

**SENATE BILL NO. 2134**

Introduced by

Senators Lee, K. Roers

Representative Dobervich

1 A BILL for an Act to amend and reenact sections 25-01.3-06 and 25-01.3-08 of the North  
2 Dakota Century Code, relating to duties of the protection and advocacy project.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 25-01.3-06 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **25-01.3-06. Authority of project - Annual report.**

7 1. Pursuant to rules adopted by the committee, the project, within the limits of legislative  
8 appropriations, shall provide advocacy and protective services for persons with  
9 developmental disabilities and persons with mental illnesses. The rules adopted by the  
10 committee relating to the need for the consent of the client must balance the rights of  
11 persons with developmental disabilities or mental illnesses to privacy and to refuse  
12 services under section 25-01.3-11 with the committee's duties to protect the human  
13 and legal rights of persons eligible for services and to monitor facilities for compliance  
14 with federal and state laws and rules.

15 2. The project may:

16 1. a. Represent persons with developmental disabilities or mental illnesses so that  
17 ~~they~~the persons may realize the rights and services to which they are entitled.

18 2. b. Investigate complaints and reports if the alleged incidents are reported to the  
19 committee or the project or if there is probable cause to believe that the incidents  
20 occurred.

21 3. c. Monitor individual habilitation or treatment plans, program plans, educational  
22 plans, facilities and programs, and all other services and care provided to  
23 persons with developmental disabilities or mental illnesses.

- 1           4.   d.   Employ counsel to represent clients to pursue legal, administrative, voluntary  
2                   compliance, and other appropriate remedies to ensure the protection of the rights  
3                   of persons with developmental disabilities or mental illnesses, and employ  
4                   counsel to represent the project or the committee when, in the opinion of the  
5                   attorney general, a conflict of interest under the North Dakota Rules of  
6                   Professional Conduct exists between the office of attorney general and the  
7                   committee or the project, and the conflict cannot be avoided by the appointment  
8                   of counsel under subsection 3 of section 54-12-01 or section 54-12-08.
- 9           5.   e.   Pursue legal, administrative, voluntary compliance, and other appropriate  
10                   remedies to ensure the protection and the rights of persons with developmental  
11                   disabilities or mental illnesses. ~~Prior to~~Before instituting any legal action in a  
12                   federal or state court on behalf of a person with developmental disabilities or  
13                   mental illnesses, the project shall exhaust in a timely manner all administrative  
14                   remedies if appropriate. If, in pursuing administrative remedies, the project  
15                   determines that anya matter with respect to that person will not be resolved  
16                   within a reasonable time, the project may pursue alternative remedies, including  
17                   the initiation of a legal action with the consent of the committee. However,  
18                   exhaustion of administrative remedies is not a prerequisite to initiation of a legal  
19                   action ~~when~~if that action is instituted to prevent or eliminate imminent serious  
20                   harm to a person with developmental disabilities or mental illnesses.
- 21           6.   f.   Sign anya criminal complaint necessary to protect the interests of anya person  
22                   with developmental disabilities or mental illness, or group of persons with  
23                   developmental disabilities or mental illnesses, who appear to have been  
24                   victimized by or subjected to criminal conduct.
- 25           7.   g.   Review each annual survey report and plan of corrections for cited deficiencies  
26                   made pursuant to titles XVIII and XIX of the Social Security Act with respect to  
27                   any facility rendering care or treatment to persons with developmental disabilities  
28                   or mental illnesses.
- 29           8.   h.   Provide the public, on an annual basis, an opportunity to comment on the  
30                   priorities established by, and the activities of the committee.

- 1       9.    i.   Establish a grievance procedure for clients or prospective clients to ensure that
- 2                   persons with developmental disabilities or mental illnesses have full access to the
- 3                   services of the committee.
- 4       ~~10.~~   j.   Prepare an annual report to the legislative assembly and the governor describing
- 5                   the priorities, activities, accomplishments, and expenditures of the system.
- 6       41.   k.   Provide information on and referral to programs and services addressing the
- 7                   needs of persons with developmental disabilities or mental illnesses.
- 8       42.   l.   Accept and administer gifts, grants, or contracts with ~~persons~~individuals or
- 9                   organizations, including the federal government, on such terms as may be
- 10                  beneficial to the state.
- 11       ~~13.~~   m.   Contract with any person, public or private, to carry out any responsibilities of the
- 12                   project under this chapter and section 25-01-01.1.
- 13        3.   The project shall use the report, complaint, and investigation process to assess the
- 14                   opportunity for education and voluntary compliance.

15        **SECTION 2. AMENDMENT.** Section 25-01.3-08 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17        **25-01.3-08. Investigation of reports and complaints.**

- 18        1.    Upon receipt of any report of suspected abuse, neglect, exploitation, or a complaint
- 19                   made pursuant to sections 25-01.3-01 through 25-01.3-12, the project shall assess the
- 20                   need for an investigation of the report or complaint. If the project determines that the
- 21                   report or complaint is warranted, the project shall investigate or cause the report or
- 22                   complaint to be investigated. For the purpose of investigating a report or a complaint,
- 23                   the project may:
  - 24                   a.    Interview the alleged victim who has developmental disabilities or mental illness
  - 25                                  at any time of the day or night, with or without notice.
  - 26                   b.    Interview any other individual who may have knowledge of the situation.
  - 27                   c.    Access all locations under the control of the caretaker where records or other
  - 28                                  information exist, including the residence of the alleged victim.
  - 29                   d.    Coordinate investigations with other agencies, departments, or other entities
  - 30                                  providing services necessary or advisable for the person with developmental
  - 31                                  disabilities or mental illness.

- 1           e. Delegate investigatory powers to the extent necessary and appropriate to any  
2            ~~person~~individual or entity.
- 3           2. This section does not limit the responsibilities of law enforcement agencies to enforce  
4           the laws of this state or preclude law enforcement agencies from investigating, as  
5           appropriate, any alleged criminal conduct.
- 6           3. This section does not prohibit the project from assessing the opportunity for education  
7           and voluntary compliance in the course of investigating a report or complaint.