

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF  
THE GUARDIANSHIP OF  
JOHN SPANGLER

: CASE NO. 2009-0121  
:  
:  
: On Appeal from the  
: Geauga County Court of Appeals,  
: Eleventh Appellate District

MERIT BRIEF OF APPELLEE JOHN SPANGLER

DEREK S. HAMALIAN (0039378)  
Counsel of Record  
JASON C. BOYLAN (0082409)  
Ohio Legal Rights Service  
50 West Broad Street, Suite 1400  
Columbus, Ohio 43215  
Telephone: 614-466-7264  
Fax: 614-644-1888  
dhamalian@olrs.state.oh.us  
jboylan@olrs.state.oh.us  
Counsel for John Spangler

DAVID P. JOYCE (0022437)  
Gauga County Prosecutor  
JUDITH A. MIEDEMA (0076206)  
Assistant Prosecuting Attorney  
Courthouse Annex  
231 Main Street, Suite 3A  
Chardon, Ohio 44024  
Telephone: 440-279-2100  
Fax: 440-279-1322  
miedej@odjfs.state.oh.us  
Counsel for Gauga County Bd. of DD

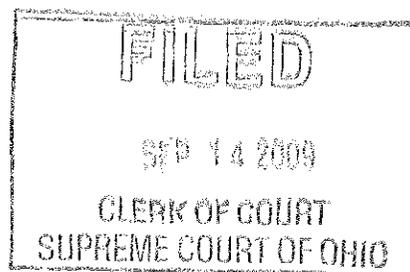
PAMELA WALKER MAKOWSKI (0024667)  
The Law Office of Pamela Walker Makowski  
503 South High Street, Suite 205  
Columbus, Ohio 43215  
Telephone: 614-564-6500  
Fax: 614-564-6555  
Pam.Makowski@aol.com  
Counsel for Joseph and Gabriele Spangler

SHANE EGAN (0038913)  
4110 North High Street, 2nd Floor  
Columbus, Ohio 43214  
Telephone: 614-262-3800  
Counsel for Amicus Curiae, Advocacy and  
Protective Services, Inc.

RICHARD CORDRAY (0038034)  
Attorney General of Ohio  
BENJAMIN C. MIZER (0083089)\*  
Solicitor General

FRANKLIN J. HICKMAN (0006105)  
JUDITH C. SALTZMAN (0068901)  
Hickman & Lowder Co., L.P.A.  
1300 East Ninth Street, Suite 1020  
Cleveland, Ohio 44114  
Telephone: 216-861-0360  
Fax: 216-861-3113  
Co-Counsel for Gauga County Bd. of DD

\*Counsel of Record  
DAVID LIEBERMAN (pro hac vice pending)  
Deputy Solicitor  
30 East Broad Street, 17th Floor  
Columbus, OH 43215  
Telephone: 614-466-8980  
Fax: 614-466-5087  
benjamin.mizer@ohioattorneygeneral.gov  
Counsel for Amicus Curiae, State of Ohio



## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE CASE.....	1
ARGUMENT .....	3
Proposition of Law: There is no statutory or other provision of law that authorizes a county board of developmental disabilities to file for the removal of a guardian. ....	3
I. <u>The primary role of a county board of developmental disabilities is to arrange for and provide services to eligible individuals.</u> .....	4
A.     A County Board of Developmental Disabilities is defined by statute primarily as a service provider to eligible persons with developmental disabilities. ....	5
B.     The individualized service plan is the fundamental way in which the DD Board ensures the health, safety and welfare of service recipients. ....	7
C.     There is an extensive system of accountability in place to ensure the health, safety, and welfare of eligible individuals that does not include the need for a DD Board to file for the removal of a guardian. ....	9
II. <u>R.C. 5126.33 is an appropriate and complete remedy for county boards of developmental disabilities to act in the probate court.</u> .....	11
A.     R.C. 5126.33 provides an avenue for a DD Board to fulfill its statutory role. ....	12
B.     R.C. 5126.33 was available to the DD Board here for the provision of services to John Spangler.....	14
C.     Following the statutorily authorized procedure under R.C. 5126.33 is imperative to ensure accountability, conformity to the law, privacy and individual choice, and the health, safety, and welfare of service recipients like John Spangler. ....	15
III. <u>Not only is R.C. 5126.33 an appropriate and complete remedy, it is the <i>only</i> remedy available to county boards of developmental disabilities.</u> .....	18
A.     Ohio Adm. Code 5123:2-9-04(J) does not authorize the DD Board to seek the removal of a guardian in probate court. ....	19
B.     R.C. 305.14(C) does not provide the DD Board with legal authority to seek the removal of a guardian in probate court. ....	20

C.	The DD Board lacks the implied power to seek the removal of a guardian because there is no express statutory power from which any implied power must flow. ....	21
D.	The possibility of tort liability does not expand the DD Board's authority to file for the removal of a guardian. ....	23
IV.	<u>The Court of Appeals correctly ruled that the DD Board lacked standing under R.C. Chapters 2109 and 2111 as an interested party to seek the removal of the guardian.</u> .....	24
A.	The definition of an "interested party" should not be expanded to include the DD Board. ....	24
B.	The Court of Appeals correctly concluded that the DD Board lacked standing to seek the removal of the guardian under other doctrines of standing. ....	27
	CONCLUSION.....	31
	CERTIFICATE OF SERVICE .....	32

