

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 08-1246

BY REPRESENTATIVE(S) Green, Borodkin, Frangas, Gagliardi, Hodge, Jahn, Kefalas, Kerr A., Labuda, Madden, McFadyen, McGihon, Merrifield, Middleton, Primavera, Rice, Romanoff, Stafford, Summers, and Todd; also SENATOR(S) Keller, Bacon, Boyd, Gibbs, Groff, Kopp, Mitchell S., Morse, Penry, Schwartz, Shaffer, Spence, Tochtrop, Tupa, Ward, Wiens, Williams, and Windels.

CONCERNING THE CREATION OF A REGISTRY OF CAREGIVERS WHO ARE DEEMED TO HAVE A SUBSTANTIATED ALLEGATION OF WRONGDOING AGAINST A PERSON WITH A DEVELOPMENTAL DISABILITY, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 10.5 of title 27, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

27-10.5-142. Caregiver abuse - duties of the department - working group - issues - report - funding. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) PERSONS WITH DEVELOPMENTAL DISABILITIES ARE FOUR TO TEN TIMES MORE LIKELY TO BE VICTIMS OF CRIME THAN THE GENERAL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

POPULATION. STUDIES HAVE SHOWN THAT MOST CRIMES AGAINST PERSONS WITH DEVELOPMENTAL DISABILITIES ARE UNREPORTED, AND FOR THOSE THAT ARE REPORTED THERE ARE EXCESSIVELY LOW RATES OF PROSECUTION AND CONVICTION.

(b) PERSONS WITH DEVELOPMENTAL DISABILITIES FREQUENTLY DEPEND UPON OTHERS TO MEET THEIR BASIC NEEDS, LEADING TO A POWER IMBALANCE BETWEEN THE CAREGIVER AND THE CLIENT WITH DEVELOPMENTAL DISABILITIES.

(c) THE GENERAL ASSEMBLY IS ESPECIALLY CONCERNED BY THE PREVALENCE OF ABUSE, NEGLECT, AND EXPLOITATION OF PERSONS WITH DEVELOPMENTAL DISABILITIES BY CAREGIVERS WHO ARE IN A POSITION OF TRUST. STUDIES ESTIMATE THAT MOST PERPETRATORS WHO ABUSE PERSONS WITH DEVELOPMENTAL DISABILITIES HAD ACCESS TO THEIR VICTIMS THROUGH THEIR WORK PROVIDING CARE FOR THOSE PERSONS.

(d) THE PROTECTION OF POPULATIONS WHO ARE AT RISK DUE TO ADVANCED AGE OR DEVELOPMENTAL DISABILITIES REQUIRES THE CREATION OF A SYSTEM TO PROTECT THESE VULNERABLE POPULATIONS FROM THOSE WHO ABUSE OR NEGLECT THEM.

(e) THEREFORE, THE GENERAL ASSEMBLY HEREBY DETERMINES THAT IT IS NECESSARY TO CREATE AN CAREGIVER ABUSE REGISTRY TO TRACK THOSE PERSONS WHO ABUSE, NEGLECT, OR EXPLOIT AT-RISK ADULTS, AND TO THAT END TASKS THE DEPARTMENT OF HUMAN SERVICES TO DEVELOP A PLAN TO CREATE AND IMPLEMENT SUCH A REGISTRY.

(2) ON OR BEFORE AUGUST 30, 2008, THE DEPARTMENT SHALL CONVENE A WORKING GROUP TO MAKE RECOMMENDATIONS FOR THE DEVELOPMENT OF A PLAN BY THE DEPARTMENT TO IMPLEMENT A REGISTRY OF CAREGIVERS WHO HAVE A SUBSTANTIATED ALLEGATION OF EXPLOITATION, MISTREATMENT, NEGLECT, PHYSICAL ABUSE, OR SEXUAL ABUSE OF A PERSON WITH A DEVELOPMENTAL DISABILITY. THE WORKING GROUP SHALL INCLUDE REPRESENTATION FROM INTERESTED PARTIES, INCLUDING BUT NOT LIMITED TO THE DIVISION FOR DEVELOPMENTAL DISABILITIES, COMMUNITY CENTERED BOARDS, SERVICE PROVIDERS, FAMILY MEMBERS, ADVOCATES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, THE JUDICIAL DEPARTMENT, LAW ENFORCEMENT, AND ANY OTHER EXPERTS AS DETERMINED BY THE DEPARTMENT. IN DEVELOPING THE PLAN, THE

DEPARTMENT AND THE WORKING GROUP SHALL CONSIDER EXISTING REGISTRY MODELS IN COLORADO, AS WELL AS STATUTORY MODELS FOR CAREGIVER ABUSE REGISTRIES IN OTHER STATES.

