FIRST ENGROSSMENT

Sixty-seventh Legislative Assembly of North Dakota

ENGROSSED 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;
- 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;
- 14 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.
- 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.	"Ad	vocate" means an employee of the project.
2	4.	"Ca	retaker" means a person, organization, association, or facility who has assumed
3		lega	al responsibility or a contractual obligation for the care of a person with
4		dev	elopmental disabilities or mental illness, or a parent, spouse, sibling, other relative,
5		or p	erson who has voluntarily assumed responsibility for the person's care.
6	5.	"Co	mmittee" means the committee on protection and advocacy.
7	6.	"Co	mplaint" means an allegation of a violation of human or legal rights, or a lack of
8		nee	ded services, which is not a report of abuse, neglect, or exploitation.
9	7.	"De	velopmental disability" is a disability as defined in section 25-01.2-01.
10	8.	"Elię	gibility 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.	"Ex	ploitation", when committed by a caretaker or relative of, or any person in a
24		fidu	ciary relationship with, a person with developmental disabilities or mental illness,
25		mea	ans:
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.	"Fac	cility" means a school, residence center, group home, nursing home, foster home,
6		boa	rding home, or other facility operated by any public or private agency, organization,
7		or ir	nstitution, which provides services to a person with developmental disabilities or
8		mer	ntal illness.
9	11.	"Ind	ividually identifiable health information" and "personal representative" have the
10		mea	aning 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.	"Me	ntal health professional" means a mental health professional as defined in section
13		25-0	03.1-02.
14	13.	"Me	ntal illness" means significant mental illness or emotional impairment as
15		dete	ermined by a mental health professional.
16	14.	"Ne	glect" 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.	<u>"Otł</u>	ner appropriate remedies" means remedies achieved through alternative dispute
7		reso	plution, such as discussion, education, conciliation, and mediation.
8	<u>16.</u>	"Pro	pject" means the protection and advocacy project.
9	16.<u>17.</u>	"Pro	ptective services" means actions to assist persons with developmental disabilities
10		or n	nental illnesses who are unable to manage their own resources or to protect
11		ther	nselves from abuse, neglect, exploitation, or other hazards.
12	17.<u>18.</u>	"Re	port" means a verbal or written communication, including an anonymous
13		com	nmunication, alleging the abuse, neglect, or exploitation of a person with
14		dev	elopmental disabilities or mental illness.
15	SECTION 2. AMENDMENT. Section 25-01.3-06 of the North Dakota Century Code is		
16	amende	d and	d reenacted as follows:
17	25-0)1.3-(06. Authority of project <u>- Annual report</u> .
17 18	25-0 <u>1.</u>		06. Authority of project <u>- Annual report</u>. suant to rules adopted by the committee, the project, within the limits of legislative
		Pur	
18		Pur: app	suant to rules adopted by the committee, the project, within the limits of legislative
18 19		Pur: app dev	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with
18 19 20		Purs app dev com	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the
18 19 20 21		Purs app dev com	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of
18 19 20 21 22		Purs app dev com pers serv	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse
18 19 20 21 22 23		Purs app dev com pers serv and	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse vices under section 25-01.3-11 with the committee's duties to protect the human
18 19 20 21 22 23 24		Purs app dev com pers serv and with	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse vices under section 25-01.3-11 with the committee's duties to protect the human legal rights of persons eligible for services and to monitor facilities for compliance
18 19 20 21 22 23 24 25	<u>1.</u>	Purs app dev com pers serv and with	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse vices under section 25-01.3-11 with the committee's duties to protect the human legal rights of persons eligible for services and to monitor facilities for compliance in federal and state laws and rules.
18 19 20 21 22 23 24 25 26	<u>1.</u> <u>2.</u>	Purs app dev com pers serv and with The	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse vices under section 25-01.3-11 with the committee's duties to protect the human legal rights of persons eligible for services and to monitor facilities for compliance federal and state laws and rules.
18 19 20 21 22 23 24 25 26 27	<u>1.</u> <u>2.</u>	Purs app dev com pers serv and with The	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the numittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse vices under section 25-01.3-11 with the committee's duties to protect the human legal rights of persons eligible for services and to monitor facilities for compliance federal and state laws and rules.
18 19 20 21 22 23 24 25 26 27 28	<u>1.</u> <u>2.</u> 1.	Purs app dev com pers serv and with The <u>a.</u>	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse vices under section 25-01.3-11 with the committee's duties to protect the human legal rights of persons eligible for services and to monitor facilities for compliance federal and state laws and rules. Project may: Represent persons with developmental disabilities or mental illnesses to which they are entitled.
18 19 20 21 22 23 24 25 26 27 28 29	<u>1.</u> <u>2.</u> 1.	Purs app dev com pers serv and with The <u>a.</u>	suant to rules adopted by the committee, the project, within the limits of legislative ropriations, shall provide advocacy and protective services for persons with elopmental disabilities and persons with mental illnesses. The rules adopted by the mittee relating to the need for the consent of the client must balance the rights of sons with developmental disabilities or mental illnesses to privacy and to refuse vices under section 25-01.3-11 with the committee's duties to protect the human legal rights of persons eligible for services and to monitor facilities for compliance federal and state laws and rules. project may: Represent persons with developmental disabilities or mental illnesses to which they are entitled. Investigate complaints and reports if the alleged incidents are reported to the