## TABLE OF AUTHORITIES

### Cases

<i>A. Bentley &amp; Sons v. Pierce</i> (1917), 96 Ohio St. 44, 117 N.E. 6.....	21
<i>Burger Brewing Co. v. Thomas</i> (1975), 42 Ohio St.2d 377, 329 N.E.2d 693 .....	20
<i>City of East Liverpool v. Columbiana Cty. Budget Comm.</i> (2007), 114 Ohio St.3d 133, 2007 Ohio 3759, 870 N.E.2d 705 .....	28
<i>Cuyahoga Cty. Bd. of Mental Retardation v. Cuyahoga Cty. Bd. of Commrs.</i> (1975), 41 Ohio St.2d 103, 322 N.E.2d 885 .....	21
<i>Elek v. Huntington Nat. Bank</i> (1991), 60 Ohio St.3d 135, 573 N.E.3d 1056.....	20
<i>Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation &amp; Developmental Disabilities</i> (2004), 102 Ohio St.3d 230, 2004-Ohio-2629.....	23
<i>In re Estate of Rice</i> , 2005 Ohio 3301, 161 Ohio App.3d 847, 832 N.E.2d 139 .....	25
<i>In re Guardianship of Love</i> (1969), 19 Ohio St.2d 111, 48 O.O.2d 107, 249 N.E.2d 794.....	26
<i>In re Guardianship of Santrucek</i> (2008), 120 Ohio St.3d 67, 2008 Ohio 4915.....	24, 26
<i>In re Guardianship of Shawn Constable</i> , (2007) 2007 Ohio 3346, ¶ 9, 2007 Ohio App. LEXIS 3105 (Clermont Co.).....	26
<i>In re Guardianship of Titington</i> (1958), 82 Ohio L. Abs. 563, 162 N.E.2d 628.....	24
<i>In re Oliver's Guardianship</i> (1909), 9 Ohio N.P. 178, 20 Ohio Dec. 64 .....	24
<i>In re Trust of Marshall</i> (1946), 78 Ohio App. 1, 46 Ohio Law Abs. 344, 65 N.E.2d 523 .....	25
<i>In re Weingart</i> , 8th Dist. No. 79849, 2002-Ohio-38.....	24
<i>In The Matter of the Guardianship of John Spangler</i> , 11 <sup>th</sup> Dist. Nos. 2007-G-2800 and 2007-G-2802, 2008-Ohio-6978.....	1
<i>Kowalski v. Tesmer</i> (2004), 543 U.S. 125, 125 S.Ct. 564, 160 L.Ed.2d 519 .....	28
<i>Ridley v. Hamilton Cty. Bd. of Mental Retardation &amp; Developmental Disabilities</i> , 150 Ohio App.3d 383, 2002-Ohio-6344.....	22
<i>Sierra Club v. Morton</i> (1972), 405 U.S. 727, 732, 31 L.Ed.2d 636 .....	26

<i>State ex rel. Dallman v. Court of Common Pleas</i> (1973), 35 Ohio St.2d 176, 298 N.E.2d 515...	26
<i>State ex rel. Holdridge v. Indus Comm.</i> (1967), 11 Ohio St.2d 175, 228 N.E.2d 621.....	14
<i>Waliga v. Bd. of Trustees of Kent State Univ.</i> (1986), 22 Ohio St.3d 55, 488 N.E.2d 850 .....	20
<i>Whitmore v. Arkansas</i> , (1990) 495 U.S. 149 .....	26

**Statutes**

R.C. 1.11 .....	15
R.C. 305.14 .....	20
R.C. 305.14(A).....	19
R.C. 305.14(C).....	20
R.C. 2111.02 .....	17, 24
R.C. 2111.13 .....	17, 25
R.C. 2111.50(A)(1).....	17
R.C. 4112.99 .....	20
R.C. 5123.50(D).....	13
R.C. 5123.601 .....	10
R.C. 5123.61 .....	4, 9, 10, 13
R.C. 5123.61(C).....	10
R.C. 5123.61(D).....	10
R.C. 5123.61(F) .....	10
R.C. 5123.61(I) .....	10
R.C. 5126.03 .....	21
R.C. 5126.03(D).....	21
R.C. 5126.04.....	5

R.C. 5126.046 .....	5
R.C. 5126.05 .....	5, 6, 21, 22
R.C. 5126.05(A).....	6
R.C. 5126.051 .....	5
R.C. 5126.055(A)(4).....	9
R.C. 5126.15(B).....	7
R.C. 5126.30 .....	4, 16
R.C. 5126.33 .....	passim
R.C. 5126.33(B).....	13
R.C. 5126.33(C).....	13, 16
R.C. 5126.33(D).....	12
R.C. 5126.33(D)(1)(c).....	14
R.C. 5126.33(D)(3).....	12
R.C. 5126.33(E).....	12
R.C. 5126.33(G).....	12
R.C. 5126.33(I)(2).....	12
Section 1396, Title 42, U.S.C. ....	9

**Other Authorities**

S.B. 178.....	4, 16
Black’s Law Dictionary (8Ed.Rev. 2004) 1442.....	26

**Rules**

Civ.R. 17(B).....	26
Civ.R. 73 .....	26

Ohio Adm. Code 5123:2-17-02(C)(14) .....	10
Ohio Adm. Code 5123:2-17-02(D)(1) .....	10
Ohio Adm. Code 5123:2-17-02(D)(3) .....	11
Ohio Adm. Code 5123:2-17-02(I) .....	10
Ohio Adm. Code 5123:2-3-13 .....	16
Ohio Adm. Code 5123:2-9-04 .....	7
Ohio Adm. Code 5123:2-9-04(C)(4)(d).....	8
Ohio Adm. Code 5123:2-9-04(J) .....	18
Section 160.102, Title 45, C.F.R. ....	16
Section 160.103, Title 45, C.F.R. ....	16

## STATEMENT OF THE CASE

This case is before this Court to determine whether the Eleventh District Court of Appeals correctly ruled that the Geauga County DD Board of Developmental Disabilities (hereinafter "DD Board") lacked authority to seek the removal of the legal guardians of John Spangler. For the reasons that follow, the Eleventh District Court of Appeals reached the correct result. The Eleventh District Court of Appeals correctly determined that R.C. 5126.33 is the exclusive means by which a DD Board, which stands merely as a service provider under the Medicaid system vis a vis John Spangler, may intervene in a guardianship to ensure the health, safety, and welfare of individuals receiving services from the DD Board. See, *In The Matter of the Guardianship of John Spangler*, 11<sup>th</sup> Dist. Nos. 2007-G-2800 and 2007-G-2802, 2008-Ohio-6978.

In addition to reaching the correct result, the Eleventh District Court of Appeals also viewed this case correctly. The underlying dispute that lead to this case is the question of what services the DD Board could provide John Spangler after his home care providers advised the DD Board that they were not going to provide services to John anymore. Because of this, John Spangler would be without care providers, which he needed twenty four hours a day, seven days a week. Rather than use its authority under 5126.31, et seq. to initiate an investigation into potential neglect of John Spangler, the DD Board, improperly disclosing without consent information that is confidential under both state and federal law,<sup>1</sup> filed an emergency motion on October 25, 2007, to remove John's parents as guardians. Seeking to remove the guardian,

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<sup>1</sup> While not central to this case, a significant related concern for Mr. Spangler is that confidential personal health information became, essentially, available to the public upon the board's filing of this motion without an attendant motion to file the information under seal or subject to a protective order. 45 CFR 164.508, 164.512(a), (e) *cf.* Rules of Superintendence for the Courts of Ohio, Rules 44-47 (Eff. July 1, 2009).

however, was not the Board's role, as the Eleventh District Court of Appeals correctly found. Instead, the DD Board should have availed itself of the remedy in R.C. 5126.33 for a DD Board to file a complaint with the probate court if unable to obtain consent for services.

