

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2134
(Senators Lee, K. Roers)
(Representative Dobervich)

AN ACT to amend and reenact sections 25-01.3-01, 25-01.3-06, and 25-01.3-08 of the North Dakota Century Code, relating to duties of the protection and advocacy project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-01.3-01 of the North Dakota Century Code is amended and reenacted as follows:

25-01.3-01. Definitions.

In sections 25-01.3-01 through 25-01.3-12, unless the context otherwise requires:

1. "Abuse" means:
 - a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with developmental disabilities;
 - b. Knowing, reckless, or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which placed that person at risk of injury or death;
 - c. Rape or sexual assault of a developmentally disabled or mentally ill person;
 - d. Corporal punishment or striking of a developmentally disabled or mentally ill person;
 - e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a developmentally disabled or mentally ill person; and
 - f. Use of bodily or chemical restraints on a developmentally disabled or mentally ill person which is not in compliance with federal or state laws and administrative regulations.
2. "Advocacy" means action to assist or represent a person or group of persons with developmental disabilities or mental illnesses in securing their rights, obtaining needed services, investigating complaints, and removing barriers to identified needs.
3. "Advocate" means an employee of the project.
4. "Caretaker" means a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with developmental disabilities or mental illness, or a parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person's care.
5. "Committee" means the committee on protection and advocacy.
6. "Complaint" means an allegation of a violation of human or legal rights, or a lack of needed services, which is not a report of abuse, neglect, or exploitation.
7. "Developmental disability" is a disability as defined in section 25-01.2-01.
8. "Eligibility for services" means persons eligible for services of the project, including:

- a. An adult with developmental disabilities.
 - b. An adult suffering from a mental illness who is an inpatient or resident in a facility rendering care or treatment, even if the location of the person is unknown.
 - c. An adult suffering from a mental illness who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility.
 - d. An adult suffering from a mental illness who within the last ninety days was an inpatient or resident of a facility rendering care or treatment.
 - e. A child with developmental disabilities or a child with mental illness who meets the criteria of subdivision b, c, or d is eligible for advocacy services.
 - f. A child with developmental disabilities or mental illness who is not an abused or neglected child as defined in chapter 50-25.1 is eligible for protective services.
9. "Exploitation", when committed by a caretaker or relative of, or any person in a fiduciary relationship with, a person with developmental disabilities or mental illness, means:
- a. The taking or misuse of property or resources of a person with developmental disabilities or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means;
 - b. The use of the services of a person with developmental disabilities or mental illness without just compensation; or
 - c. The use of a person with developmental disabilities or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or mental anguish to the person with developmental disabilities or mental illness.
10. "Facility" means a school, residence center, group home, nursing home, foster home, boarding home, or other facility operated by any public or private agency, organization, or institution, which provides services to a person with developmental disabilities or mental illness.
11. "Individually identifiable health information" and "personal representative" have the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103 and part 164, section 5-02, subsection g, respectively.
12. "Mental health professional" means a mental health professional as defined in section 25-03.1-02.
13. "Mental illness" means significant mental illness or emotional impairment as determined by a mental health professional.
14. "Neglect" means:
- a. Inability of a person with developmental disabilities or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person;
 - b. Failure by any caretaker of a person with developmental disabilities or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with developmental disabilities or mental illnesses;

- c. Negligent act or omission by any caretaker which causes injury or death to a person with developmental disabilities or mental illness or which places that person at risk of injury or death;
 - d. Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with developmental disabilities or mental illness;
 - e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with developmental disabilities or mental illness;
 - f. Failure by any caretaker to provide a safe environment for a person with developmental disabilities or mental illness; and
 - g. Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility providing care and services for persons with developmental disabilities or mental illnesses.
15. "Other appropriate remedies" means remedies achieved through alternative dispute resolution, such as discussion, education, conciliation, and mediation.
16. "Project" means the protection and advocacy project.
- ~~16.~~17. "Protective services" means actions to assist persons with developmental disabilities or mental illnesses who are unable to manage their own resources or to protect themselves from abuse, neglect, exploitation, or other hazards.
- ~~17.~~18. "Report" means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness.

SECTION 2. AMENDMENT. Section 25-01.3-06 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Pursuant to rules adopted by the committee, the project, within the limits of legislative appropriations, shall provide advocacy and protective services for persons with developmental disabilities and persons with mental illnesses. The rules adopted by the committee relating to the need for the consent of the client must balance the rights of persons with developmental disabilities or mental illnesses to privacy and to refuse services under section 25-01.3-11 with the committee's duties to protect the human and legal rights of persons eligible for services and to monitor facilities for compliance with federal and state laws and rules.
2. The project may:
 1. a. Represent persons with developmental disabilities or mental illnesses so ~~that they~~the persons may realize the rights and services to which they are entitled.
 2. b. Investigate complaints and reports if the alleged incidents are reported to the committee or the project or if there is probable cause to believe ~~that~~ the incidents occurred.
 3. c. Monitor individual habilitation or treatment plans, program plans, educational plans, facilities and programs, and all other services and care provided to persons with developmental disabilities or mental illnesses.
 4. d. Employ counsel to represent clients to pursue legal, administrative, voluntary compliance, and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities or mental illnesses, and employ counsel to

represent the project or the committee when, in the opinion of the attorney general, a conflict of interest under the North Dakota Rules of Professional Conduct exists between the office of attorney general and the committee or the project, and the conflict cannot be avoided by the appointment of counsel under subsection 3 of section 54-12-01 or section 54-12-08.

5. e. Pursue legal, administrative, voluntary compliance, and other appropriate remedies to ensure the protection and the rights of persons with developmental disabilities or mental illnesses. ~~Prior to~~Before instituting any legal action in a federal or state court on behalf of a person with developmental disabilities or mental illnesses, the project shall exhaust in a timely manner all administrative remedies if appropriate. If, in pursuing administrative remedies, the project determines ~~that any~~ matter with respect to that person will not be resolved within a reasonable time, the project may pursue alternative remedies, including the initiation of a legal action with the consent of the committee. However, exhaustion of administrative remedies is not a prerequisite to initiation of a legal action ~~when~~if that action is instituted to prevent or eliminate imminent serious harm to a person with developmental disabilities or mental illnesses.
 6. f. Sign any criminal complaint necessary to protect the interests of any person with developmental disabilities or mental illness, or group of persons with developmental disabilities or mental illnesses, who appear to have been victimized by or subjected to criminal conduct.
 7. g. Review each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act with respect to any facility rendering care or treatment to persons with developmental disabilities or mental illnesses.
 8. h. Provide the public, on an annual basis, an opportunity to comment on the priorities established by, and the activities of the committee.
 9. i. Establish a grievance procedure for clients or prospective clients to ensure ~~that~~ persons with developmental disabilities or mental illnesses have full access to the services of the committee.
 10. j. Prepare an annual report to the legislative assembly and the governor describing the priorities, activities, accomplishments, and expenditures of the system.
 11. k. Provide information on and referral to programs and services addressing the needs of persons with developmental disabilities or mental illnesses.
 12. l. Accept and administer gifts, grants, or contracts with ~~persons~~individuals or organizations, including the federal government, on such terms as may be beneficial to the state.
 13. m. Contract with any person, public or private, to carry out any responsibilities of the project under this chapter and section 25-01-01.1.
3. The project shall use the report, complaint, and investigation process to assess the opportunity for voluntary compliance and other appropriate remedies.

SECTION 3. AMENDMENT. Section 25-01.3-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Upon receipt of any report of suspected abuse, neglect, exploitation, or a complaint made pursuant to sections 25-01.3-01 through 25-01.3-12, the project shall assess the need for an investigation of the report or complaint. If the project determines ~~that~~ the report or complaint is

warranted, the project shall investigate or cause the report or complaint to be investigated. For the purpose of investigating a report or a complaint, the project may:

- a. Interview the alleged victim who has developmental disabilities or mental illness at any time of the day or night, with or without notice.
 - b. Interview any other individual who may have knowledge of the situation.
 - c. Access all locations under the control of the caretaker where records or other information exist, including the residence of the alleged victim.
 - d. Coordinate investigations with other agencies, departments, or other entities providing services necessary or advisable for the person with developmental disabilities or mental illness.
 - e. Delegate investigatory powers to the extent necessary and appropriate to any ~~person~~individual or entity.
2. This section does not limit the responsibilities of law enforcement agencies to enforce the laws of this state or preclude law enforcement agencies from investigating, as appropriate, any alleged criminal conduct.
 3. This section does not prohibit the project from assessing the opportunity for voluntary compliance and other appropriate remedies in the course of investigating a report or complaint.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2134.

Senate Vote: Yeas 43 Nays 3 Absent 1

House Vote: Yeas 86 Nays 5 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State