury to the guardian or family member would be required regardless of the injury's severity (i.e., regardless of whether the injury constitutes a major, moderate, or minor injury).

Notification of injury would be provided by the provider or licensee of the program, facility, community care residence, or living arrangement where the individual with developmental disabilities is located at the time of injury. Such notification would need to be provided to the guardian of the individual, or, if there is no guardian, to a family member who requests such notification, and is to be provided: 1) as soon as possible, but no later than 60 minutes after the occurrence of the injury; and 3) through in-person means, or by telephone, and also through email or other electronic means. Electronic means may be used to engage in follow-up communications after the initial notification.

Notwithstanding these requirements, notification of injury would not be required if the guardian or family member expresses, in a written document filed with the caretaker, that they do not want to receive notification of injury under the bill.

The bill would further amend section 3 of P.L.2010, c.5 (C.30:6D-75), the State's Central Registry Law, which pertains to the reporting of incidents involving the abuse, neglect, or exploitation of an individual with a developmental disability. These amendments would specify that the department is to provide notice of an incident involving abuse, neglect, or exploitation of such an individual, to the guardian or authorized family member, as soon as possible, but no later than 60 minutes after the occurrence of the abuse, neglect, or exploitation.

Verification/Investigation of Major or Moderate Physical Injury, and of Abuse, Neglect, or Exploitation

The bill would provide that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, in a community-based residential program, or in a day program, the department is to send an employee (who is not an employee of a State developmental center, but who may be a case manager) to verify the level of severity of the incident. In investigating the incident, the department would be required to comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-76) (the Central Registry Law), which provide requirements in association with the commencement and continuation of an investigation into the abuse, neglect, or exploitation of an individual with a developmental disability.

Drug Testing Requirements

The bill would require the drug testing of all direct care staff members – i.e., persons 18 years of age or older, who are employed by a community-based residential program, a day program, a facility, or a living arrangement licensed or funded by the department, and who may come into direct contact with individuals with developmental disabilities during the course of such employment. The expenses associated with drug testing, under the bill's provisions, are to be paid by the department.

The bill requires direct care staff members to undergo an initial drug test, prior to employment, as well as a random drug test once a year during the course of employment. In addition, the bill provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test in cases where the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. In such a case, the bill requires the supervisor to report this information to his immediate supervisor, and, if the latter concurs that there is reasonable suspicion to believe that the direct care staff member is illegally using a controlled dangerous substance, that supervisor will be required to notify the person responsible for the overall operation of the program, facility, or living arrangement. Such drug testing would not be ordered without the written approval of the person responsible for the overall operation of the program, facility, or living arrangement. A direct care staff member who is employed by a program, facility, or living arrangement, and who tests positive for the unlawful use of any controlled dangerous substance drug test, may be referred for treatment services or terminated from employment; however, if the staff member refuses to submit to the drug testing, termination from employment will be required.

Support System for Parents and Guardians

The bill would attempt to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center.

In particular, the bill would require each developmental center to biannually schedule a meeting with the parents and guardians of those individuals with developmental disabilities who are residing in the center, in order to provide an opportunity for the parents and guardians to share experiences about the individuals. Similarly, the bill would require the provider of a community-based residential program to request contact information from each parent or guardian of an individual with a developmental disability who is residing at the group home or supervised apartment, as the case may be, and advise those parents and guardians that, if they agree, the provider will exchange

their contact information with the parents and guardians of other individuals residing in the residential program, in order to provide an opportunity for the parents and guardians to share their experiences about the individuals. The provider of a day program is also required to request the same contact information from the parents or guardians of individuals with developmental disabilities who are participating in day habilitation services or sheltered workshops, and to advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents or guardians of other individuals participating in the day program, in order to provide an opportunity for parents and guardians to share their experiences.

Expansion and Clarification of Central Registry Law

The Central Registry Law is designed to prevent caregivers who commit offenses against individuals with developmental disabilities from working with these individuals. To that end, the law provides procedures for the reporting and investigation of incidents of abuse, neglect, and exploitation, which are committed by caregivers against individuals with developmental disabilities.

This bill would amend the Central Registry Law to define the term “program,” consistently with the other provisions of the bill, to include day programs and community-based residential programs that are licensed or funded by the department. The bill would also amend the Central Registry Law to: 1) permit the guardian or authorized family member of an individual with a developmental disability to request investigatory assistance from local and State law enforcement officials who have undergone training in working with individuals with developmental disabilities; 2) require the Commissioner of Human Services to commence a review/investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident; 3) require the commissioner to provide the guardian or authorized family member of an individual with a developmental disability with prior notice, either in person or by phone, that an investigation into abuse, neglect, or exploitation of the individual will be commenced; 4) require the commissioner to provide the guardian or authorized family member, as appropriate, with the opportunity to submit information to facilitate the investigation, to represent the individual during the course of the investigation, to be informed of the progress of the investigation through the receipt of regular progress reports (which include the represented individual’s relevant medical records), and to attend or observe an investigative interview of the person they represent, unless the attendance or observation would impede the investigation; and 6) require the Office of Investigations to issue a written report no later than 14 days after the conclusion of an investigation into an incident of alleged abuse, neglect, or exploitation. If the guardian or authorized family member expressly requests, at any time, that the department terminate an investigative interview of the

person they represent, the department, and its Office of Investigations, will be required to immediately comply with the request, unless it would impede the investigation.

