

SENATE BILL NO. 2134

Introduced by

Senators Lee, K. Roers

Representative Dobervich

1 | A BILL for an Act to amend and reenact sections 25-01.3-01, 25-01.3-06, and 25-01.3-08 of the
2 | North 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 25-01.3-01 of the North Dakota Century Code is
5 | amended and reenacted as follows:

6 | **25-01.3-01. Definitions.**

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

8 | 1. "Abuse" means:

9 | a. Willful use of offensive, abusive, or demeaning language by a caretaker that
10 | causes mental anguish of any person with developmental disabilities;

11 | b. Knowing, reckless, or intentional acts or failures to act which cause injury or
12 | death to a developmentally disabled or mentally ill person or which placed that
13 | person at risk of injury or death;

14 | c. Rape or sexual assault of a developmentally disabled or mentally ill person;

15 | d. Corporal punishment or striking of a developmentally disabled or mentally ill
16 | person;

17 | e. Unauthorized use or the use of excessive force in the placement of bodily
18 | restraints on a developmentally disabled or mentally ill person; and

19 | f. Use of bodily or chemical restraints on a developmentally disabled or mentally ill
20 | person which is not in compliance with federal or state laws and administrative
21 | regulations.

22 | 2. "Advocacy" means action to assist or represent a person or group of persons with
23 | developmental disabilities or mental illnesses in securing their rights, obtaining needed
24 | services, investigating complaints, and removing barriers to identified needs.

- 1 3. "Advocate" means an employee of the project.
- 2 4. "Caretaker" means a person, organization, association, or facility who has assumed
- 3 legal responsibility or a contractual obligation for the care of a person with
- 4 developmental disabilities or mental illness, or a parent, spouse, sibling, other relative,
- 5 or person who has voluntarily assumed responsibility for the person's care.
- 6 5. "Committee" means the committee on protection and advocacy.
- 7 6. "Complaint" means an allegation of a violation of human or legal rights, or a lack of
- 8 needed services, which is not a report of abuse, neglect, or exploitation.
- 9 7. "Developmental disability" is a disability as defined in section 25-01.2-01.
- 10 8. "Eligibility for services" means persons eligible for services of the project, including:
- 11 a. An adult with developmental disabilities.
- 12 b. An adult suffering from a mental illness who is an inpatient or resident in a facility
- 13 rendering care or treatment, even if the location of the person is unknown.
- 14 c. An adult suffering from a mental illness who is in the process of being admitted to
- 15 a facility rendering care or treatment, including persons being transported to such
- 16 a facility.
- 17 d. An adult suffering from a mental illness who within the last ninety days was an
- 18 inpatient or resident of a facility rendering care or treatment.
- 19 e. A child with developmental disabilities or a child with mental illness who meets
- 20 the criteria of subdivision b, c, or d is eligible for advocacy services.
- 21 f. A child with developmental disabilities or mental illness who is not an abused or
- 22 neglected child as defined in chapter 50-25.1 is eligible for protective services.
- 23 9. "Exploitation", when committed by a caretaker or relative of, or any person in a
- 24 fiduciary relationship with, a person with developmental disabilities or mental illness,
- 25 means:
- 26 a. The taking or misuse of property or resources of a person with developmental
- 27 disabilities or mental illness by means of undue influence, breach of fiduciary
- 28 relationship, deception, harassment, criminal coercion, theft, or other unlawful or
- 29 improper means;
- 30 b. The use of the services of a person with developmental disabilities or mental
- 31 illness without just compensation; or

