



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB6203

by Rep. Paul Evans

SYNOPSIS AS INTRODUCED:

See Index

Amends the Abuse of Adults with Disabilities Intervention Act. Requires the Office of Inspector General designated by the Department of Human Services to refer evidence of crimes against an adult with disabilities to the appropriate law enforcement agency immediately upon finding evidence of a crime (rather than according to Office of Inspector General policies). Provides that upon the death of an adult with disabilities where a complaint or report of alleged abuse, neglect, or exploitation was made prior to the person's death, regardless of whether the complaint or report was substantiated or unsubstantiated and regardless of whether consent was given for an assessment, the Office of Inspector General shall immediately report the matter to the appropriate law enforcement agency and coroner or medical examiner. Provides that if a report of alleged or suspected abuse, neglect, or exploitation of an adult with disabilities is made and it reasonably appears to the investigator that the adult with disabilities lacks the capacity to consent to necessary services, including an assessment, the Department shall seek the appointment of a guardian for the purpose of consenting to such services, together with an order for an evaluation of the eligible adult's physical, psychological, and medical condition and decisional capacity. Contains provisions concerning oral and written reports; training and education opportunities for investigators; service plans; reporting requirements regarding the death of an adult with disabilities; and the prohibition against employer retaliation for certain disclosures. Defines terms. Effective immediately.

LRB097 22047 KTG 70858 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Abuse of Adults with Disabilities
5 Intervention Act is amended by changing Sections 15, 25, 30,
6 35, 40, and 45 and by adding Section 63 as follows:

7 (20 ILCS 2435/15) (from Ch. 23, par. 3395-15)

8 Sec. 15. Definitions. As used in this Act:

9 "Abuse" means causing any physical, sexual, or mental abuse
10 to an adult with disabilities, including exploitation of the
11 adult's financial resources. Nothing in this Act shall be
12 construed to mean that an adult with disabilities is a victim
13 of abuse or neglect for the sole reason that he or she is being
14 furnished with or relies upon treatment by spiritual means
15 through prayer alone, in accordance with the tenets and
16 practices of a recognized church or religious denomination.
17 Nothing in this Act shall be construed to mean that an adult
18 with disabilities is a victim of abuse because of health care
19 services provided or not provided by licensed health care
20 professionals.

21 "Adult with disabilities" means a person aged 18 through 59
22 who resides in a domestic living situation and whose physical
23 or mental disability impairs his or her ability to seek or

1 obtain protection from abuse, neglect, or exploitation.

2 "Consent" means the ability to understand and appreciate
3 the nature and consequences of making decisions concerning
4 one's welfare in the absence of undue influence, imitation, or
5 coercion, including, but not limited to, the nature and
6 consequences of making provisions for health or mental health
7 care, food, shelter, clothing, safety, or financial affairs.
8 The ability to give consent may be reasonably determined by an
9 investigator based on an assessment or investigative findings,
10 observation, or a medical or mental health evaluation performed
11 by a physician or psychologist at the request of the
12 investigator.

13 "Department" means the Department of Human Services.

14 "Adults with Disabilities Abuse Project" or "project"
15 means that program within the Office of Inspector General
16 designated by the Department of Human Services to receive and
17 assess reports of alleged or suspected abuse, neglect, or
18 exploitation of adults with disabilities.

19 "Domestic living situation" means a residence where the
20 adult with disabilities lives alone or with his or her family
21 or household members, a care giver, or others or at a board and
22 care home or other community-based unlicensed facility, but is
23 not:

24 (1) A licensed facility as defined in Section 1-113 of
25 the Nursing Home Care Act or Section 1-113 of the ID/DD
26 Community Care Act or Section 1-113 of the Specialized

1 Mental Health Rehabilitation Act.

2 (2) A life care facility as defined in the Life Care
3 Facilities Act.

4 (3) A home, institution, or other place operated by the
5 federal government, a federal agency, or the State.

6 (4) A hospital, sanitarium, or other institution, the
7 principal activity or business of which is the diagnosis,
8 care, and treatment of human illness through the
9 maintenance and operation of organized facilities and that
10 is required to be licensed under the Hospital Licensing
11 Act.

12 (5) A community living facility as defined in the
13 Community Living Facilities Licensing Act.

14 (6) A community-integrated living arrangement as
15 defined in the Community-Integrated Living Arrangements
16 Licensure and Certification Act or community residential
17 alternative as licensed under that Act.

18 "Emergency" means a situation in which an adult with
19 disabilities is in danger of death or great bodily harm.

20 "Family or household members" means a person who as a
21 family member, volunteer, or paid care provider has assumed
22 responsibility for all or a portion of the care of an adult
23 with disabilities who needs assistance with activities of daily
24 living.

25 "Financial exploitation" means the illegal, including
26 tortious, use of the assets or resources of an adult with

1 disabilities. Exploitation includes, but is not limited to, the
2 misappropriation of assets or resources of an adult with
3 disabilities by undue influence, by breach of a fiduciary
4 relationship, by fraud, deception, or extortion, or by the use
5 of the assets or resources in a manner contrary to law.

6 "Mental abuse" means the infliction of emotional or mental
7 distress by a caregiver, a family member, or any person with
8 ongoing access to a person with disabilities by threat of harm,
9 humiliation, or other verbal or nonverbal conduct.

10 "Neglect" means the failure of another individual to
11 provide an adult with disabilities with or the willful
12 withholding from an adult with disabilities the necessities of
13 life, including, but not limited to, food, clothing, shelter,
14 or medical care.

15 Nothing in the definition of "neglect" shall be construed to
16 impose a requirement that assistance be provided to an adult
17 with disabilities over his or her objection in the absence of a
18 court order, nor to create any new affirmative duty to provide
19 support, assistance, or intervention to an adult with
20 disabilities. Nothing in this Act shall be construed to mean
21 that an adult with disabilities is a victim of neglect because
22 of health care services provided or not provided by licensed
23 health care professionals.

24 "Physical abuse" means any of the following acts:

25 (1) knowing or reckless use of physical force,
26 confinement, or restraint;

1 (2) knowing, repeated, and unnecessary sleep
2 deprivation;

3 (3) knowing or reckless conduct which creates an
4 immediate risk of physical harm; or

5 (4) when committed by a caregiver, a family member, or
6 any person with ongoing access to a person with
7 disabilities, directing another person to physically abuse
8 a person with disabilities.

9 "Secretary" means the Secretary of Human Services.

10 "Service plan" means a temporary plan of the actions
11 developed to address the service or support needs of an adult
12 with disabilities.

13 "Sexual abuse" means touching, fondling, sexual threats,
14 sexually inappropriate remarks, or any other sexual activity
15 with an adult with disabilities when the adult with
16 disabilities is unable to understand, unwilling to consent,
17 threatened, or physically forced to engage in sexual behavior.
18 Sexual abuse includes acts of sexual exploitation including,
19 but not limited to, facilitating or compelling an adult with
20 disabilities to become a prostitute, or receiving anything of
21 value from an adult with disabilities knowing it was obtained
22 in whole or in part from the practice of prostitution.

23 "Substantiated case" means a reported case of alleged or
24 suspected abuse, neglect, or exploitation in which the Adults
25 with Disabilities Abuse Project staff, after assessment,
26 determines that there is reason to believe abuse, neglect, or

1 exploitation has occurred.

2 (Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11; 97-227,
3 eff. 1-1-12; 97-354, eff. 8-12-11; revised 9-7-11.)

4 (20 ILCS 2435/25) (from Ch. 23, par. 3395-25)

5 Sec. 25. Reports of abuse, neglect, or exploitation of an
6 adult with disabilities.

7 (a) Any person who has reasonable cause to believe abuse,
8 neglect, or exploitation of an adult with disabilities has
9 occurred may report this to the statewide telephone number
10 established under this Act.

11 (b) Any person, institution, or agency making a report or
12 assessment under this Section in good faith, or providing
13 information, participating in an assessment, or taking
14 photographs or x-rays, shall be immune from any civil or
15 criminal liability on account of making the report or
16 assessment, providing information, or participating in an
17 assessment, or on account of submitting or otherwise disclosing
18 the photographs or x-rays to the Adults with Disabilities Abuse
19 Project.

20 (c) The identity of a person making a report of alleged or
21 suspected abuse, neglect, or exploitation under this Section
22 may be disclosed by the Office of Inspector General only with
23 the person's written consent or by court order.

24 (d) The privileged quality of communication between any
25 licensed health care professional or any other person who

1 reports abuse, neglect, or exploitation and his or her patient
2 or client shall not apply to situations involving abused,
3 neglected, or exploited adults with disabilities. Use of a
4 telecommunication device for the deaf constitutes an oral
5 report. Written reports may be taken, but cannot be required.

6 (e) All reports shall, if possible, include the name and
7 address of the adult with disabilities, the name and address of
8 the alleged abuser, if applicable, the nature and extent of the
9 suspected abuse, neglect, or exploitation, the possible extent
10 of the injury or condition as a result of the abuse, neglect,
11 or exploitation, any evidence of previous abuse, neglect, or
12 exploitation, the time, date and location of the incident, the
13 name, address of the reporter, and any other information that
14 the reporter believes may be useful in assessing the suspected
15 abuse, neglect, or exploitation.

16 (f) The Office of Inspector General shall refer evidence of
17 crimes against an adult with disabilities to the appropriate
18 law enforcement agency immediately upon finding evidence of a
19 crime according to Office of Inspector General policies. A
20 referral to law enforcement may be made at any time. Upon the
21 death of an adult with disabilities where a complaint or report
22 of alleged abuse, neglect, or exploitation was made prior to
23 the person's death pursuant to this Act, regardless of whether
24 the complaint or report was substantiated or unsubstantiated
25 and regardless of whether consent was given for an assessment,
26 the Office of Inspector General shall immediately report the

1 matter orally to both the appropriate (i) law enforcement
2 agency and (ii) coroner or medical examiner.

3 Oral reports made pursuant to this subsection shall be
4 confirmed in writing. Such written reports shall, at a minimum,
5 contain information regarding (1) the prior complaint or report
6 of alleged abuse, neglect, or exploitation of the deceased
7 adult with disabilities, the deceased adult with disabilities,
8 and the reporter, upon the reporter's consent pursuant to this
9 Act; (2) actions taken or not taken by the Office of Inspector
10 General or the Department upon receiving the complaint or
11 report of alleged abuse, neglect, or exploitation; (3) the
12 personnel from the Department and the Office of Inspector
13 General who were involved in investigating the complaint or
14 report of alleged abuse, neglect, or exploitation; and (4) as
15 available and applicable, the case numbers for the Department,
16 the Office of Inspector General, law enforcement, and the
17 coroner or medical examiner. The Office of Inspector General
18 shall also maintain a copy of the written report and shall
19 document subsequent action, if any, by the appropriate law
20 enforcement agency.

21 Upon the completion of the coroner's report and the law
22 enforcement agency's investigation, the Office of Inspector
23 General shall forward its written report, the coroner's report,
24 and the law enforcement agency's final investigative report to
25 the Attorney General.

26 ~~When the Office of Inspector General has reason to believe~~

1 ~~that the death of an adult with disabilities may be the result~~
2 ~~of abuse, neglect, or exploitation, the Office of Inspector~~
3 ~~General shall immediately report the matter to the coroner or~~
4 ~~medical examiner and shall cooperate fully with any subsequent~~
5 ~~investigation.~~

6 (g) Nothing in this Act shall preclude a person from
7 reporting an alleged act of abuse, neglect, or exploitation of
8 an adult with disabilities to a law enforcement agency.

9 (h) Nothing in this Act shall diminish the duty of law
10 enforcement officers to respond to and investigate incidents of
11 alleged abuse, neglect, and exploitation pursuant to the
12 Illinois Domestic Violence Act of 1986, when applicable.

13 (Source: P.A. 91-671, eff. 7-1-00.)

14 (20 ILCS 2435/30) (from Ch. 23, par. 3395-30)

15 Sec. 30. Statewide telephone number.

16 (a) There shall be a single, statewide, TTY accessible,
17 24-hour toll free telephone number established and maintained
18 by the Office of Inspector General that all persons may use to
19 report alleged or suspected abuse, neglect, or exploitation of
20 an adult with disabilities.

21 (b) The Office of Inspector General shall make every effort
22 to publicize the statewide, TTY accessible, 24-hour toll free
23 telephone number and to encourage public understanding of and
24 cooperation in reporting and eliminating abuse, neglect, and
25 exploitation of adults with disabilities.

1 (c) The Department shall establish minimum standards of
2 training and provide educational opportunities to qualify
3 investigators in the field of adults with disabilities abuse to
4 determine whether reports of alleged abuse, neglect, or
5 exploitation of disabled adult persons are substantiated. The
6 training must be conducted at least annually and shall include,
7 but need not be limited to, the following areas:

8 (1) The dynamics of adults with disabilities abuse,
9 neglect, or exploitation.

10 (2) The effects of adults with disabilities abuse,
11 neglect, or exploitation on adult and child victims.

12 (3) Information collection and preservation.

13 (4) Analysis of facts.

14 (5) Levels of evidence.

15 (6) Conclusions based on evidence.

16 (7) Interviewing skills, including specialized
17 training to interview people with unique needs or
18 disabilities.

19 (8) Report writing.

20 (9) Coordination and referral to other necessary
21 agencies such as law enforcement and judicial agencies.

22 (10) Human relations and cultural diversity.

23 (11) The dynamics of adults with disabilities abuse,
24 neglect, or exploitation within family networks and the
25 appropriate methods for interviewing relatives in the
26 course of the assessment or investigation.

1 (12) Protective services that are available to protect
2 alleged victims from further abuse, neglect, or
3 exploitation.

4 (13) Laws and procedures concerning adults with
5 disabilities abuse, neglect, or exploitation.

6 The training shall be developed in consultation with legal,
7 law enforcement, and mental health professionals with an
8 expertise in (i) adults with disabilities abuse, neglect, or
9 exploitation, or (ii) domestic abuse of disabled adults. The
10 ~~Office of Inspector General shall conduct training at least~~
11 ~~annually for persons taking reports on the statewide telephone~~
12 ~~number and persons conducting assessments or making referrals~~
13 ~~for service plans.~~

14 (Source: P.A. 91-671, eff. 7-1-00.)

15 (20 ILCS 2435/35) (from Ch. 23, par. 3395-35)

16 Sec. 35. Assessment of reports.

17 (a) The Adults with Disabilities Abuse Project shall, upon
18 receiving a report of alleged or suspected abuse, neglect, or
19 exploitation obtain the consent of the subject of the report to
20 conduct an assessment with respect to the report. The
21 assessment shall include, but not be limited to, a face-to-face
22 interview with the adult with disabilities who is the subject
23 of the report and shall ~~may~~ include a visit to the residence of
24 the adult with disabilities, and interviews or consultations
25 with service agencies or individuals who may have knowledge of

1 the circumstances of the adult with disabilities. A
2 determination shall be made whether each report is
3 substantiated. The Office of Inspector General must notify the
4 proper law enforcement agency to investigate if a crime has
5 been committed. If the Office of Inspector General determines
6 that there is clear and substantial risk of death or great
7 bodily harm, it shall immediately secure or provide emergency
8 protective services for purposes of preventing further abuse,
9 neglect, or exploitation, and for safeguarding the welfare of
10 the person. Such services must be provided in the least
11 restrictive environment commensurate with the adult with
12 disabilities' needs.

13 (a-5) The Adults with Disabilities Abuse Project shall
14 initiate an assessment of all reports of alleged or suspected
15 abuse or neglect within 7 days after receipt of the report,
16 except reports of abuse or neglect that indicate that the life
17 or safety of an adult with disabilities is in imminent danger
18 shall be assessed within 24 hours after receipt of the report.
19 Reports of exploitation shall be assessed within 30 days after
20 the receipt of the report.

21 (b) (Blank).

22 (c) The Department shall effect written interagency
23 agreements with other State departments and any other public
24 and private agencies to coordinate and cooperate in the
25 handling of substantiated cases; to accept and manage
26 substantiated cases on a priority basis; and to waive

1 eligibility requirements for the adult with disabilities in an
2 emergency.

3 (d) Every effort shall be made by the Adults with
4 Disabilities Abuse Project to coordinate and cooperate with
5 public and private agencies to ensure the provision of services
6 necessary to eliminate further abuse, neglect, and
7 exploitation of the adult with disabilities who is the subject
8 of the report.

9 The Office of Inspector General shall promulgate rules and
10 regulations to ensure the effective implementation of the
11 Adults with Disabilities Abuse Project statewide.

12 (e) When the Adults with Disabilities Abuse Project
13 determines that a case is substantiated, it shall refer the
14 case to the appropriate office within the Department of Human
15 Services to develop, with the consent of and in consultation
16 with the adult with disabilities, a service plan for the adult
17 with disabilities.

18 (f) The Adults with Disabilities Abuse Project shall refer
19 reports of alleged or suspected abuse, neglect, or exploitation
20 to another State agency when that agency has a statutory
21 obligation to investigate such reports.

22 (g) If the Adults with Disabilities Abuse Project has
23 reason to believe that a crime has been committed, the incident
24 shall be reported to the appropriate law enforcement agency.

25 (Source: P.A. 91-671, eff. 7-1-00.)

1 (20 ILCS 2435/40) (from Ch. 23, par. 3395-40)

2 Sec. 40. Service plan ~~periods~~. A service plan shall be
3 developed for each adult with disabilities who is in need of
4 services and who accepts the services. When implemented, the
5 service plan shall be in place until the situation causing the
6 abuse, neglect, or exploitation of the adult with disabilities
7 is ameliorated. The Department shall by rule establish the
8 period of time within which a service plan shall be implemented
9 and the duration of the plan. The rules shall provide for an
10 expedited response to emergency situations.

11 The Department shall implement a service plan for
12 substantiated cases within 14 calendar days after the report is
13 substantiated. In emergency situations, the Department shall
14 implement the service plan as soon as possible and in no event
15 later than 2 working days after the case is substantiated. All
16 appropriate emergency services shall remain in place until this
17 service plan is implemented.

18 This Section shall not be interpreted to preclude an
19 investigation into the death of a disabled adult who is the
20 subject of a pending complaint or report of alleged abuse,
21 neglect, or exploitation.

22 (Source: P.A. 91-671, eff. 7-1-00.)

23 (20 ILCS 2435/45) (from Ch. 23, par. 3395-45)

24 Sec. 45. Consent.

25 (a) If the Adults with Disabilities Abuse Project has

1 received a report of alleged or suspected abuse, neglect, or
2 exploitation with regard to an adult with disabilities who
3 lacks the capacity to consent to an assessment or to services,
4 the Adults with Disabilities Abuse Project may seek, directly
5 or through another agency, the appointment of a temporary or
6 permanent guardian for assessment, provision of services, or
7 any other decision-making authority as is appropriate for the
8 individual as provided in Article XIa of the Probate Act of
9 1975 or other relief as provided under the Illinois Domestic
10 Violence Act of 1986.

11 (a-5) If the adult with disabilities consents to the
12 assessment, such assessment shall be conducted. If the adult
13 with disabilities consents to the services included in the
14 service plan, such services shall be provided. If the adult
15 with disabilities refuses or withdraws his or her consent to
16 the completion of the assessment, the assessment shall be
17 terminated. If the adult with disabilities refuses or withdraws
18 his or her consent to the provision of services, the services
19 shall not be provided. When a complaint or report of alleged
20 abuse, neglect, or exploitation is made, but consent is not
21 given or is withdrawn, and the adult with disabilities
22 subsequently dies, the Office of Inspector General shall report
23 the matter to the proper authorities pursuant to Section 25 of
24 this Act.

25 (a-6) If a report of alleged or suspected abuse, neglect,
26 or exploitation of an adult with disabilities is made and it

1 reasonably appears to the investigator that the adult with
2 disabilities lacks the capacity to consent to necessary
3 services, including an assessment, the Department shall seek,
4 directly or through another agency, the appointment of a
5 guardian as provided in Article XIa of the Probate Act of 1975
6 for the purpose of consenting to such services, together with
7 an order for an evaluation of the eligible adult's physical,
8 psychological, and medical condition and decisional capacity.

9 (a-7) If a report of alleged or suspected abuse, neglect,
10 or exploitation of an adult with disabilities is made and the
11 investigator reasonably concludes that the adult with
12 disabilities has the capacity to consent and does not consent,
13 an assessment or services shall not be conducted. If a
14 subsequent report is made, the Department shall seek the
15 appointment of a guardian for the purpose of consenting to such
16 services, together with an order for an evaluation of the
17 eligible adult's physical, psychological, and medical
18 condition and decisional capacity, and an assessment shall be
19 conducted.

20 (a-8) If a report of alleged or suspected abuse, neglect,
21 or exploitation of an adult with disabilities is made and the
22 guardian of the adult with disabilities refuses consent to an
23 assessment, or subsequently withdraws consent, the Adults with
24 Disabilities Abuse Project shall seek directly or through
25 another agency a court order seeking appropriate remedies, and
26 may in addition request removal of the guardian and the

1 appointment of a successor guardian pursuant to Article XIa of
2 the Probate Act of 1975.

3 (b) A guardian of the person of an adult with disabilities
4 who is abused, neglected, or exploited by another individual in
5 a domestic living situation may consent to an assessment or to
6 services being provided pursuant to the service plan. If the
7 guardian is alleged to be the perpetrator of the abuse,
8 neglect, or exploitation, the Adults with Disabilities Abuse
9 Project shall, when there is an immediate and urgent necessity,
10 seek the appointment of a temporary substitute guardian
11 pursuant to Section 213.3 of the Illinois Domestic Violence Act
12 of 1986 under the provisions of Article XIa of the Probate Act
13 of 1975. If a guardian withdraws his consent or refuses to
14 allow an assessment or services to be provided to the adult
15 with disabilities, the Adults with Disabilities Abuse Project
16 may seek directly or through another agency a court order
17 seeking appropriate remedies, and may in addition request
18 removal of the guardian and appointment of a successor guardian
19 pursuant to Article XIa of the Probate Act of 1975.

20 (c) For the purposes of this Section only, "lacks the
21 capacity to consent" shall mean that the adult with
22 disabilities reasonably appears to be unable by reason of
23 physical or mental condition to receive and evaluate
24 information related to the assessment or services, or to
25 communicate decisions related to the assessment or services.

26 (Source: P.A. 94-418, eff. 8-2-05.)

1 (20 ILCS 2435/63 new)

2 Sec. 63. Retaliation for certain disclosures prohibited.

3 Subject to the provisions of the Whistleblower Act, an employer

4 may not retaliate against an employee for disclosing

5 information to a government or law enforcement agency where the

6 employee has reasonable cause to believe that the information

7 discloses a violation of this Act or of a State or federal law,

8 rule, or regulation in connection with this Act.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.

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Statutes amended in order of appearance

20 ILCS 2435/15	from Ch. 23, par. 3395-15
20 ILCS 2435/25	from Ch. 23, par. 3395-25
20 ILCS 2435/30	from Ch. 23, par. 3395-30
20 ILCS 2435/35	from Ch. 23, par. 3395-35
20 ILCS 2435/40	from Ch. 23, par. 3395-40
20 ILCS 2435/45	from Ch. 23, par. 3395-45
20 ILCS 2435/63 new	