The bill would also amend the confidentiality provisions of the Central Registry Law, in order to authorize disclosure of investigative records and reports to the guardian or authorized family member of an individual with a developmental disability if: such information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of such detailed information is in the best interests of the individual, as determined by DDD, or by the individual's guardian or authorized family member. The bill would further provide that any written summary of the investigation (which the law already requires be provided to the guardian or authorized family member) is to include the following information, at a minimum: 1) the name of the individual with a developmental disability who is the subject of the allegation; 2) the date of the incident, or the date reported if the incident date is unknown; 3) whether the incident is an allegation of abuse, neglect, or exploitation; 4) the incident number; 5) a summary of the allegation; 6) a finding that the incident is substantiated or unsubstantiated; 7) the rationale for the finding and, if a substantiated incident, a description of the action or inaction that precipitated the finding; 8) if known at the time of issuing the summary, whether or not criminal charges against the alleged offending caregiver are pending; and 9) whether remedial action was taken.

Bill Designation

This bill is designated as "Stephen Komninos' Law" to honor the memory of Stephen J. Komninos, an individual with developmental disabilities who died at the age of 22 while under the care of a private licensed facility for individuals with developmental disabilities. Stephen was a non-verbal young man who was very sociable and suffered through many substantiated incidents of abuse and neglect by caregivers. Tragically, the last incident resulted in his death. This bill is intended to facilitate the enhanced protection of individuals with developmental disabilities, like Stephen, by requiring more transparency in incident reporting and investigations; by requiring more timely reporting and the issuance of prompt notification to the parents and guardians of individuals with developmental disabilities who suffer injury, abuse, neglect, or exploitation; and by promoting the establishment and maintenance of a Statewide policy and environment that does not tolerate the abuse, neglect, or exploitation of individuals with developmental disabilities.

Committee Amendments

The committee amended the bill to:

- add a new provision establishing a new offense of endangering the welfare of an individual with a developmental disability, which would constitute a second degree crime if committed by a caregiver, and a third degree crime if committed by any other individual;
- add a new centralized definitional section that incorporates definitions for all of the pertinent terms used throughout sections 3 through 9 of the bill;
- require the Department of Human Services to appoint employees of the department, who are not employees of a State developmental center, but who may be case managers employed by the department or an agency under contract with the department, to annually conduct not less than two site visits of every community-based residential program and every day program (as opposed to designating members of the public to conduct six site visits, as required under the original bill);
- specify that not less than two site visits conducted for each group home is to be an unannounced visit conducted by a department employee assigned to the resident of the group home; and that not less than two site visits conducted for each supervised apartment is to be an unannounced visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case;
- specify that not less than one of the annual site visits conducted for each day habilitation provider and each sheltered workshop provider is to be an unannounced site visit conducted by a department employee assigned to a participant in the day program; and that not less than one of the annual site visits is to be an unannounced site visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case;
- specify that nothing in the site visit section of the bill may be construed to authorize a staff member or agent of a community-based residential program, or a staff member or agent of a day program, to perform the site visits required by the bill;
- require the provider or licensee of a program, facility, community care residence, or living arrangement licensed or funded by the department to provide notice to the parents or guardian of an individual with developmental disabilities who suffers major, moderate, or minor injury (as opposed to requiring the department to provide such notice);
- specify that notice of injury is to be provided within 60 minutes to the guardian or authorized family member of the injured individual, through in-person means, or by telephone, and also through email or other electronic means; and specify that electronic means may be used to engage in follow-up communications;

- specify that notice of injury shall not be required if the guardian or family member expressly indicates, in writing, that they do not want to receive notification;

- insert a new section requiring the department to send an employee to the location of an incident involving moderate or major physical injury, or abuse, neglect, or exploitation in a State developmental center, community-based residential program, or day program, within 48 hours after receipt of an incident report; and further requiring the department to comply with the State’s Central Registry Law when investigating incidents involving moderate or major injury, or abuse, neglect, or exploitation;

- insert a new section on drug testing, which specifies that a drug test is required for each direct care staff member as a condition of employment; that one or more direct care staff members are to be subject to random drug testing on an annual basis after hiring; that a direct care staff member may be subject to an additional drug test if there is reasonable suspicion to believe that the staff member is illegally using a controlled substance; that a direct care staff member who tests positive for the unlawful use of a controlled substance may be referred for treatment services or terminated from employment; that a direct care staff member who refuses to submit to drug testing, as required under the bill, is to be terminated from employment; that an employer subject to the bill’s drug testing provisions is to notify each direct care staff member employed thereby of the bill’s provisions, in this regard; and that expenses associated with drug testing are to be paid by the department;

- require State developmental centers to set up biannual meetings (as opposed to events) with parents and guardians to share their experiences, and clarify that day programs are required to request contact information from parents and guardians and obtain their consent to share the information with other similarly-situated parents and guardians for the purposes of sharing their experiences (as community-based residential programs are required to do under the bill);

- insert a new section to amend section 4 of P.L.2003, c.191 (C.30:6D-5.4) to specify that penalties collected under that section are to be dedicated to providing funding for training caregivers, and for site visits conducted pursuant to the bill’s provisions;

- add a definition of the term “program” to new section 10 of the bill (amending section 2 of P.L.2010, c.5 (C.30:6D-74)), which definition is consistent with the definition that is used in the omnibus definitional section that appears at new section 3 of the bill;

- clarify that the department is to provide notice to the guardian or authorized family member of an individual with a developmental disability no later than 60 minutes after an incident involving abuse, neglect, or exploitation of the individual, and further specify that the department is to provide for verification of report prioritization by

sending an employee or case manager to the appropriate location within 48 hours to verify the level of severity of the report;

- specify that a caregiver (in addition to a case manager or case managers supervisor) who is charged with failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, is to be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities; and that such a caregiver will retain a right to review by the Civil Service Commission;

- clarify that any assistance from local and State law enforcement officials that is requested by the guardian of an individual with a developmental disability is to be provided by an official who has undergone education or training in working with individuals with developmental disabilities;