- 1 c. The use of a person with developmental disabilities or mental illness for the
2 entertainment or sexual gratification of others under circumstances that cause
3 degradation, humiliation, or mental anguish to the person with developmental
4 disabilities or mental illness.
- 5 10. "Facility" means a school, residence center, group home, nursing home, foster home,
6 boarding home, or other facility operated by any public or private agency, organization,
7 or institution, which provides services to a person with developmental disabilities or
8 mental illness.
- 9 11. "Individually identifiable health information" and "personal representative" have the
10 meaning set forth in title 45, Code of Federal Regulations, part 160, section 103 and
11 part 164, section 5-02, subsection g, respectively.
- 12 12. "Mental health professional" means a mental health professional as defined in section
13 25-03.1-02.
- 14 13. "Mental illness" means significant mental illness or emotional impairment as
15 determined by a mental health professional.
- 16 14. "Neglect" means:
- 17 a. Inability of a person with developmental disabilities or mental illness to provide
18 food, shelter, clothing, health care, or services necessary to maintain the mental
19 and physical health of that person;
- 20 b. Failure by any caretaker of a person with developmental disabilities or mental
21 illness to meet, either by commission or omission, any statutory obligation, court
22 order, administrative rule or regulation, policy, procedure, or minimally accepted
23 standard for care of persons with developmental disabilities or mental illnesses;
- 24 c. Negligent act or omission by any caretaker which causes injury or death to a
25 person with developmental disabilities or mental illness or which places that
26 person at risk of injury or death;
- 27 d. Failure by any caretaker, who is required by law or administrative rule, to
28 establish or carry out an appropriate individual program or treatment plan for a
29 person with developmental disabilities or mental illness;
- 30 e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to
31 a person with developmental disabilities or mental illness;

- 1 f. Failure by any caretaker to provide a safe environment for a person with
2 developmental disabilities or mental illness; and
- 3 g. Failure by any caretaker to maintain adequate numbers of appropriately trained
4 staff at a facility providing care and services for persons with developmental
5 disabilities or mental illnesses.
- 6 15. "Other appropriate remedies" means remedies achieved through alternative dispute
7 resolution, such as discussion, education, conciliation, and mediation.
- 8 16. "Project" means the protection and advocacy project.
- 9 ~~16.~~17. "Protective services" means actions to assist persons with developmental disabilities
10 or mental illnesses who are unable to manage their own resources or to protect
11 themselves from abuse, neglect, exploitation, or other hazards.
- 12 ~~17.~~18. "Report" means a verbal or written communication, including an anonymous
13 communication, alleging the abuse, neglect, or exploitation of a person with
14 developmental disabilities or mental illness.

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

17 **25-01.3-06. Authority of project - Annual report.**

- 18 1. Pursuant to rules adopted by the committee, the project, within the limits of legislative
19 appropriations, shall provide advocacy and protective services for persons with
20 developmental disabilities and persons with mental illnesses. The rules adopted by the
21 committee relating to the need for the consent of the client must balance the rights of
22 persons with developmental disabilities or mental illnesses to privacy and to refuse
23 services under section 25-01.3-11 with the committee's duties to protect the human
24 and legal rights of persons eligible for services and to monitor facilities for compliance
25 with federal and state laws and rules.
- 26 2. The project may:
- 27 ~~1.~~ a. Represent persons with developmental disabilities or mental illnesses so ~~that~~
28 ~~they~~the persons may realize the rights and services to which they are entitled.
- 29 ~~2.~~ b. Investigate complaints and reports if the alleged incidents are reported to the
30 committee or the project or if there is probable cause to believe ~~that~~ the incidents
31 occurred.

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

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

19 **25-01.3-08. Investigation of reports and complaints.**

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

- 1 d. Coordinate investigations with other agencies, departments, or other entities
2 providing services necessary or advisable for the person with developmental
3 disabilities or mental illness.
- 4 e. Delegate investigatory powers to the extent necessary and appropriate to any
5 person~~individual~~ or entity.
- 6 2. This section does not limit the responsibilities of law enforcement agencies to enforce
7 the laws of this state or preclude law enforcement agencies from investigating, as
8 appropriate, any alleged criminal conduct.
- 9 3. This section does not prohibit the project from assessing the opportunity for ~~education~~
10 ~~and~~-voluntary compliance and other appropriate remedies in the course of
11 investigating a report or complaint.