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AN ACT concerning children with developmental disabilities receiving services from the Department of Children and Families, designated as Tyler Banal's Law, and supplementing and amending Title 9 of the Revised Statutes.

"Tyler Banal's Law;" provides protections for children with developmental disabilities receiving services from DCF.

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Same as \_\_\_\_\_ 12/13 Same as \_\_\_\_\_ 14/15

Suggested allocation: ss.1-5 – C.9:6-3.2 et seq.; s.7 - A.P.A.; s.8 - Eff. date to 2014/41

AN ACT concerning children with developmental disabilities receiving services from the Department of Children and Families, designated as Tyler Banal's Law, and amending and supplementing Title 9 of the Revised Statutes.

*BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:*

1. (New section) As used in this act:

"Abused child" means a child under the age of 21 years whose parent, guardian, or other person having his custody and control:

a. Inflicts or allows to be inflicted upon the child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

b. Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; or

c. Commits or allows to be committed an act of sexual abuse against the child;

d. Or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, or such other person having his custody and control, to exercise a minimum degree of care (1) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (2) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment or using excessive physical restraint under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or by any other act of a similarly serious nature requiring the aid of the court;

e. Or a child who has been willfully abandoned by his parent or guardian, or such other person having his custody and control;

f. Or a child who is in an institution as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21) and (1) has been so placed inappropriately for a continued period of time with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being or (2) has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation; except that a child shall

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

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not be considered abused pursuant to this subsection if the acts or omissions described therein occur in a day school as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21).

"Authorized family member" means a relative of a child with a developmental disability receiving services from the Department of Children and Families who is authorized by the child's guardian to receive information pursuant to this act.

"Commissioner" means the Commissioner of Children and Families.

"Department" means the Department of Children and Families.

"Institution" means institution as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21), including any program, facility, or living arrangement licensed or funded by the department providing services to a child with a developmental disability.

"Institutional Abuse Investigation Unit" means the unit in the Department of Children and Families designated to conduct an investigation of an abused child in an institution providing services to a child with a developmental disability.

2. (New section) a. The Commissioner of Children and Families, or the commissioner's designee, shall designate employees of the Department of Children and Families, who may be case managers employed by the department or an agency under contract with the department, as applicable, to conduct at least three unannounced site visits annually to randomly check whether a child with a developmental disability receiving services from an institution is, or is at risk of being, an abused child.

b. An employee of the department conducting an unannounced site visit pursuant to subsection a. of this section, having reasonable cause to believe that a child with a disability has been subjected to abuse by a staff person of the institution, shall report the abuse immediately to the department, and, if appropriate, the department shall notify, as soon as possible, but no later than 24 hours after the occurrence of the abuse, the child's parent, guardian, or authorized family member. The employee shall also report the abuse to the Division of Child Protection and Permanency in accordance with the provisions of section 3 of P.L.1971, c.437 (C.9:6-8.10).

3. (New section) a. A case manager of a child with a developmental disability receiving services from an institution, the case manager's supervisor, or a staff member of the institution who has reasonable cause to believe that the child has been subjected to abuse by a staff member of the institution shall immediately report the abuse to the chief administrator of the institution or other person at the institution responsible for the child's welfare, as appropriate. The chief administrator or other person responsible for the child's welfare, as appropriate, shall notify the commissioner, or the commissioner's designee, of the abuse not more than two hours after the occurrence of the abuse, unless there is an extraordinary

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circumstance which prevents such notification, in which case the chief administrator or other person responsible for the child's welfare shall notify the commissioner, or the commissioner's designee as soon as possible, but not more than eight hours after the occurrence of the abuse. The chief administrator or other person responsible for the child's welfare, as appropriate, shall also report the abuse to the Division of Child Protection and Permanency in accordance with the provisions of section 3 of P.L.1971, c.437 (C.9:6-8.10).

b. Upon receipt of notification that a child with a developmental disability receiving services from an institution has been subjected to abuse, the commissioner, or the commissioner's designee, shall notify the child's parent, guardian, or authorized family member of the abuse as soon as possible, but no later than 24 hours after the occurrence of the abuse.

c. Notifications pursuant to this section shall be in person, or by telephone, and other electronic means shall be used to follow up the telephoned notification.

4. (New section) a. Pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) and section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), within 24 hours of the receipt of a report that a child with a developmental disability receiving services from an institution has been subjected to abuse:

(1) the Division of Child Protection and Permanency shall: designate an investigator from the Institutional Abuse Investigation Unit to conduct an investigation, and the investigator shall forward a copy of a report of the investigation to the child abuse registry in accordance with the provisions of section 4 of P.L.1971, c.437 (C.9:6-8.11); and

(2) the Commissioner of Children and Families shall designate an employee of the department, who may be a case manager employed by the department or an agency under contract with the department, as applicable, to accompany the investigator to verify the level of severity of the report.

b. The parent or guardian of a child with a developmental disability who is the subject of a report pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) or section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), in consultation with the investigator from the Institutional Abuse Investigation Unit, may request appropriate assistance from local and State law enforcement officials.

c. The parent, guardian, or authorized family member of a child with a developmental disability who is the subject of a report pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) or section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be provided an opportunity to submit information to facilitate the investigation conducted

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pursuant to subsection a. of this section, be informed of the progress of the investigation, and represent the child in the investigation.

d. Upon completion of an investigation conducted pursuant to subsection a. of this section, the commissioner, or the commissioner's designee, shall notify the parent, guardian, or authorized family member of a child with a developmental disability who is the subject of a report pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) or section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill) of any action taken by the chief administrator of the institution or any other person at the institution responsible for the child's welfare to remediate a condition that may have contributed to the abuse of the child in accordance with the provisions of section 7 of P.L.1987, c.341 (C.9:6-3.1).

5. (New section) The case manager of a child with a developmental disability receiving services from an institution or the case manager's supervisor who knowingly violates the provisions of P.L.1971, c.436 (C.9:6-8.8 et seq.), including the failure to report an act of child abuse, having reasonable cause to believe an act of child abuse has been committed pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) or section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be guilty of a crime of the fourth degree, unless the act of child abuse results in the death of the child, in which case the case manager or supervisor shall be guilty of a crime of the third degree.

6. Section 7 of P.L.1971, c.437 (C.9:6-8.14) is amended to read as follows:

**【Any】** Except as provided in section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), a person knowingly violating the provisions of **【this act】** P.L.1971, c.437 (C.9:6-8.8 et seq.), including the failure to report an act of child abuse, having reasonable cause to believe that an act of child abuse has been committed, is a disorderly person.

(cf: P.L.1971, c.437, s. 7)

7. The Commissioner of Children and Families, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall adopt rules and regulations necessary to effectuate the purposes of this act.

8. This act shall take effect on the first day of the seventh month next following the date of enactment, but the Commissioner of Children and Families may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

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## STATEMENT

This bill, which is designated as "Tyler Banal's Law," improves protections for children with developmental disabilities in institutions and provides for increased transparency of investigations conducted in connection with allegations of child abuse.

The bill provides for three unannounced site visits annually to be conducted at an institution providing services to a child with a developmental disability. Under the provisions of the bill, "institution" means an institution as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21), and includes any program, facility, or living arrangement licensed or funded by the Department of Children and Families (DCF) providing services to a child with a developmental disability.

The Commissioner of Children and Families, or the commissioner's designee, would choose employees of DCF, including case managers employed by DCF or an agency under contract with DCF, as applicable, to conduct the unannounced site visits to randomly check whether a child with a developmental disability receiving services from an institution is, or is at risk of being, an abused child.

The employee conducting the visits would report immediately to DCF if they have reasonable cause to believe that the child has been subjected to abuse by a staff member of the institution. The department would then, if appropriate, notify the child's parent, guardian, or authorized family member of the abuse as soon as possible but no later than 24 hours after the abuse occurs. The employee would also report the abuse to the Division of Child Protection and Permanency (DCPP) in accordance with section 3 of P.L.1974, c.437 (C.9:6-8.10).

The bill also requires the case manager of a child with a developmental disability receiving services from an institution to immediately report the abuse to the chief administrator of the institution or other person at the institution responsible for the child's welfare, as appropriate, and the chief administrator or other person responsible for the child's welfare, as appropriate, would also report the abuse to DCPP.

The notification to the commissioner, or the commissioner's designee, of the abuse would be no later than two hours after the abuse occurs, unless extraordinary circumstances prevents notification. In that case, the commissioner would be notified as soon as possible, but no later than eight hours after the abuse occurs. The commissioner would then notify the child's parent, guardian, or authorized family member of the abuse as soon as possible, but no later than 24 hours after the abuse occurs. Notifications would be made in person, or by telephone, and other electronic means would be used to follow up the telephoned notification.

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The bill stipulates that within 24 hours of receiving a report that a child with a developmental disability receiving services from an institution has been subjected to abuse, DCPD would send an investigator from the Institutional Abuse Investigation Unit to conduct an investigation, and the investigator would forward a copy of a report of the investigation to the child abuse registry pursuant to the provisions of P.L.1974, c.437 (C.9:6-8.11). The commissioner would send an employee of DCF to accompany the investigator to verify the level of severity of the report.

The bill also mandates that, in consultation with the investigator from the Institutional Abuse Investigation Unit, the parent or guardian of a child who is the subject of a report pursuant to the bill, may request appropriate assistance from local and State law enforcement officials in the investigation.

The parent, guardian, or authorized family member would be given the opportunity to submit information to facilitate the investigation, be informed of the progress of the investigation, and represent the child in the investigation.

Once the investigation is completed, the commissioner, or the commissioner's designee, would notify the child's parent, guardian, or authorized family member of any action taken by the chief administrator of the institution or any other person at the institution responsible for the child's welfare to remediate a condition that may have contributed to the abuse of the child in accordance with the provisions of section 7 of P.L.1987, c.341 (C.9:6-3.1).

Under the provisions of the bill, a case manager of a child with a developmental disability receiving services from an institution or the case manager's supervisor who fails to report an act of child abuse committed pursuant to the bill, including knowingly violating the provisions of P.L.1971, c.436 (C.9:6-8.8 et seq.), would be guilty of a crime of the fourth degree. If the child dies as a result of the abuse, the case manager or supervisor would be guilty of a crime of the third degree. Under current law, anyone who knowingly fails to report an act of child abuse is guilty of a crime of the fourth degree.

The bill is intended to create an environment that does not tolerate the abuse of children with developmental disabilities by providing for more transparency in reporting and investigating acts of child abuse and encouraging the reporting of these acts in a more timely manner.

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"Tyler Banal's Law;" provides protections for children with developmental disabilities receiving services from DCF.

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