- specify that the guardian or authorized family member of an individual with a developmental disability who is the subject of an investigation into injury, abuse, neglect, or exploitation; is to be given prior notice of the commencement of the investigation; is to be given prior notice of any investigatory interview of the individual, as well as the opportunity to be present while the individual is being interviewed, unless that would impede the investigation; is to be regularly provided with written progress report showing the status of the investigation; and is authorized to terminate the interview at any time, unless termination would impede the investigation;

- specify that a departmental review of an incident involving abuse, neglect, or exploitation of an individual with a developmental disability is to be commenced no later than seven days after receipt of the incident report;

- remove references to the Special Response Unit and replace with corrected references to the Office of Investigations;

- clarify that the Office of Investigations is to issue a written report of the investigation no later than 14 days after the investigation is concluded;

- specify the information that is to be included in the written summary of an investigation that is provided to the guardian or authorized family member of the individual who is the subject of the investigation;

- state that the actual records and reports of the investigation (in addition to the written summary of investigation) may also be provided to the guardian or authorized family member if the information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of information is in the best interests of the individual, as determined by the Division of Developmental Disabilities, or by the individual's guardian or family member;

- revise the title of the bill to accurately reflect the statutory titles being supplemented, and the sections of law being amended, thereby;
- revise the bill synopsis to accurately reflect the varied purposes of the bill; and
- make technical changes to the previously-existing provisions of the bill.

As reported by the committee, Senate Bill No. 516(1R) is identical to Assembly Bill No. 2503(ACS)(1R), which the committee also reported favorably on this date.

This bill was pre-filed for introduction in the 2016-2017 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 516

STATE OF NEW JERSEY

DATED: JUNE 1, 2017

The Senate Budget and Appropriations Committee reports Senate Bill No. 516 (1R).

This bill would improve protections for individuals with developmental disabilities and provide for increased transparency and accountability in investigations that are conducted in association with an allegation of abuse, neglect, or exploitation of an individual with a developmental disability. The bill would also enhance the criminal penalties that are associated with certain crimes committed against persons with developmental disabilities, and it would establish a new offense of endangering the welfare of an individual with a developmental disability. The bill is intended to encourage caregivers, supervisors, and managers of facilities, as well as the appropriate funding, licensing, regulatory, and law enforcement agencies, to protect individuals with developmental disabilities, by providing more transparency in incident reporting and investigation, requiring the timely reporting of incidents, and facilitating the establishment of an environment wherein the abuse, neglect, or exploitation of individuals with developmental disabilities is not tolerated.

The bill defines “developmental disability” in the same way the term is defined by section 3 of P.L.1977, c.82 (C.30:6D-3). Specifically, a developmental disability is “a severe, chronic disability of a person which:

(1) is attributable to a mental or physical impairment or combination of mental or physical impairments;

(2) is manifest before age 22;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and

(5) reflects the need for a combination and sequence of special inter-disciplinary or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

“Developmental disability” includes, but is not limited to, severe disabilities attributable to an intellectual disability, autism, cerebral

palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

Increased Criminal Penalties

The bill would establish two new grades of offenses that involve endangering the welfare of an individual with a developmental disability. Under the bill's provisions, a caregiver or other person who has a legal duty for the care of a person with a developmental disability, or who has assumed responsibility for the care of a person with a developmental disability, and who subjects the person with a developmental disability to abuse, neglect, or exploitation, would be guilty of a crime of the second degree. Any other person who engages in such conduct would be guilty of a crime of the third degree. For the purposes of this offense, the terms "abuse," "caregiver," "exploitation," and "neglect," would have the same meaning ascribed to those terms in section 2 of P.L.2010, c.5 (C.30:6D-74).

The bill would further amend the law at section 3 of P.L.2010, c.5 (C.30:6D-75) to upgrade certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability. Specifically, the bill would provide that a case manager or case manager's supervisor who fails to report an act of abuse, neglect, or exploitation will be guilty of a crime of the fourth degree (as opposed to a disorderly person's offense), unless the abuse, neglect, or exploitation results in the death of an individual with a developmental disability, in which case the case manager or supervisor will be guilty of a crime of the third degree (as opposed to a crime of the fourth degree). The bill would further specify that a caregiver suspected of abuse, neglect, or exploitation of an individual with a developmental disability, who is charged with a failure to report, is to be temporarily reassigned to duties that do not involve contact with such individuals. Such a caregiver, if employed by the Department of Human Services (DHS), would retain a right of review by the Civil Service Commission. (The law currently provides for the temporary reassignment of case managers and case manager supervisors who fail to report, but it does not address caregivers who are suspected of abuse, neglect, or exploitation.)

Under the State's criminal code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine up to \$150,000, or both; a crime of the third degree is punishable by a term of imprisonment of three to five years or a fine up to \$15,000, or both; a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months or a fine up to \$10,000, or both; and a disorderly persons offense is punishable by a term of imprisonment of up to six months or a fine of up to \$1,000 or both.

Finally, the bill would revise the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) in order to specify that

any penalties collected thereunder are to be used for caregiver training and site visits conducted under the bill's other provisions

Site Visits

This bill would establish a system for the regular site visitation of all community-based residential programs and day programs that provide services to individuals with developmental disabilities. "Community-based residential program" is defined by the bill to include any group home or supervised apartment that is licensed and regulated by the department; while a "day program" is defined to include those programs that are certified to provide day habilitation services or sheltered workshops for individuals with developmental disabilities.

Specifically, the bill would require the Commissioner of Human Services, or the commissioner's designee, to ensure that case managers: annually conduct not less than two site visits of each and every community-based residential program and day program, in order to evaluate whether the individuals with developmental disabilities who are receiving services from each such program are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the department, in accordance with the State law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry Law).