- 13.c.Monitor individual habilitation or treatment plans, program plans, educational2plans, facilities and programs, and all other services and care provided to3persons with developmental disabilities or mental illnesses.
- 4 4. d. Employ counsel to represent clients to pursue legal, administrative, voluntary 5 compliance, and other appropriate remedies to ensure the protection of the rights 6 of persons with developmental disabilities or mental illnesses, and employ 7 counsel to represent the project or the committee when, in the opinion of the 8 attorney general, a conflict of interest under the North Dakota Rules of 9 Professional Conduct exists between the office of attorney general and the 10 committee or the project, and the conflict cannot be avoided by the appointment 11 of counsel under subsection 3 of section 54-12-01 or section 54-12-08.
- 12 5. Pursue legal, administrative, voluntary compliance, and other appropriate е. 13 remedies to ensure the protection and the rights of persons with developmental 14 disabilities or mental illnesses. Prior to Before instituting any legal action in a 15 federal or state court on behalf of a person with developmental disabilities or 16 mental illnesses, the project shall exhaust in a timely manner all administrative 17 remedies if appropriate. If, in pursuing administrative remedies, the project 18 determines that anya matter with respect to that person will not be resolved 19 within a reasonable time, the project may pursue alternative remedies, including 20 the initiation of a legal action with the consent of the committee. However, 21 exhaustion of administrative remedies is not a prerequisite to initiation of a legal 22 action when if that action is instituted to prevent or eliminate imminent serious 23 harm to a person with developmental disabilities or mental illnesses.
- 246.f.Sign anya criminal complaint necessary to protect the interests of anya person25with developmental disabilities or mental illness, or group of persons with26developmental disabilities or mental illnesses, who appear to have been27victimized 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.

1	8.	<u>h.</u>	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.	<u>i.</u>	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.	<u>k.</u>	Provide information on and referral to programs and services addressing the
9			needs of persons with developmental disabilities or mental illnesses.
10	12.	<u>l.</u>	Accept and administer gifts, grants, or contracts with personsindividuals or
11			organizations, including the federal government, on such terms as may be
12			beneficial to the state.
13	13.	<u>m.</u>	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	<u>3.</u>	<u>The</u>	project shall use the report, complaint, and investigation process to assess the
16		<u>opp</u>	ortunity for voluntary compliance and other appropriate remedies.
17	SEC		N 3. AMENDMENT. Section 25-01.3-08 of the North Dakota Century Code is
18	amende	d and	d reenacted as follows:
19	25-0)1.3-(08. Investigation of reports and complaints.
20	1.	Upc	on receipt of any report of suspected abuse, neglect, exploitation, or a complaint
21		mac	de pursuant to sections 25-01.3-01 through 25-01.3-12, the project shall assess the
22		nee	d for an investigation of the report or complaint. If the project determines that the
23		repo	ort or complaint is warranted, the project shall investigate or cause the report or
24		com	plaint 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<u>individual</u> 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	<u>3.</u>	This section does not prohibit the project from assessing the opportunity for voluntary
10		compliance and other appropriate remedies in the course of investigating a report or
11		complaint.