Key testimony on this point was provided by Suzanne Joseph, Director of Community Support for the DD Board, who testified that after "we (the DD Board), heard from the provider that they were giving two weeks notice, and then at that point we felt that the guardianship needed to be removed so that we could continue as a DD Board to seek and find consistent *services* for John." Tr. 4/24/2007, p.101. (Emphasis added). Ms. Joseph also testified that it was only two days after the care provider noticed the DD Board that they would like "*not to continue providing services*" to John that the emergency motion was filed. Tr. 4/24/2007, 9.102. (Emphasis added). See also, Tr. 4/24/2007, p. 71, wherein Ms. Joseph testified that the DD Board's concern was that the provider was not going to *provide services* anymore. (Emphasis added). Ultimately, the providers remained as providers beyond the two week notice they had given the DD Board.

Ms. Joseph's testimony about the services that John needed after his home care providers submitted their letter of resignation is consistent with the statutory role of the DD Board as a provider of services to persons with developmental disabilities. Her testimony dovetails precisely with R.C. 5126.33, which authorizes a DD Board to file a complaint with the probate court when services are necessary to prevent abuse, neglect, and exploitation. R.C. 5126.33 is the DD Board's statutory remedy to provide services when the DD Board cannot obtain consent to do so.

On June 4, 2007, counsel for John Spangler appeared in this case and filed a motion to dismiss the Geauga County DD Board of Developmental Disabilities from the case for lack of

standing. After three days of hearings, on August 9, 2007, John Spangler and his counsel met in camera with Judge Henry. At that time, John Spangler advised the court that he wanted his father to be his guardian and wanted to be able to spend more time with his family and pets. Tr. 8/9/2007 pp. 4,8,9. On August 15, 2007, the court ruled that the DD Board had standing to participate in the hearing.

The interests of the DD Board and of John Spangler diverged at the instant the DD Board sought to remove John Spangler's guardians. John made it clear to the probate court that he wanted his father to be his guardian and the probate court was advised of John Spangler's wishes in this regard on two separate occasions. See, Tr. 6/13/2007, p.181; Tr. 8/9/2007, p.4. The mutuality of interests between John Spangler and the DD Board lay not in removing the guardians, but in obtaining the appropriate services through the Service and Support Administrator (hereinafter "SSA") and Individualized Service Plan (hereinafter "ISP") as provided for by law, culminating if need be, in filing a complaint under R.C. 5126.33.

## **ARGUMENT**

**Proposition of Law: There is no statutory or other provision of law that authorizes a county board of developmental disabilities to file for the removal of a guardian.**

Some individuals with developmental disabilities may need to rely on a circle of support to help them carry out activities of daily living. The circle of support is comprised of those who are involved with them on a regular basis and may include family, friends, guardians, health care professionals, educators, DD Board employees, and private service providers. All of these people together help to ensure that the individual with developmental disabilities receives the services and support that help him to succeed. Individuals with developmental disabilities may also be vulnerable to abuse, neglect, or exploitation, which may occur in a variety of situations. A system of accountability is absolutely necessary in order to prevent and correct such situations

and to ensure that the individuals with developmental disabilities continue to receive the services they need. Likewise, every effort must be made to ensure that those individuals retain as much independence as possible. The system of accountability provides checks and balances to ensure that services and supports are not imposed upon individuals against their wishes.

The Ohio General Assembly has created a rich scheme of statutory provisions that ensures these checks and balances. Starting with HB 403 in 1989 and with significant enhancements provided in SB 178 in 2004,<sup>2</sup> the General Assembly ensured that abuse or neglect was reported, investigated, and ameliorated through the provision of services, including court-ordered protective services as a last resort. *See* Ohio Revised Code §§ 5123.61; 5126.30 *et seq.* These laws create both a mandatory duty to report and investigate suspected abuse or neglect, and a threshold before a DD Board can impose services upon an individual without his or his guardian's consent. When this statutory threshold is met, a DD Board can take specific action to arrange for the provision of services without the consent of the individual with developmental disabilities or that individual's guardian. If the DD Board sidesteps the system and instead seeks the removal of a guardian, the accountability built into the system is breached and the individual's independence, privacy, and freedom of choice are put in jeopardy.

**I. The primary role of a county board of developmental disabilities is to arrange for and provide services to eligible individuals.**

A complete review of federal and state laws governing the delivery of services and the protection of rights for persons with developmental disabilities in Ohio demonstrates that a DD

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<sup>2</sup> Senate Bill 178 (originally SB 4) was the result of recommendations from then Governor Taft's Task Force on DD Victims of Crime, composed of lawyers, advocates, service providers (including representatives of the county boards), and people with disabilities, which was charged with strengthening Ohio's laws to protect people with DD who were abused, neglected, or exploited. *See* <http://www.lbo.state.oh.us/fiscal/fiscalnotes/125ga/SB0004S1.HTM> (fiscal note on SB 4, accessed September 14, 2009).

Board does not have broad authority to seek the removal of a guardian whenever it sees fit. Rather, when a DD Board is viewed in the proper context of this system of state and federal laws, which is designed to provide appropriate services and protect the rights of persons with a developmental disability, it is apparent that a DD Board is primarily a provider of services to persons with developmental disabilities and that the DD Board exceeded its role in seeking to have the guardians removed in this case.

An individual who receives services from the DD Board does not necessarily have to be a ward subject to guardianship in the probate court. The service recipient could simply be an individual in that county who is eligible and receives services under an ISP through the DD Board. Whether or not the service recipient has received guardianship services, the DD Board has an avenue through R.C. 5126.33 under which it can effectuate its charge of arranging services for eligible individuals.

**A. A County Board of Developmental Disabilities is defined by statute primarily as a service provider to eligible persons with developmental disabilities.**

The statutory scheme of R.C. Chapter 5126, governing DD Boards, makes it clear that a DD Board is a service provider and an operator of programs for persons with developmental disabilities. For example, R.C. 5126.04 requires a DD Board to set priorities for facilities, programs, and services, and plan for individual habilitation or service plans for persons with developmental disabilities within its county. R.C. 5126.046 requires a DD Board to maintain a list of eligible service providers from which individuals with developmental disabilities may choose to provide them services. R.C. 5126.051 authorizes a DD Board to provide residential, supported living and other services to individuals with developmental disabilities. These provisions are all part and parcel of the DD Board's primary statutory role as a provider of

services. That specific role is set forth in R.C. 5126.05, wherein the duties and powers of the DD Board are set forth.

R.C. 5126.05 states, in relevant part:

(A) Subject to the rules established by the director of mental retardation and developmental disabilities pursuant to Chapter 119. of the Revised Code for *programs and services* offered pursuant to this chapter, and subject to the rules established by the state board of education pursuant to Chapter 119. of the Revised Code for *programs and services* offered pursuant to Chapter 3323. of the Revised Code, the county board of mental retardation and developmental disabilities shall:

(1) *Administer and operate facilities, programs, and services* as provided by this chapter and Chapter 3323 of the Revised Code and establish policies for their administration and operation;

(2) *Coordinate, monitor, and evaluate existing services* and facilities available to individuals with mental retardation and developmental disabilities;

(3) *Provide early childhood services, supportive home services, and adult services*, according to the plan and priorities developed under section 5126.04 of the Revised Code;

(4) *Provide or contract for special education services* pursuant to Chapters 3317. and 3323 of the Revised Code and ensure that related services, as defined in section 3323.01 of the Revised Code, are available according to the plan and priorities developed under section 5126.04 of the Revised Code;

(5) Adopt a budget, authorize expenditures for the purposes specified in this chapter \* \* \*;

(6) Submit annual reports of its work and expenditures, pursuant to sections 3323.09 and 5126.12 of the Revised Code, \* \* \*;

(7) Authorize all positions of employment, establish compensation, \* \* \*;

(8) *Provide service and support administration* in accordance with section 5126.15 of the Revised Code; and

(9) Certify respite care homes \* \* \*.

(G) The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation and developmental

disabilities to perform its functions and duties, and may utilize any available local, state, and federal funds for such purpose.

(Emphasis added.) R.C. 5126.05 enumerated DD Board duties and powers clearly demonstrate that a DD Board's primary purpose is to provide *services* to individuals with developmental disabilities.

In addition to the enumeration of the specific powers and duties in subsections (A)(1) to (A)(9), the language of subsection (A) sets the context within which those powers and duties may be wielded. As R.C. 5126.05(A) specifically states, the list of powers and duties enumerated from (A)(1) to (A)(9) is "subject to the rules established by the director of mental retardation and developmental disabilities ... for *programs and services* offered pursuant to this chapter," Chapter 5126. This repeated focus on the provision of "programs and services" represents the primary legislative directive on the scope of a DD Board's powers. A DD Board may exercise its powers and duties only within this scope - providing programs and services to individuals with developmental disabilities.

**B. The individualized service plan is the fundamental way in which the DD Board ensures the health, safety and welfare of service recipients.**

A fundamental way in which a DD Board provides services and meets the needs of eligible individuals is through the service and support administrator. SSA services are provided under R.C. 5126.15(B) by an individual who is employed by or under contract with the DD Board. In order to provide services, the SSA is required to first establish an individual's eligibility for services. The SSA is then required to assess the individual's needs for services and develop an individualized service plan. R.C. 5126.15(B) also requires the SSA to establish a budget for services based on the individual's assessed needs and preferred ways of meeting those needs, and ensure that those services are effectively coordinated and provided by appropriate providers. This provision of law for assessing needs and developing service plans contains no

limitation or restrictions on an individual's needs and demonstrates the breadth and thoroughness of the individual needs that an ISP can address.

In addition, for individuals receiving home and community based waiver services under Medicaid, the law is even more explicit as to how an individual's health, safety, and welfare should be addressed by a DD Board. Ohio Adm. Code 5123:2-9-04 identifies the duties of a local Medicaid authority such as the DD Board when providing home and community based waiver services to persons like John Spangler. This provision of law specifically states that for each service recipient the DD Board shall develop an ISP which shall be written, describing (a) medical and other services to be furnished as identified through the assessment process; (b) service frequency; (c) service duration; (d) the type of provider who will furnish each service; and (e) the completion and approval date(s) of the ISP. The crux of delivering services to meet the needs of the individual through the ISP is that the ISP is to "be the fundamental tool by which the [DD Board] and state will ensure the health, safety, and welfare of the individuals served under the waiver. As such, it will be subject to periodic review and update." Ohio Adm. Code 5123:2-9-04(C)(4)(d).

Periodic reviews take place to determine the appropriateness and adequacy of the services, and to ensure that the services furnished are consistent with the nature and severity of the individual's disabilities." Ohio Adm. Code 5123:2-9-04(C)(4)(d). The ISP is required to be updated if there is a change in the individual's condition or if the individual chooses a new provider. Ohio Adm. Code 5123:2-9-04(C)(4)(d) is an express statement with force of law which directs the DD Board to care for the health, safety, and welfare of the individuals served through an assessment of needs and an ISP. The health, safety, and welfare of the individuals is further ensured because those needs, along with the duration and frequency, must be specified on

the ISP. *Id.* Ohio Adm. Code 5123:2-9-04(C)(4)(d) is a clear mandate to DD Boards that the health, safety, and welfare of individuals receiving services from the DD Board are to be safeguarded through an assessment of needs and the development of an ISP with subsequent modifications, as needed.

Ohio Adm. Code 5123:2-9-04(C)(4)(d) is but one more example that demonstrates that the DD Board's mission falls squarely within a service delivery model. Therefore, the appropriate remedy for the DD Board is one that must be consistent with the express manner in which the DD Board is required to ensure the health, safety, and welfare of individuals who receive services from it. That manner is the remedy provided for by filing a complaint under R.C. 5126.33.

**C. There is an extensive system of accountability in place to ensure the health, safety, and welfare of eligible individuals that does not include the need for a DD Board to file for the removal of a guardian.**

The DD Board, though an integral part of the developmental disability system, is still only one part of a larger service delivery system under the Department of Developmental Disabilities (hereinafter "Department"). A DD Board is charged with monitoring the provision of Medicaid support services. The DD Board shall "[m]onitor the services provided to the individual and ensure the individual's health, safety, and welfare." R.C. 5126.055(A)(4). The Department is also charged with this function when the DD Board provides those services directly. *Id.* The Department, in turn, is accountable to submit a state plan to the United States Department of Health and Human Services in order to receive federal funds to implement services that are provided by the DD Boards. See generally, Section 1396, Title 42, U.S.C.

A process is in place which ensures the health, safety, and welfare of eligible individuals that is within the confines of the DD Board's statutory role of providing services. When an eligible individual does not receive appropriate services, those services need to be adjusted

accordingly. That process, though primarily implemented through the development and implementation of ISPs for eligible individuals, also includes a system of reporting, monitoring, and investigating allegations of abuse, neglect, and exploitation upon those individuals who receive services through the DD Board.

The Department oversees the provision of Medicaid waiver and non-waiver services to eligible individuals through a myriad of avenues, including residential care services in the community through private service providers, DD Boards, and state-run intermediate care facilities for the mentally retarded. The legislature created an accountability process in the form of a registry that receives reports concerning service recipients where incidents have or may occur. Sec. R.C. 5123.61. The registry is maintained by the Department, which receives reports of abuse, neglect, and other major unusual incidents from DD Boards. *Id.*

The report may also be presented to a law enforcement officer who, in turn, may remove the service recipient from his place of residence where the officer believes that "immediate removal is essential to protect the adult from further injury or abuse or in accordance with the order of a court made pursuant to section 5126.33 of the Revised Code." R.C. 5123.61(F) and R.C. 5123.61(I); See also, Ohio Adm. Code 5123:2-17-02(D)(1). The Department and law enforcement may then investigate the report. The Ohio Legal Rights Service, an independent state agency, also has statutory access to monitor and investigate incidents reported under the registry. R.C. 5123.601.

When an incident occurs and "there is reason to believe the health or safety of an individual may be adversely affected," actions must be taken by the above entities in order to ensure that the individual continues to receive appropriate services. R.C. 5123.61; R.C. 5123.601. A reportable incident may exist after an individual has suffered *or faces* a substantial

risk. R.C. 5123.61(C). (Emphasis added). The report must identify the affected service recipient and include any information that would assist in the investigation of the report. R.C. 5123.61(D).

Within this comprehensive system, DD Boards are far from the sole protectors of individuals who receive their services. In fact, there are instances in which a DD Board's own acts or omissions can be a cause for investigation. See, R.C. 5123.61(F) and Ohio Adm. Code 5123:2-17-02(I) (Department conducts investigation when allegations are against DD Board superintendent, director, agent, service and support administrator, employee, DD Board member, or other conflict of interest). Service providers who contract with DD Boards may also be involved in instances of abuse or neglect that give rise to an investigation. See generally, Ohio Adm. Code 5123:2-17-02(C)(14). If the DD Board and another provider cannot come to an agreement about what action needs to be taken to ensure the health and safety of a service recipient, the DD Board is required to contact the Department to make those determinations. Ohio Adm. Code 5123:2-17-02(D)(3). Consequently, there are many actors in addition to the DD Board who play a significant role in ensuring the health, welfare, and safety of eligible individuals. Nowhere within this comprehensive system that protects eligible individuals, is there any mention of a DD Board's right to seek the removal of a guardian.

**II. R.C. 5126.33 is an appropriate and complete remedy for county boards of developmental disabilities to act in the probate court.**

The DD Board has an appropriate and complete remedy to ensure the health, safety, and welfare of eligible individuals with disabilities through the development, monitoring and modification of the ISP, the monitoring of incidents of abuse and neglect, and the DD Board's express authority to file a complaint in probate when services are needed.

**A. R.C. 5126.33 provides an avenue for a DD Board to fulfill its statutory role.**

Contrary to the DD Board's assertions, R.C. 5126.33 provides the DD Board with express statutory authority to intervene in cases like the one at bar and provides the DD Board with an appropriate remedy in the probate court. When the DD Board determines that an adult with developmental disabilities is in need of services to address abuse, neglect or exploitation, the DD Board must arrange for the provision of services to prevent the abuse, neglect, or exploitation. If the problem cannot be fixed because the service recipient or his guardian does not consent to the services, the DD Board still has a remedy under R.C. 5126.33 to file a complaint in probate court to obtain a court order for the provision of services.

R.C. 5126.33 provides, in relevant part, that:

- (A) A county board of mental retardation and developmental disabilities may file a complaint with the probate court of the county in which an adult with mental retardation or a developmental disability resides for an order authorizing the board to arrange services \* \* \*. The complaint shall include:
- (1) The name, age, and address of the adult;
  - (2) Facts describing the nature of the abuse, neglect, or exploitation and supporting the board's belief that services are needed;
  - (3) The types of services proposed by the board, as set forth in the protective service plan described in division (J) of section 5126.30 of the Revised Code and filed with the complaint;
  - (4) Facts showing the board's attempts to obtain the consent of the adult or the adult's guardian to the services.

Subsection (B) provides that notice must be given to various parties and the twenty four hour timeline for holding a hearing may be waived where there is a risk of immediate physical harm.

Subsection (C) contains provisions for the right to counsel, hearing timelines and other procedural matters. At the hearing, the probate court may issue an order authorizing the services if it has found upon clear and convincing evidence that: (a) the adult has been abused, neglected,

or exploited; (b) the adult is incapacitated; (c) there is a substantial risk to the adult of immediate physical harm or death; (d) the adult is in need of the services; and (e) no person authorized by law or court order to give consent for the adult is available or willing to consent to the services. R.C. 5126.33(D). The DD Board is then required to develop a protective service plan to prevent further abuse, neglect, or exploitation for up to a year. R.C. 5126.33(D)(3).

There are additional subsections within R.C. 5126.33 that make it evident that when R.C. 5126.33 is taken as a whole, it provides the DD Board with an effective remedy that can be timely obtained. For example, R.C. 5126.33(E) allows the court to order that the adult be removed from the adult's place of residence and placed in another residential setting if it finds that all other options for meeting the adult's needs have been exhausted. R.C. 5126.33(G) permits the protective order to be modified by the court or the parties and allows the court to issue temporary orders. Finally, R.C. 5126.33(I)(2) gives the court the authority to grant an ex parte order on its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order, if it appears to the court that the best interest and the welfare of the adult requires it. These provisions allow the DD Board, the court, and the parties the flexibility to effectively and swiftly deal with changed circumstances regarding the adult with developmental disabilities.

The foregoing statutes also establish a threshold when a DD Board seeks to intervene in a guardianship case and override the lack of consent to services by the adult and/or the adult's guardian. The legislative concern for this level of intrusion into the decision making process of the guardian and the adult is evident in the procedural due process protections that are part and parcel of R.C. 5126.33. These include, among other due process rights, the basic rights of notice

of the filing of the complaint under R.C. 5126.33(B), and the right to be represented by counsel and the right to court appointed counsel, if indigent. See, R.C. 5126.33(C).

The statutory scheme embodied in R.C. 5126.33 represents a comprehensive, effective and flexible process whereby the DD Board can obtain relief tailored to an adult's individualized needs in a timely fashion and where all parties can be heard and all parties' rights protected.

**B. R.C. 5126.33 was available to the DD Board here for the provision of services to John Spangler.**

R.C. 5126.33 encompasses situations where the DD Board has reason to believe that the provision of services to the individual will not continue, and that individual's safety is at risk without some action being taken. "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services that are necessary to maintain the health and safety of the individual. See, R.C. 5123.61, citing R.C. 5123.50(D). Neglect is sufficiently broad to include circumstances where an individual will no longer have services. The DD Board could have found that John Spangler was faced with such a situation when his service providers stated that they would no longer provide him the twenty-four hour care that he needed.

John's services were provided under his Medicaid waiver and pursuant to his ISP. John's ISP was developed by his guardian, SSA, and provider in order to provide him consistent services that would ensure his health and safety. Because John had exhibited many violent behaviors without these services in place, John would be subject to serious risk if the services were not immediately adjusted and implemented.

Under the remedy available in R.C. 5126.33, the DD Board could have taken action to provide services for John Spangler that would ensure his health, safety, and welfare, even if the guardian was uncooperative. R.C. 5126.33(D)(1)(e) provides that where "[n]o person authorized

by law or court order to give consent for the adult is available or willing to consent to the services," the court may take action. The purpose of this provision of law is to override a service recipient's or a guardian's refusal to consent to protective services offered by the DD Board. If, as the DD Board indicates in its brief, John Spangler's guardian was able to give consent but chose not to do so, the DD Board should have availed itself of the express statutory provision in R.C. 5126.33 that was developed for this very circumstance. See, Appellant's Brief at p. 22.