For a group home, not less than two site visits would need to be unannounced site visits that are conducted by a department employee who is assigned to a resident of the group home. "Department employee" is defined to include a direct employee of the DHS, or an employee of a department-funded case management agency. For a supervised apartment, not less than two site visits would need to be unannounced site visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day habilitation services provider or a sheltered workshop provider, not less than one site visit would need to be an unannounced site visit conducted by a department employee who is assigned to a participant in the day program; and not less than one site visit would need to be an unannounced site visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case.

Notice of Physical Injury, Abuse, Neglect, and Exploitation

The bill would also require certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded by the department. Notification of injury to the guardian or family member would be required regardless of the injury's severity (i.e.,

regardless of whether the injury constitutes a major, moderate, or minor injury).

Notification of injury would be provided by the provider or licensee of the program, facility, community care residence, or living arrangement where the individual with developmental disabilities is located at the time of injury. Such notification would need to be provided to the guardian of the individual, or, if there is no guardian, to a family member who requests such notification, and is to be provided: 1) as soon as possible, but no later than 60 minutes after the occurrence of the injury; and 3) through in-person means, or by telephone, and also through email or other electronic means. Electronic means may be used to engage in follow-up communications after the initial notification.

Notwithstanding these requirements, notification of injury would not be required if the guardian or family member expresses, in a written document filed with the caretaker, that they do not want to receive notification of injury under the bill.

The bill would further amend section 3 of P.L.2010, c.5 (C.30:6D-75), the State's Central Registry Law, which pertains to the reporting of incidents involving the abuse, neglect, or exploitation of an individual with a developmental disability. These amendments would specify that the department is to provide notice of an incident involving abuse, neglect, or exploitation of such an individual, to the guardian or authorized family member, as soon as possible, but no later than 60 minutes after the occurrence of the abuse, neglect, or exploitation.

Verification/Investigation of Major or Moderate Physical Injury, and of Abuse, Neglect, or Exploitation

The bill would provide that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, in a community-based residential program, or in a day program, the department is to send an employee (who is not an employee of a State developmental center, but who may be a case manager) to verify the level of severity of the incident. In investigating the incident, the department would be required to comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-76) (the Central Registry Law), which provide requirements in association with the commencement and continuation of an investigation into the abuse, neglect, or exploitation of an individual with a developmental disability.

Drug Testing Requirements

The bill would require the drug testing of direct care staff members – i.e., persons 18 years of age or older, who are employed by a community-based residential program, a day program, a facility, or a living arrangement licensed or funded by the department, and who

may come into direct contact with individuals with developmental disabilities during the course of such employment. The expenses associated with drug testing, under the bill's provisions, are to be paid by the department.

The bill requires all direct care staff members to undergo an initial drug test, prior to employment. It further provides that a program, facility, or living arrangement must require one or more of the direct care staff members employed thereby to undergo a random drug test once a year, as part of the regular course of employment. The person who is responsible for the overall management of the program, facility, or living arrangement will have the discretion to determine the total number of direct care staff member employees who will be required to undergo random drug testing each year. Finally, the bill provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test in cases where the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. In such a case, the bill requires the supervisor to report this information to his immediate supervisor, and, if the latter concurs that there is reasonable suspicion to believe that the direct care staff member is illegally using a controlled dangerous substance, that supervisor will be required to notify the person responsible for the overall operation of the program, facility, or living arrangement. Such drug testing would not be ordered without the written approval of the person responsible for the overall operation of the program, facility, or living arrangement. A direct care staff member who is employed by a program, facility, or living arrangement, and who tests positive for the unlawful use of any controlled dangerous substance drug test, may be referred for treatment services or terminated from employment; however, if the staff member refuses to submit to the drug testing, termination from employment will be required.

The bill's drug testing requirements would not apply to direct care staff members who are employed in a State developmental center, since those actors are already subject to drug testing requirements under section 1 of P.L.2009, c.220 (C.30:4-3.27).

Support System for Parents and Guardians

The bill would attempt to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center.

In particular, the bill would require each developmental center to biannually schedule a meeting with the parents and guardians of those individuals with developmental disabilities who are residing in the center, in order to provide an opportunity for the parents and guardians to share experiences about the individuals. Similarly, the bill would

require the provider of a community-based residential program to request contact information from each parent or guardian of an individual with a developmental disability who is residing at the group home or supervised apartment, as the case may be, and advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents and guardians of other individuals residing in the residential program, in order to provide an opportunity for the parents and guardians to share their experiences about the individuals. The provider of a day program is also required to request the same contact information from the parents or guardians of individuals with developmental disabilities who are participating in day habilitation services or sheltered workshops, and to advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents or guardians of other individuals participating in the day program, in order to provide an opportunity for parents and guardians to share their experiences.

Expansion and Clarification of Central Registry Law

The Central Registry Law is designed to prevent caregivers who commit offenses against individuals with developmental disabilities from working with these individuals. To that end, the law provides procedures for the reporting and investigation of incidents of abuse, neglect, and exploitation, which are committed by caregivers against individuals with developmental disabilities.

This bill would amend the Central Registry Law to define the term “program,” consistently with the other provisions of the bill, to include day programs and community-based residential programs that are licensed or funded by the department. The bill would also amend the Central Registry Law to: 1) permit the guardian or authorized family member of an individual with a developmental disability to request investigatory assistance from local and State law enforcement officials who have undergone training in working with individuals with developmental disabilities; 2) require the Commissioner of Human Services to commence a review/investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident; 3) require the commissioner to provide the guardian or authorized family member of an individual with a developmental disability with prior notice, either in person or by phone, that an investigation into abuse, neglect, or exploitation of the individual will be commenced; 4) require the commissioner to provide the guardian or authorized family member, as appropriate, with the opportunity to submit information to facilitate the investigation, to represent the individual during the course of the investigation, to be informed of the progress of the investigation through the receipt of regular progress reports (which include the represented individual’s relevant medical records), and to attend or observe an investigative interview of the person they represent, unless the attendance or observation would

impede the investigation; and 5) require the Office of Investigations to issue a written report no later than 14 days after the conclusion of an investigation into an incident of alleged abuse, neglect, or exploitation. If the guardian or authorized family member expressly requests, at any time, that the department terminate an investigative interview of the person they represent, the department, and its Office of Investigations, will be required to immediately comply with the request, unless it would impede the investigation.

