

HOUSE No. 4026

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 13, 2017.

The committee on Children, Families and Persons with Disabilities to whom was referred the petition (accompanied by bill, House, No. 80) of Linda Dean Campbell and others relative to the establishment of an abuse registry for certain caretakers of persons with intellectual or developmental disabilities, reports recommending that the accompanying bill (House, No. 4026) ought to pass.

For the committee,

KAY KHAN.

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to establish a registry of caretakers found to have substantiated abuse against persons with intellectual disability or developmental disability.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 21. (1) the following definitions shall

2 “Abuse” means an act or omission of a caretaker which results in serious physical or
3 serious emotional injury or abuse per se to a person with an intellectual or developmental
4 disability; provided, however, that no person shall be considered to be abused for the sole reason
5 that such person is being furnished or relies upon treatment in accordance with the tenets and
6 teachings of a church or religious denomination by a duly accredited practitioner thereof.

7 “Abuser” means a person whose name is listed on the Massachusetts disability abuse
8 registry.

9 “Caretaker” means any person employed by a provider licensed by the department
10 pursuant to sections fifteen and fifteen A of chapter nineteen B of the general laws, or
11 commonwealth department of developmental services employee, that provides services or
12 supports to a person with an intellectual or developmental disability

13 “Commissioner” means the commissioner of the department of developmental services

14 “Department” means the department of developmental services

15 “Registry” means the Massachusetts disability abuse registry

16 (2) Creation of a disability abuse registry

17 The department shall, subject to appropriation, establish and maintain a registry of
18 abusers, against whom a substantiated finding of abuse of a person with an intellectual or
19 developmental disability has been issued by the disabled persons protection commission in
20 accordance with chapter nineteen C of the general laws, or a substantiated finding under 115
21 CMR 9.00 including that of financial exploitation of a person with an intellectual or
22 developmental disability has been issued by the department, to be known as the Massachusetts
23 disability abuse registry.

24 The department shall, in accordance with section two of chapter thirty A of the general
25 laws and subject to appropriation, adopt regulations consistent with this section. Said regulations
26 shall include procedures and standards for the placement of a caretaker’s name on the registry,
27 and the process for the notification to the caretaker of the right to appeal the finding that the
28 caretaker meets the criteria for placement of his or her name on the registry.

29 The Department’s rules and regulations shall provide for a hearing before the
30 Massachusetts division of administrative law appeals, and pursuant to subsection one of chapter
31 thirty A of the general laws.

32 (3) Registration Process

33 After the conclusion of any appeal process at the agency that substantiated a finding of
34 abuse of a person with an intellectual or developmental disability by a caretaker, or a
35 substantiated finding of financial exploitation of a person with an intellectual or developmental
36 disability by a caretaker and after notice and an opportunity for a hearing on the placement of his
37 or her name on the registry, the department shall enter the abuser's name on the registry.

38 (4) Requirement to check registry

39 Prior to hiring an individual seeking employment, a provider shall determine whether the
40 applicant's name appears on the registry.

41 The department shall notify a provider that currently employs an abuser upon the entry of
42 his or her name in the registry

43 (5) Prohibition of hiring persons listed on the registry

44 No service provider shall hire or knowingly employ an individual whose name appears
45 on the registry, or, if an alternative sanction was imposed, that individual shall not be hired or
46 employed until the terms of such section have been fulfilled.

47 The department shall promulgate regulations to ensure service provider compliance with
48 this subsection

49 The department shall establish penalties for providers who fail to meet the requirements
50 of this subsection, including, but not limited to monetary fines, loss or downgrade of state
51 certification, and forfeiture of state contracts.

52 (6) Whistleblower Protections

53 The protections established in section 185, of chapter 149, of the General Laws shall
54 apply to any employee of a licensed service provider who reports an instance of abuse, or
55 participates in any aspect of a relevant investigation.

56 (7) Access to the registry

57 The information maintained in the registry, including the record of its proceedings, shall
58 not be considered a public record under clause twenty-six, of section seven, of chapter four of the
59 general laws. The division of administrative law appeals and the department shall keep
60 confidential and may only disseminate information contained in the registry to a provider for
61 consideration of a current employee or an applicant for employment to provide direct care to
62 persons with intellectual or developmental disability; or to a law enforcement agency; or the
63 attorney general; or appropriate district attorney; or agency of the commonwealth that has
64 jurisdiction over the victim, the matter under investigation, or jurisdiction over professional
65 misconduct for possible prosecution or the imposition of remedial or disciplinary measures in
66 accordance with the requirements of any applicable law or regulation.

67 (8) Registry oversight

68 Annually, the secretary of health and human services shall initiate an audit of the
69 disability abuse registry to ensure compliance with this section, including that all substantiated
70 findings by the disabled persons protection commission were added to the registry and proper
71 notification was made to relevant providers, and

72 Section 2. Section five of chapter nineteen C of the general laws, is hereby amended by
73 inserting at the end thereof, the following new subsection:

74 (6) immediately upon issuance of an investigation report substantiating abuse of a person
75 with an intellectual disability or developmental disability, the commission shall submit all
76 relevant information to the Massachusetts disability abuse registry

77 Section 3. Section 4H of chapter seven of the general laws, is hereby amended by
78 inserting, in line 81, after the fourth paragraph, the following new paragraph:-

79 In accordance with section 21 of chapter 19B, caretakers who have been determined to
80 meet the criteria for placement of their names on the Massachusetts disability abuse registry shall
81 be entitled to a hearing before the Massachusetts division of administrative law appeals.

82 Section 4. Section 9B of chapter 30 of the general laws is hereby amended by inserting,
83 in line 32, after the phrase “chapter one hundred and fifty E” the following new phrase:-

84 “or Massachusetts disability abuse registry proceedings under chapter seven, section four
85 H”