Finally, an aspect of R.C. 5126.33 that should not be overlooked is that it is a remedial law. A remedial law is one which prescribes the method of obtaining redress. *State ex rel. Holdridge v. Indus Comm.* (1967), 11 Ohio St.2d 175, 178, 228 N.E.2d 621. R.C. 5126.33 contains numerous provisions that prescribe a precise method and procedure for the DD Board to obtain redress when it cannot provide services to address abuse, neglect, or exploitation of an individual when it cannot get consent to do so from the individual, or a guardian when applicable. Both the remedial law and the proceedings under R.C. 5126.33 should be construed liberally to give the statute effect and promote justice. See, R.C. 1.11. If R.C. 5126.33 is interpreted consistent with R.C. 1.11, then the findings that a court must make, and the remedy a DD Board may obtain are sufficiently broad so as to make it clear that R.C. 5126.33 is the only remedy needed by the DD Board, and the only remedy available to the DD Board to take action in the probate court.

**C. Following the statutorily authorized procedure under R.C. 5126.33 is imperative to ensure accountability, conformity to the law, privacy and individual choice, and the health, safety, and welfare of service recipients like John Spangler.**

R.C. 5126.33 addresses the circumstances in which a DD Board must act in the probate court to ensure the receipt of services. As a creature of statute, the DD Board has a role that is limited by the provisions under which it was created. Those statutes do not provide for a DD

Board to file for the removal of a guardian. R.C. 5126.33 does, however, provide a forum for a DD Board to fulfill its function of arranging and providing services for eligible individuals. Arranging for and providing services for eligible individuals will, in turn, ensure those individuals' health, welfare, and safety.

R.C. 5126.33 also provides a forum where all involved parties can fully participate in this important decision-making process. Because the development of John's ISP is a group effort involving, at a minimum, his guardian, his SSA, and his service provider, these actors may have disagreements about exactly what provisions of the plan constitute appropriate services. When the individuals upon whom John relies cannot agree on what the proper course of services should be, there is a remedy for the DD Board. It can follow the process under R.C. 5126.33.

R.C. 5126.33 allows those individuals involved to contest the DD Board's position at a hearing in the probate court. In 2004, the legislature enacted S.B. 178, which introduced two new accountability measures for instances where a DD Board files a complaint in the probate court to obtain consent to provide services for an eligible individual. S.B. 178, Eff. 30 Jan., 2004. It expanded the notice provisions of the complaint to require that, unless waived by the court, notice of the filing of a complaint must be personally served on the service recipient who is the subject of the proceeding, a caretaker, and any other persons designated by the court, such as the individual's spouse, custodian, guardian, or parent. R.C. 5126.33(C); R.C. 5126.30(L). It also allows the hearing participants to attend the hearing, present evidence, and examine and cross-examine witnesses. R.C. 5126.33(C). These important amendments give everyone involved the opportunity to be present and fully participate at the hearing. The probate court, through R.C. 5126.33, acts as the arbiter in this dispute in a similar manner as that of a guardianship hearing, though the probate judge may not have even dealt with the service

recipient if that individual is not subject to guardianship. Following R.C. 5126.33 provides for accountability and an opportunity to be heard for all those involved, an important due process consideration where government override of an individual's or his guardians choice is permitted.

In addition, the health information of service recipients is private and confidential under the Health Information Portability Accountability Act and the DD Board's own statutes. See, Section 160.102, Title 45, C.F.R.; Section 160.103, Title 45, C.F.R.; Ohio Adm. Code 5123:2-3-13 (service recipients' records are privileged and confidential). This information should not be disclosed to anyone, including the probate court, without justification. For the DD Board, that justification is limited to an express statutory authority to disclose, such as under R.C. 5126.33.

The DD Board here tries to expand its role by drawing upon the probate court's significantly broad role as the superior guardian of the ward. The question of law in this case, however, is whether the DD Board had the authority to file for the removal of a guardian, not whether the probate court has the authority to oversee guardianship activities, including a change of guardian. John Spangler does not contest a probate court's role as the superior guardian of the ward. See, R.C. 2111.50(A)(1). Nor does he contest that a probate court may appoint and remove guardians in order to ensure that the person appointed will act in the best interest of the ward. See, R.C. 2111.02; R.C. 2111.13. But the probate court's role should not be confused with that of the DD Board.

Similarly, the DD Board's role should not be confused with that of the guardian. The DD Board is not charged with a fiduciary duty like a guardian. See, R.C. 2111.13 (guardian of the person must protect, control and provide maintenance for the ward). Some DD Boards' service recipients do not even receive guardianship services.

A view of the larger picture of the provision of services for individuals with developmental disabilities demonstrates that the Department, law enforcement, health care professionals, service providers, and guardians, all have a role that is played in ensuring that DD Board services are appropriately provided to eligible individuals. The DD Board does not enjoy a special status such that it must be compelled to assert a right to contest a guardian. It instead has an express statutory provision to address the probate court with concerns regarding potential harm to its service recipients. This process needs to be followed in order to ensure that DD services are provided effectively and appropriately while still respecting individual choice and privacy.

**III. Not only is R.C. 5126.33 an appropriate and complete remedy, it is the *only* remedy available to county boards of developmental disabilities.**

DD Boards do not have a statutory remedy to file for the removal of a guardian. This makes sense because R.C. 5126.33 permits a DD Board to fulfill its central role of ensuring that individuals who receive services through the DD Board continue to receive appropriate services even in circumstances where the DD Board cannot obtain consent for those services from the service recipient or his guardian.

Even though the DD Board has a complete remedy under R.C. 5126.33, it still asserts that it has the requisite authority to interject itself into a guardianship matter under several different provisions of law. However, when closely examined, these provisions fail to give the DD Board any of the authority needed to undertake the actions involved in this case.

The DD Board contends that its authority should be extended to recognize an implied power allowing it to take the action it did in this case. Nowhere in R.C. 5126.33, R.C. Chapters 5123 and 5126, or Ohio Adm. Code Chapter 5123, the statutory and regulatory provisions

governing DD Boards, has the legislature granted any authority, express or implied, for a DD Board to seek to remove a guardian.

**A. Ohio Adm. Code 5123:2-9-04(J) does not authorize the DD Board to seek the removal of a guardian in probate court.**

The DD Board asserts that Ohio Adm. Code 5123:2-9-04(J) establishes an implied duty of great breadth that encompasses the authority to seek the removal of a guardian. Ohio Adm. Code 5123:2-9-04(J) states that a DD Board "may take immediate action to ensure the health, safety and welfare of an individual receiving [Medicaid waiver services] where there is substantial risk of immediate harm to the individual *only as expressly provided for in law.*" (Emphasis added). The rule further states that "[n]othing in this rule shall limit the authority of county DD Boards to take immediate action to ensure an individual's health, safety and welfare *as provided for under law.*" (Emphasis added).

The only immediate action that the DD Board may take, however, is action that is "expressly provided for in law." Thus, it would take a provision of law authorizing the DD Board to take immediate action to seek the removal of a guardian in probate court before this rule would allow the DD Board to take the action it attempted here. There is no such provision of law that expressly or implicitly provides that a DD Board can seek the removal of a guardian in probate court when a DD Board either believes the guardian is not acting in the ward's best interest or when the guardian's actions have jeopardized the ward's health, safety and welfare. That is not to say that the DD Board can take no "immediate action" to ensure the health, safety and welfare of an individual. As is its role, it can provide needed services, and where necessary, it can file a complaint under R.C. 5126.33.

The DD Board claims that it is entitled to seek the removal of a guardian because laws that are remedial in nature should be broadly construed when no specific remedy is provided by

the statutes. In *Elek v. Huntington Nat. Bank* this Court found that R.C. 4112.99 granted individual victims of discrimination the right to pursue civil litigation. *Elek v. Huntington Nat. Bank*, 60 Ohio St.3d 135, 137, 573 N.E.3d 1056. The language at issue in *Elek* regarding a remedy states that "[w]hoever violates this chapter is subject to a civil action...." R.C. 4112.99. The Court concluded that "[a] plain reading of th[c] section yields the unmistakable conclusion that a civil action is available to remedy any form of discrimination identified in R.C. Chapter 4112." *Id.* at 136. The Court went on to state, in what appears to be dicta, if R.C. 4112.99 had been ambiguous as to what remedies were provided, it should be liberally construed to promote its object. *Id.* at 137.

The DD Board's reliance on the dicta in *Elek* is misplaced. Like in *Elek*, the DD Board already has a specific legal remedy. R.C. 5126.33 provides an unambiguous remedy for the DD Board to file a complaint in the probate court. There is no need to look further for meaning from statutes that are not remedial and do not expressly authorize action in probate court.

**B. R.C. 305.14(C) does not provide the DD Board with legal authority to seek the removal of a guardian in probate court.**

The DD Board points to a general provision to initiate legal action in support of its claim that it may seek the removal of a guardian. However, R.C. 305.14(C) is merely a procedural provision that allows a DD Board to obtain counsel. When read in its entirety, and when subsection (C) is placed in context to the whole statute, it cannot be interpreted to give the DD Board the authority it claims, or to authorize the DD Board to initiate legal actions without limitation.

The purpose of R.C. 305.14 is to determine when and under what circumstances a county board of commissioners can retain counsel. Subsection (A) requires the county prosecutor to submit an application to, and obtain the approval of, the court of common pleas before outside

counsel can be retained. See, R.C. 305.14(A). Subsection (C) merely carves out an exception for DD Boards, as opposed to county boards of commissioners, and provides that DD Boards do not need to make application and do not need the approval of a court of common pleas in order to employ legal counsel, as required for county boards of commissioners. The exception in R.C. 305.14(C) does not purport to determine whether a matter is properly before a DD Board or whether a DD Board is a proper party to an action; and it certainly does not give a DD Board *carte blanche* with respect to litigation. This point is illustrated by *Hurst v. Hankinson* (December 20, 1994), Ohio Ct. App., Perry No. CA-474, 1994 Ohio App. LEXIS 5922.

In *Hurst*, the county auditor appealed from the trial court's judgment issuing a writ of mandamus, which ordered the auditor to issue a warrant on the county treasurer for services rendered to the DD Board. The Court of Appeals first determined that outside counsel had been properly obtained; but more to the point, it had to determine whether the DD Board had properly exercised its authority in issuing and approving the vouchers and determining whether the claim was valid. *Hurst* at 2-3. In effect, all R.C. 305.14(C) did was to permit the DD Board to retain and pay legal counsel. R.C. 305.14 in no way authorizes the DD Board to seek the removal of a guardian in probate court.

**C. The DD Board lacks the implied power to seek the removal of a guardian because there is no express statutory power from which any implied power must flow.**

It is well established that a governmental agency has only such power as it is delegated to it by the General Assembly. *D.A.B.E., Inc. v Toledo-Lucas County DD Board of Health*, 96 Ohio St.3d 250, 260 (2002). The authority that is conferred by the General Assembly cannot be extended by the governmental agency. See, *Burger Brewing Co. v. Thomas* (1975), 42 Ohio St.2d 377, 329 N.E.2d 693. Although a power of an agency may be implied from an express power where it is reasonably related to the duties of the agency, an implied power is limited to

making the express power effective. *Waliga v. Bd. of Trustees of Kent State Univ.* (1986), 22 Ohio St.3d 55, 488 N.E.2d 850; *D.A.B.E., Inc.* at 259. Therefore, an implied power can only flow from an express power. Where there is no express power, there can be no implied power to effectuate that express power.

For the DD Board to have an implied power to seek the removal of a guardian, it must come from an express power. As this Honorable Court has held, an implied power is only incidental or ancillary to an express power, and, if there is no express grant, there can be no implied grant. *D.A.B.E.* at 259. In addition, this Court stated that when "construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it." *D.A.B.E., Inc.* at 259, quoting *A. Bentley & Sons v. Pierce* (1917), 96 Ohio St. 44, 47, 117 N.E. 6.

The DD Board cites *Cuyahoga Cty. Bd. of Mental Retardation v. Cuyahoga Cty. Bd. of Commrs.* (1975), 41 Ohio St. 2d 103, 322 N.E.2d 885, as authority for its asserted implied power to seek the removal of the guardian. *Cuyahoga*, however, is in fact consistent with the well settled principle of law that no implied authority may exist without first an express power. Furthermore, an analysis of *Cuyahoga* demonstrates that it actually supports the argument that the DD Board lacks the implied authority to seek the removal of a guardian.

At issue in *Cuyahoga* was whether the DD Board had the implied authority to bring a mandamus action in order to place a voter levy on the ballot to raise funds for its programs. This Court examined former R.C. 5126.03 (now R.C. 5126.05), which set forth the statutory powers and duties of the DD Board, in order to determine whether the DD Board had an express or

implied power. The Court found three separate statutory provisions within R.C. 5126.03 that specifically related to providing funding for the programs the DD Board was authorized to operate. Of significance was the provision that the DD Board has the statutory duty to "provide such funds as are necessary for the operation of facilities, programs, and services established under Section 5127.01 of the Revised Code." Former R.C. 5126.03(D). Based on these three express statutory provisions in former R.C. 5126.03 related to the funding of the DD Board's programs, this Court found an implied power to bring a mandamus action to place a voter levy on the ballot to provide future funding.