The bill would also amend the confidentiality provisions of the Central Registry Law, in order to authorize disclosure of investigative records and reports to the guardian or authorized family member of an individual with a developmental disability if: such information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of such detailed information is in the best interests of the individual, as determined by DDD, or by the individual's guardian or authorized family member. The bill would further provide that any written summary of the investigation (which the law already requires be provided to the guardian or authorized family member) is to include the following information, at a minimum: 1) the name of the individual with a developmental disability who is the subject of the allegation; 2) the date of the incident, or the date reported if the incident date is unknown; 3) whether the incident is an allegation of abuse, neglect, or exploitation; 4) the incident number; 5) a summary of the allegation; 6) a finding that the incident is substantiated or unsubstantiated; 7) the rationale for the finding and, if a substantiated incident, a description of the action or inaction that precipitated the finding; 8) if known at the time of issuing the summary, whether or not criminal charges against the alleged offending caregiver are pending; and 9) whether remedial action was taken.

Bill Designation

This bill is designated as "Stephen Komninos' Law" to honor the memory of Stephen J. Komninos, an individual with developmental disabilities who died at the age of 22 while under the care of a private licensed facility for individuals with developmental disabilities. Stephen was a non-verbal young man who was very sociable and suffered through many substantiated incidents of abuse and neglect by caregivers. Tragically, the last incident resulted in his death. This bill is intended to facilitate the enhanced protection of individuals with developmental disabilities, like Stephen, by requiring more transparency in incident reporting and investigations; by requiring more timely reporting and the issuance of prompt notification to the parents and guardians of individuals with developmental disabilities who suffer injury, abuse, neglect, or exploitation; and by promoting the establishment and maintenance of a Statewide policy and

environment that does not tolerate the abuse, neglect, or exploitation of individuals with developmental disabilities.

As reported, this bill is identical to Assembly Bill No. 2503 (ACS) (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that several provisions of the bill would significantly increase annual personnel and administrative expenditures at the Department of Human Services (DHS). The specific magnitude of the increase is uncertain, and may vary substantially depending on the manner in which the DHS would implement the bill.

Additional staff would be needed to conduct site visits and restructure the investigations process as required under the bill. Based on information provided by the Executive on an earlier version of the bill, the OLS assumes for purposes of illustrating the potential impact of the current legislation that 200 additional employees may have to be hired at a gross annual cost of approximately \$24 million. Federal Medicaid funds may offset a portion of these costs, leading to an estimated annual State cost of \$18 million. These estimates are highly uncertain and only serve as an illustrative example.

In addition, the OLS estimates that drug testing for applicants for employment as direct care staff may cost the State approximately \$600,000 annually. Indeterminate additional expenditures for the drug testing of certain current employees would also be required under the bill.

Moreover, the bill may result in a small recurring increase in State revenue resulting from increased fines and criminal penalties imposed on individuals who endanger the welfare of an individual with a developmental disability, or who fail to report incidents of abuse, neglect, or exploitation. However, the bill may also result in increased annual State costs to incarcerate these individuals for longer terms than are authorized under current law, depending upon the sentences imposed.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 516

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: JUNE 20, 2017

SUMMARY

- Synopsis:** Provides protections for individuals with developmental disabilities; upgrades crimes committed against such individuals; and improves transparency and accountability in investigations of abuse, neglect, and exploitation of such individuals; designated as "Stephen Komninos' Law."
- Type of Impact:** Annual State expenditure increase from General Fund and potentially Casino Revenue Fund, and annual State revenue increase to General Fund.
- Agencies Affected:** Department of Human Services; Judiciary; Department of Law and Public Safety; Office of the Public Defender; Department of Corrections; State Parole Board.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual Impact</u>
State Cost	Indeterminate increase – See comments below.
State Revenue	Indeterminate increase – See comments below.

- The Office of Legislative Services (OLS) determines that the bill would produce an indeterminate increase in the annual administrative expenditures of several State agencies, with the most significant increase accruing to the Department of Human Services (DHS). In addition, the bill would yield indeterminate annual State revenue increases from fines and penalties collected from individuals convicted of the bill's new and upgraded crimes.
- Several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS. The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS would implement the bill.
- Additional staff would be needed to conduct site visits and restructure the investigations process as required under the bill. Based on information provided by the Executive on an earlier version of the bill, the OLS assumes for purposes of illustrating the potential impact of

the current legislation that 200 additional DHS employees may have to be hired at a gross annual cost of approximately \$24 million. Federal Medicaid funds may offset a portion of these costs, leading to an estimated annual State cost in this example of \$18 million.

- The OLS estimates that drug testing for applicants for employment as direct care staff may cost the State approximately \$600,000 annually. Indeterminate additional expenditures for drug testing of certain current employees would also be required under the bill.
- The OLS estimates that the establishment of two new criminal offenses and the upgrades of certain existing offenses related to the abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver would increase the annual workload and operating expenditures of the Department of Law and Public Safety, the Judiciary, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The OLS cannot quantify the annual cost increases because of a lack of data on the number of cases that would be adjudicated under the new and upgraded offenses.

BILL DESCRIPTION

Senate Bill No. 516 (1R) of 2016, which is designated as "Stephen Komninos' Law," improves protections for individuals with developmental disabilities and provides for increased transparency and accountability in investigations of alleged abuse, neglect, or exploitation of such individuals.

The bill establishes two new grades of criminal offenses that involve endangering the welfare of an individual with a developmental disability. The bill also upgrades certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver.

In addition, the bill establishes a system for the regular site visitation of all community-based residential programs (i.e. group homes and supervised apartments) and day programs (including day habilitation programs and sheltered workshops) that provide services to individuals with developmental disabilities. Specifically, the bill requires that case managers annually conduct not fewer than two site visits of each community-based residential program and day program in order to evaluate whether the individuals with developmental disabilities are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver. The results of each site visit are to be reported to the department. For a group home, not fewer than two site visits need to be unannounced visits conducted by a department employee who is assigned to a resident of the group home. For a supervised apartment, not fewer than two site visits need to be unannounced visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day program, at least one site visit needs to be an unannounced visit conducted by a department employee who is assigned to a participant in the day program; and at least one site visit needs to be an unannounced visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. A "department employee" may be a DHS employee or an employee of a department-funded case management agency.

The bill also requires certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded by the department. Notification of injury is to be given by the provider or licensee of the program, facility, community care residence, or

living arrangement where the injury occurred. Such notification needs to be provided to the guardian or family member who has requested such notifications no later than 60 minutes after the occurrence of the injury; and through in-person means, or by telephone, and also through email or other electronic means. Furthermore, the department is to provide notice of an incident involving abuse, neglect, or exploitation to the guardian or authorized family member no later than 60 minutes after the occurrence of the incident.

The bill also provides that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, community-based residential program, or day program, the department is to send an employee to verify the level of severity of the incident. In investigating the incident, the department is to comply with the Central Registry Law, which concerns investigations into the abuse, neglect, or exploitation of an individual with a developmental disability.

The bill further requires the drug testing of all direct care staff members who may come into direct contact with individuals with developmental disabilities during the course of their employment. The associated expenses are to be paid by the department. Direct care staff members are to undergo an initial drug test prior to employment. In addition, the employing program, facility, or living arrangement is to conduct at least once a year a random drug test of at least one employed direct care staff member. The bill also provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test when the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous substance.

The bill attempts to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center. In particular, the bill requires each developmental center to biannually schedule a meeting with the parents and guardians. Similarly, the bill requires programs to request contact information from each parent or guardian, and advise the parents and guardians that, if they agree, the provider will exchange their contact information with the parents and guardians of other individuals residing in the residential program.

The bill also requires the DHS to commence an investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident, and specifies several means by which guardians or family members must be informed and allowed to participate in the investigation. The bill also authorizes the disclosure of investigative records and reports to guardians or family members under certain circumstances.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive Branch has not submitted a formal, written fiscal note for this bill. However, the DHS provided information relevant to a previous iteration of the bill in response to OLS discussion points in May 2017. This information indicates that there are approximately 1,875 contracted programs that provide in-person/residential services to 8,975 individuals with developmental disabilities. An additional 16,500 individuals receive in-person/own-home services such as support coordination, individual supports, and community-based supports. For residential services, State case managers make four on-site visits per year, with monthly telephone contact between visits. Increasing this frequency to six on-site visits per year (which was required by the version of the bill that was current at that time) would require a 50 percent

increase in staff, or approximately 110 employees. Using a similar ratio for the own-home population would require an additional 200 new employees, bringing the total to over 300 contracted or State staff.

OFFICE OF LEGISLATIVE SERVICES

The OLS determines that the bill would produce an indeterminate increase in the annual administrative expenditures of several State agencies, with the most significant increase accruing to the DHS. In addition, the bill would yield indeterminate annual State revenue increases from fines and penalties collected from individuals convicted of the bill's new and upgraded crimes.

Department of Human Services: The OLS finds that several provisions of the bill would significantly increase personnel and administrative expenditures at the DHS. The specific magnitude of the increase is uncertain and may vary substantially depending on the manner in which the DHS would implement the bill.

The largest fiscal impact is likely to be the requirement to conduct unannounced site visits to residential and day programs. The current system of provider oversight is primarily oriented around the individuals receiving services, not the providers. Division of Developmental Disabilities (DDD) case managers and support coordinators visit their individual clients quarterly, most often at the client's residence (which is a residential program for some consumers), but sometimes at a day program or other location agreeable to the affected parties. During these visits, the case manager's or support coordinator's responsibility is to their assigned client, not the entire program (though the case manager would be obligated to report any incidentally witnessed abuse, neglect, or exploitation). When visits occur at a program site, the provider is typically made aware in advance. Thus, the bill requires fewer site visits than are currently conducted, but the visits would be functionally different – they must be unannounced, and in certain cases must be conducted by personnel who are unfamiliar with the particular program they are visiting. Thus, it is not clear that the current system could be easily adapted to meet the requirements of the bill, and a significant increase in staff may be necessary to add these additional site visits to the current system of oversight. In practice, the DHS may redesign the current oversight system to incorporate the bill's requirements, minimizing redundancy in site visitation and reducing the number of new staff who may need to be hired.

The bill's new requirements related to the notification of guardians and family members of injuries and investigations would similarly require some redesign of DDD policies and procedures. In particular, changes in the investigations process appear to be likely to require significantly more staff in order to generate reports, redact private information, and incorporate family members' input in investigations. As in the case of the reorganization of the provider oversight system, the actual increase in State costs would depend on the specific way in which the DDD redesigns its system.

The Executive estimated that an earlier version of the bill would require as many as 310 additional employees (described above). Noting that this version of the bill requires fewer site visits than the version previously evaluated by the Executive, the OLS assumes for purposes of illustrating the potential impact of the legislation that 200 additional employees may have to be hired under this version of the bill, when including both site visitation and investigations staff. At an estimated average annual cost of \$120,000 per employee (including salary, fringe benefits, equipment, and travel costs), this would lead to \$24 million in additional annual expenses. Federal Medicaid matching funds can offset 50 percent of allowable costs, but some of the bill's anticipated expenditures are not obviously consistent with federal Medicaid rules, so the actual proportion of costs that would be offset with federal funds would depend upon the way

that the DHS would design the system and apply for the federal funds. A total federal contribution of one-third of total costs may be reasonable, resulting in a State cost in this example of \$18 million annually.

The drug testing requirements of the bill would also increase State costs. Available information suggests that there are approximately 23,000 direct care staff in DHS-funded programs for individuals with developmental disabilities in New Jersey. Representatives of provider agencies have testified to the Legislature that their staff turnover rates for direct care staff are as high as 44 percent, suggesting approximately 10,000 new hires each year. At an estimated cost of \$60 per test (based on a survey of commercially available employee drug testing services), this would cost the State around \$600,000 annually. Additional costs for drug testing of job applicants who are not hired, random testing of certain current employees required by the bill, and administration would add an indeterminate amount to this total.

New and Upgraded Criminal Offenses: The OLS estimates that the establishment of two new criminal offenses and the upgrades of certain existing criminal offenses related to the abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver would increase the annual workload and operating expenditures of the Department of Law and Public Safety, the Judiciary, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The OLS, however, cannot quantify the annual cost increases because of a lack of data on the number of cases that would be adjudicated under the new and upgraded offenses.

The OLS notes that Department of Corrections data indicate that the average annual per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$41,964. However, this cost would not be incurred unless the prison population increased by a number large enough for the department to increase bed space capacity, raising fixed costs. Additional costs to be incurred in housing a small number of additional inmates without increasing bed spaces would approximate \$8.45 per day, totaling \$3,084 annually per inmate in marginal costs for food, wage, and clothing.

Any additional State cost from establishing the new crimes and upgrading several others may be offset, in part, by fines and penalties imposed by the courts on defendants convicted of having committed the offenses; however, the State's ability to collect criminal fines and penalties has historically been limited.

Section: Human Services

*Analyst: David Drescher
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY BILL NO. 2503
(First Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning the Assembly Committee Substitute for Assembly Bill No. 2503 (First Reprint) with my recommendations for reconsideration.

This bill would substantially alter the reporting and investigation process associated with claims of abuse, neglect, or exploitation of adults with developmental disabilities. These changes include amending the law concerning the Central Registry of Offenders Against Individuals with Developmental Disabilities ("Central Registry"), directing unannounced visits of all programs for individuals with developmental disabilities, creating new grades of criminal offenses, mandating participation of local law enforcement, and mandating increased participation by guardians in investigations of abuse, neglect, or exploitation.

Since the beginning of my Administration, I have been committed not only to increasing services to individuals with developmental disabilities but also to extending protections to those same individuals, including protections against abuse, neglect, and exploitation. To be sure, one of my first acts as Governor was to sign P.L.2010, c.5, which established the Central Registry to ensure that individuals who have committed acts of abuse, neglect, or exploitation against individuals with developmental disabilities are prohibited from working with any other individuals with developmental disabilities. In addition, I signed P.L.2015, c.186, which established a new criminal offense of endangering an individual with a developmental disability, providing increased penalties for egregious actions

taken against some of the most vulnerable citizens of this State.

I applaud the efforts of the Legislature in exploring additional methods by which to rid the State of abuse, neglect, and exploitation of some of the State's most vulnerable citizens. However, I am concerned that many of the provisions of this bill are not only impractical but also fail to consider important competing interests, including the need for confidentiality, flexibility, an unbiased investigatory process, and the avoidance of irresponsible spending through unfunded mandates.

Just last year, I signed into law P.L.2016, c.3, which established a task force to study abuse, neglect, and exploitation specifically against older adults and individuals with disabilities. Upon receipt of the task force's recommendations, I will explore any and all of them to remedy this extremely difficult and troubling problem. However, in the interim, and in light of my commitment to ensuring the safety of individuals with developmental disabilities, I am recommending that this bill be amended to focus on the most effective means to protect vulnerable individuals, while still taking into account other important individual, local, and State interests.

Accordingly, I herewith return the Assembly Committee Substitute for Assembly Bill No. 2503 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Line 3:</u>	Delete "Titles 2C and" and insert "Title"
<u>Page 2, Section 1, Lines 10-25:</u>	Delete in their entirety
<u>Page 2, Section 2, Line 27:</u>	Delete "2." and insert "1."
<u>Page 2, Section 2, Line 27:</u>	Delete "2 through 7" and insert "1 through 6"
<u>Page 3, Section 2, Line 3:</u>	Delete "6" and insert "5"

Page 3, Section 2, Line 15: After "individuals" insert "as they move toward independence"

Page 3, Section 3, Line 46: Delete "3." and insert "2."

Page 3, Section 3, Line 48: Delete "who"

Page 4, Section 3, Line 1: Delete "are not employees of a State developmental center, but"

Page 4, Section 3, Line 5: Delete "and"

Page 4, Section 3, Line 6: Delete "every day program"

Page 4, Section 3, Lines 9-11: Delete in their entirety

Page 4, Section 3, Line 12: Delete "section 7 of P.L.2012, c.69 (C.30:6D-5.13),"

Page 4, Section 3, Lines 27-33: Delete in their entirety

Page 4, Section 3, Line 35: Delete ", or"

Page 4, Section 3, Line 36: Delete "a staff member or agent of a day program,"

Page 4, Section 4, Line 39: Delete "4." and insert "3."

Page 5, Section 4, Line 3: After "of a" insert "community-based residential program or day"

Page 5, Section 4, Lines 4-5: Delete in their entirety

Page 5, Section 4, Line 6: Delete "by the department,"

Page 5, Section 4, Line 17: Delete "60 minutes" and insert "two hours"

Page 5, Section 4, Line 18: After "injury" insert ", except that if there is an extraordinary circumstance that prevents such notification, the provider or licensee shall provide notification as soon as possible, but no later than eight hours after the occurrence of the injury and shall provide a written, detailed explanation of the extraordinary circumstance causing the delay to the commissioner and to the guardian of the injured individual with a developmental disability or, if there is no guardian of the individual, to a family member who requests such notification, within 14 days of the incident"

Page 5, Section 4, Line 22: After "notification" insert "unless the individual has expressly prohibited the family member from receiving such notification"

Page 5, Section 4, Line 23: After "means" delete ","
Page 5, Section 4, Line 23: Delete ", and also"
Page 5, Section 4, Line 24: Delete in its entirety
Page 5, Section 5, Line 33: Delete "5." and insert "4."
Page 5, Section 5, Line 42: After "center" delete "," and insert "or"
Page 5, Section 5, Line 42: Delete "or day"
Page 5, Section 5, Line 43: Delete "program,"
Page 6, Section 6, Line 6: Delete "6." and insert "5."
Page 7, Section 7, Line 41: Delete "7." and insert "6."
Page 8, Section 8, Line 20: Delete "8." and insert "7."
Page 8, Section 9, Line 39: Delete "9." and insert "8."
Page 8, Section 9, Lines 46-47: Delete in their entirety
Page 9, Section 9, Lines 1-3: Delete in their entirety
Page 9, Section 9, Line 46: Delete "2" and insert "1"
Page 10, Section 10, Line 34: Delete "10." and insert "9."
Page 10, Section 10, Line 40: Delete "3" and insert "2"
Page 11, Section 10, Lines 1-5: Delete in their entirety
Page 11, Section 10, Line 6: Delete "(3)" and insert "(2)"
Page 11, Section 10, Line 27: Delete "5" and insert "4"
Page 12, Section 11, Line 28: Delete "11." and insert "10."
Page 12, Section 11, Lines 41-44: Delete in their entirety
Page 13, Section 11, Line 9: Delete "or"
Page 13, Section 11, Line 10: Delete "authorized family member"
Page 13, Section 11, Line 12: Delete "or authorized family"
Page 13, Section 11, Line 13: Delete "member"
Page 13, Section 11, Line 14: Delete "to represent the individual, to be informed" and insert "except that if there is no guardian, a family member of the individual may submit information, unless the individual has expressly prohibited the family member from doing so"
Page 13, Section 11, Lines 15-17: Delete in their entirety
Page 13, Section 11, Line 18: Delete "any time, unless it would impede the investigation"

- Page 13, Section 11, Line 19: Delete "the guardian or authorized family member of the" and insert "that a guardian of an individual with a developmental disability, upon request, may be permitted to attend the investigative interview of the individual the guardian represents and to terminate the interview of the individual the guardian represents, unless the attendance or termination would impede the investigation."
- Page 13, Section 11, Lines 20-39: Delete in their entirety
- Page 13, Section 11, Line 40: Delete "(3)" and insert "(2)"
- Page 14, Section 11, Line 14: Delete "seven" and insert "14"
- Page 14, Section 11, Line 30: Delete "14" and insert "30"
- Page 14, Section 11, Line 47: Delete "or authorized family member"
- Page 15, Section 11, Line 3: Delete "authorized" and insert "other person who is responsible for the welfare of the individual with a developmental disability"
- Page 15, Section 11, Line 4: Delete "family member"
- Page 15, Section 11, Line 8: Delete ", or by the"
- Page 15, Section 11, Line 9: Delete "individual's guardian or authorized family member"
- Page 15, Section 11, Line 31: Before "f." insert "(4) If there is no guardian of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation, the written summary described in paragraph (3) of this subsection shall be provided to a family member of the individual who requests such summary, unless the individual has expressly prohibited the family member from receiving such summary."
- Page 15, Section 12, Line 35: Delete "12." and insert "11."
- Page 15, Section 12, Line 43: Delete "or authorized family"
- Page 15, Section 12, Line 44: Delete "member"
- Page 15, Section 12, Line 48: Delete "or authorized family member"
- Page 16, Section 12, Line 3: After "individual." insert "If the individual with a developmental disability has

no guardian, notification pursuant to this subsection shall be given to a family member who requests such notification, unless the individual has expressly prohibited the family member from receiving such notification."

Page 17, Section 13, Line 1:

Delete "13." and insert "12."

Page 17, Section 13, Line 10:

Delete ", or observation of,"

Page 17, Line 33:

Insert "13. The Department of Human Services shall post a copy of P.L. , c. (C.) (pending before the Legislature as this bill) on its website."

Respectfully,

[seal]

/s/ Chris Christie

Governor

Attest:

/s/ James J. DiGiulio

Chief Counsel to the Governor

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BILLS SIGNED:

A-320wGR/S-1018 (Singleton, Vainieri-Huttle, Munoz, Moriarty, Lampitt, Sumter, Mukherji/Weinberg, Cruz-Perez) – Establishes minimum Medicaid reimbursement rate for personal care services

ACS for A-2503wGR/S-516 (Vainieri-Huttle, Mosquera, Tucker, McKnight, Mukherji, Wimberly, Downey/Beck, Sweeney) - Provides protections for individuals with developmental disabilities; upgrades crimes committed against such individuals; and improves transparency and accountability in investigations of abuse, neglect, and exploitation of such individuals; designated as "Stephen Komminos' Law"

AJR-77/SJR-116 (Dancer, Holley, McKnight, Vainieri-Huttle/Thompson) – Designates October as "Dyslexia Awareness Month" in New Jersey

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