(3) IN DEVELOPING THE PLAN, THE DEPARTMENT AND THE WORKING GROUP SHALL CONSIDER, AT A MINIMUM, THE FOLLOWING ISSUES RELATED TO THE CREATION AND IMPLEMENTATION OF A REGISTRY OF CAREGIVERS WHO HAVE A SUBSTANTIATED ALLEGATION OF EXPLOITATION, MISTREATMENT, NEGLECT, PHYSICAL ABUSE, OR SEXUAL ABUSE OF A PERSON WITH A DEVELOPMENTAL DISABILITY:

(a) A REVIEW AND EVALUATION OF EXISTING PROCESSES TO DETERMINE CURRENT BEST PRACTICES AND HOW TO BUILD ON THE EXISTING SYSTEM;

(b) CLEAR AND CONSISTENT STANDARDS CONCERNING WHAT CONSTITUTES A SUBSTANTIATED ALLEGATION OF EXPLOITATION, MISTREATMENT, NEGLECT, PHYSICAL ABUSE, OR SEXUAL ABUSE OF A PERSON WITH A DEVELOPMENTAL DISABILITY;

(c) A DEFINITION OF FAMILY AND A DETERMINATION OF WHETHER A FAMILY MEMBER WHO ACTS AS A CAREGIVER TO A PERSON WITH A DEVELOPMENTAL DISABILITY SHOULD BE INCLUDED ON THE REGISTRY;

(d) DUE PROCESS CONSIDERATIONS FOR INDIVIDUALS WHOSE NAMES ARE ON THE REGISTRY OR ARE GOING TO BE PLACED ON THE REGISTRY, INCLUDING THE RIGHT TO BE ADVISED OF ANY ALLEGATIONS AND AN OPPORTUNITY TO BE HEARD, REQUEST A HEARING, AND BE REPRESENTED BY LEGAL COUNSEL;

(e) THE NEED FOR THOROUGH AND FAIR INVESTIGATIONS, INCLUDING WHO WOULD PERFORM THE INVESTIGATIONS AND UNIFORM STANDARDS AND TRAINING FOR THOSE INVESTIGATORS;

(f) ANY STATUTES THAT NEED MODIFICATION DUE TO THE CREATION OF A CAREGIVER ABUSE REGISTRY;

(g) INFORMATION TECHNOLOGY NEEDS AND PERSONNEL SERVICES ASSOCIATED WITH THE CREATION, IMPLEMENTATION, AND ONGOING ADMINISTRATION OF A CAREGIVER ABUSE REGISTRY;

(h) THE COSTS ASSOCIATED WITH CREATING AND IMPLEMENTING A CAREGIVER ABUSE REGISTRY, INCLUDING WHETHER FEDERAL FUNDS OR OTHER POTENTIAL FUNDING SOURCES MAY BE AVAILABLE TO COVER ANY PART OF SUCH COSTS; AND

(i) A PROCESS AND TIMELINE TO PHASE IN THE REGISTRY.

(4) ON OR BEFORE JANUARY 30, 2009, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, SUMMARIZING THE WORK OF THE DEPARTMENT PURSUANT TO THIS SECTION. THE REPORT SHALL INCLUDE THE DEPARTMENT'S PLAN FOR A CAREGIVER ABUSE REGISTRY AND ANY RECOMMENDATIONS FOR IMPLEMENTING LEGISLATION.

(5) THE DEPARTMENT IS AUTHORIZED TO SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION. ALL PRIVATE AND PUBLIC FUNDS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE CAREGIVER ABUSE REGISTRY FUND, WHICH FUND IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS SECTION. ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND. ALL UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AS OF JUNE 30, 2010, SHALL BE TRANSFERRED TO THE GENERAL FUND.

(6) THE DEPARTMENT SHALL NOT BE OBLIGATED TO IMPLEMENT THE PROVISIONS OF THIS SECTION UNTIL SUCH TIME AS THERE IS AT LEAST THIRTY-THREE THOUSAND DOLLARS IN THE FUND, WHETHER RECEIVED FROM GIFTS, GRANTS, DONATIONS, OR OTHER SOURCES.

SECTION 2. Appropriation. In addition to any other

appropriation, there is hereby appropriated, out of any moneys in the caregiver abuse registry fund created in section 27-10.5-142 (5), Colorado Revised Statutes, not otherwise appropriated, to the department of human services, for allocation to services for people with disabilities, community services for people with developmental disabilities, administration, for the fiscal year beginning July 1, 2008, the sum of thirty-three thousand dollars (\$33,000) cash funds, or so much thereof as may be necessary, for the implementation of this act.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO