



State of Connecticut
Department of Developmental Services

DDS

Ned Lamont
Governor

Jordan A. Scheff
Commissioner

Peter Mason
Deputy Commissioner

**DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY
BEFORE THE COMMITTEE ON AGING**

February 19, 2019

Senators Maroney and Kelly, Representatives Serra and Wilson and members of the Committee on Aging. I am Jordan Scheff, Commissioner of the Department of Developmental Services (DDS) and I appreciate the opportunity to offer testimony regarding **S.B. No. 832 AN ACT CONCERNING REGISTRIES OF PERSONS FOUND RESPONSIBLE FOR ASSAULTS OR OTHER ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT OF ELDERLY PERSONS OR PERSONS WITH DISABILITIES.**

S.B. No. 832 seeks to establish a registry of offenders convicted of certain crimes against elderly persons or persons with disabilities. This registry would be administered by the Department of Emergency Services and Public Protection (DESPP). Any person placed on this registry would be required to register with the Commissioner of Emergency Services and Public Protection and provide his or her name, identifying information, including physical description, criminal history record, residence address and electronic mail address. DESPP would be required to photograph and fingerprint the offender and include the photograph and fingerprints in the registry. The person placed on the registry also would be required to appear annually at the local police department or state police troop having jurisdiction where the person resides. This registry would be publicly accessible on the DESPP website.

The Department of Developmental Services has an established record of protecting individuals with intellectual disability and individuals with autism spectrum disorder from persons, including employees and volunteers, who would abuse or neglect them. When the DDS registry of former employees who have been terminated from employment as a result of substantiated abuse or neglect was established in July of 1997, DDS was able to ensure that those employees both in public and private settings who had been substantiated for either abuse or neglect of an individual with intellectual disability would not be able to find employment in another DDS-funded agency or with the Departments of Children and Families (DCF), Mental Health and Addiction Services (DMHAS), or Social Services (DSS). Also, the DDS registry may be accessed for the purposes of protective service determinations by DCF, DMHAS, and DSS. These former employees, who are being placed on the DDS registry, have UAPA hearing rights under sections 4-177 to 4-181a, inclusive, of the Connecticut General Statutes and, if they have exhausted all administrative remedies, can appeal to the Superior Court.

The DDS registry may be accessed by DDS providers; DCF, DMHAS and DSS; and charitable volunteer organizations which serve persons with intellectual disability. The DDS registry is not available to the public-at-large.

While DDS supports any effort to protect individuals with intellectual disability from abuse and neglect, I have certain concerns with the registry being proposed in this bill and how it would use information from the DDS registry as part of its database.

The first area of concern would be that former employees who are placed on the DDS registry may not have been convicted of a crime under the law, but have been substantiated as having abused or neglected an individual with intellectual disability. While a conviction related to sexual or physical abuse or extreme neglect of a person with ID would place a former employee on the DDS registry, many of the former employees listed on the DDS registry have had abuse or neglect substantiated by the DDS Division of Investigation (DOI). While substantiation is significant and the person's employment should be terminated, the abuse or neglect substantiated may not meet the legal definitions associated with a person being charged or convicted of such actions under state or federal law. One example of an action that might lead to the termination of an employee and the placement of his or her name on the DDS registry is, if an employee was found sleeping while on duty and responsible for the health and welfare of an individual with intellectual disability. While this type of incident would not meet a legal threshold to charge the employee with a crime, unless the individual had been injured because of the employee's neglect, it would still result in the employee's termination and placement on the DDS registry. In addition, an employee who is placed on the DDS registry for an egregious action may or may not have been charged or convicted of a crime associated with the action that has led DDS to place them on the registry. This is an important distinction that must be taken into account when discussing a registry that would be publicly accessible.

With the additional threat of being placed on a publicly accessible registry alongside persons who have been convicted of crimes, the likelihood of legal challenges by former employees would increase substantially. These legal challenges would delay DDS in putting former employees on the DDS registry and would increase the chances that the former employee could be hired by another direct service agency. Also, any additional legal challenges would strain the department's financial and personnel resources.

A second concern is that the DDS Division of Investigation substantiates several types of abuse such as verbal abuse, psychological abuse, sexual abuse, physical abuse, and financial exploitation as well as a range of issues that constitute neglect on the part of the employee. While certain of these types of abuse and neglect may rise to the level of being criminal, DDS in substantiating abuse or neglect only determines that the former employee should not be hired to work with persons with intellectual disability or in other direct service employment with vulnerable populations. DDS DOI makes no determination as to whether the abuse or neglect that has been substantiated would lead the former employee to be charged or convicted of a crime. The categories of abuse or neglect that DDS substantiates for are particular to DDS and do not correlate directly with any other agency's standards or with specific criminal law.

A third concern, which is specific the provisions of subsection (h) of section 6 of the bill, is the additional requirement that DDS forward information on the former employees on the DDS registry to the Department of Public Health (DPH) for their use in the DPH "criminal history and patient abuse background search" database. DPH has never had access to the DDS registry and so forwarding this information would be an additional burden on both agencies. More importantly, the criteria for what is considered a "disqualifying offense," in section 19a-491c where this DPH database is described, includes "a substantiated finding of neglect, abuse or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3(g)(1)(C) or 42 USC 1396r(g)(1)(C)." The investigations and the hearing process that take place prior to a former employee being placed on the DDS registry are not conducted in accordance with 42 USC 1395i-3(g)(1)(C) or 42

USC 1396r(g)(1)(C). What this would mean for persons already placed on the DDS registry or what it would require DDS to do going forward is unclear. As the inclusion on this DPH database might restrict the former employees' ability to find gainful employment, this also could mean further legal challenges for the Department of Developmental Services.

Thank you again for the opportunity to testify on [S.B. No. 832](#) **AN ACT CONCERNING REGISTRIES OF PERSONS FOUND RESPONSIBLE FOR ASSAULTS OR OTHER ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT OF ELDERLY PERSONS OR PERSONS WITH DISABILITIES**. Please contact Krista Ostaszewski, DDS Director of Legislative Affairs at (860) 418-6066 with any follow up questions.