Here, there is no express statutory power or duty under R.C. 5126.05 of any kind from which an implied power to seek the removal of a guardian can be inferred. Accordingly, under *Cuyahoga*, no implied power can be inferred in this case.

**D. The possibility of tort liability does not expand the DD Board's authority to file for the removal of a guardian.**

The DD Board is not precluded from acting to ensure the health, safety, and welfare of individuals if it follows the procedures under R.C. 5126.33. When following R.C. 5126.33, the DD Board is acting within its express authority under the Revised Code. The possibility of tort liability for failure to act cannot expand the DD Board's authority where there is no duty to act without express authority.

The DD Board points to *Estate of Ridley* to support its contention that it may be subject to liability if it does not file for the removal of a guardian. *Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities*, 150 Ohio App.3d 383, 2002-Ohio-6344, ¶35, Aff'd *Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities* (2004), 102 Ohio St.3d 230, 2004-Ohio-2629. The court in *Ridley* held that a DD Board is a political subdivision that enjoys a general grant of immunity. 2004 Ohio 2629, at ¶ 21.

However, that immunity may be pierced where (a) an employee's acts or omissions were manifestly outside the scope of his employment or official responsibilities, (b) his acts or omissions were with malicious purpose, in bad faith, or conducted in a wanton or reckless manner, or (c) liability is expressly imposed upon the employee by another section of the Revised Code. 2004 Ohio 6344 at ¶ 34. The DD Board in this case has not even suggested (a) or (b), and this Court found that "no section of the Ohio Revised Code expressly imposes liability for failure to perform the duties in Ohio Rev. Code Ann. §§ 5123.62, 5126.05, 5126.41, and 5126.431," governing DD Boards. *Ridley*, 2004 Ohio 2629, at ¶ 24.

*Ridley* thus does not support the DD Board's argument. The DD Board's duties with respect to service recipients are limited by the statutory authority under which those duties were created. Since there is no statutory duty for a DD Board to file for the removal of a guardian where the DD Board and the guardian do not agree on the provision of services, the DD Board does not risk liability for failure to do so.

**IV. The Court of Appeals correctly ruled that the DD Board lacked standing under R.C. Chapters 2109 and 2111 as an interested party to seek the removal of the guardian.**

**A. The definition of an "interested party" should not be expanded to include the DD Board.**

Chapters 2109 and 2111 of the Ohio Revised Code, governing the probate court, control the circumstances under which an interested party may participate in guardianship proceedings. "Interested party" is a term of art with a limited role in guardianship proceedings. In order to take action in a guardianship proceeding, a person can only be an interested party for a number of narrowly-defined purposes. Although the term "interested party" is not specifically defined in R.C. Chapters 2109 or 2111, courts have used case-by-case discretion to determine that individuals with familial relationships to the ward, close friends, or when the former relationships do not exist for the ward, attorneys or other advocates, may be granted interested

party status in the course of a guardianship proceeding. See, *In re Weingart*, 8th Dist. No. 79849, 2002-Ohio-38 (longtime friend); *In re Guardianship of Titington* (1958), 82 Ohio L. Abs. 563, 162 N.E.2d 628 (attorney); *In re Oliver's Guardianship* (1909), 9 Ohio N.P. 178, 20 Ohio Dec. 64 (sister and stranger).

Not all persons have a legally sufficient interest to allow them to become interested parties to the proceeding, however. *In re Guardianship of Santrucek* (2008), 120 Ohio St.3d 67, 2008 Ohio 4915 at ¶11. The DD Board fails to cite a single case in which a DD Board, or any other governmental agency, has been granted interested party status in order to remove a guardian. In all of the cases cited by the DD Board, the interested party for guardianship purposes was a natural person. See generally, *In re Guardianship of Titington*, *In re Weingart*, *In re Oliver's Guardianship*, supra. The fact that the DD Board may be regarded as a "person" for purposes unrelated to this case does not diminish the fact that a ruling stating that a governmental agency is an "interested party" would significantly expand the definition of "interested person" in the line of cases cited by the DD Board.

Even if a DD Board was found to be an interested party, an interested party's motion-filing authority with regard to guardianship proceedings is specifically enumerated, and thus limited by statute. An interested party may take action in only twelve limited areas in a probate court proceeding, and only eight of these areas actually empower the interested party to file a motion of any description. An interested party may be permitted to do any of the following actions: seek appointment as guardian (R.C. 2111.02); object to the ward's medical treatment (R.C. 2111.13); be entitled to notice of a hearing on the report of an investigator (R.C. 2111.141); move for the transfer of jurisdiction (R.C. 2111.471); request a hearing on the continued need for guardianship (R.C. 2111.49); file a motion taking exception to an accounting

(R.C. 2109.33); file a motion relative to distribution of assets (R.C. 2109.36); file a petition to enforce payment or distribution (R.C. 2109.59); file a motion when the probate judge is interested (R.C. 2101.38); file a motion to require a bond (R.C. 2109.04); file a motion to vacate an order settling an account (R.C. 2109.35); and file an application to release the liens in a land sale (R.C. 2109.35). The ability to file for the removal of a guardian is not one of the authorities specified in the statutes.

Ohio courts have not recognized that an interested party may move for the removal of a guardian under R.C. 2109.24. The cases the DD Board cites in support of its argument all involve the removal of an executor, not a guardian. See, *In re Estate of Rice*, 2005 Ohio 3301, 161 Ohio App.3d 847, 832 N.E.2d 139 (beneficiaries filed a motion to remove appellant executor from his position in the probate of the will of the executor's mother); *In the Matter of the Estate of Schmidt*, Butler App. Nos. CA95-01-013 and CA95-01-014, 1995 Ohio App. LEXIS 5168 (estate administrator may be removed by probate court for failure to account for the assets of the estate); *In re Trust of Marshall*(1946), 78 Ohio App. 1, 46 Ohio Law Abs. 344, 65 N.E.2d 523 (Estate beneficiaries may file for removal of trustee under certain circumstances). These cases in no way support the DD Board's contention that an interested person may move for the removal of a guardian.

The case law in this area does not provide principled guidance. *In re Guardianship of Shawn Constable*, (2007) 2007 Ohio 3346, ¶ 9, 2007 Ohio App. LEXIS 3105 (Clermont Co.)("In fact, review of Ohio case law reveals no instance in which a moving party was found to be uninterested for purposes of participating in a guardianship proceeding.") The Court should find that an interested party must have a direct interest in some underlying aspect of the guardianship proceeding. For example, R.C. § 2111.13(C), which allows a guardian to consent to medical

care, allows an interested party to object to such consent, thus limiting the interest of the party to that specified in statute.<sup>3</sup> Similarly, next of kin or family will almost always have a direct interest in the well being of the person and the assets of the estate (although courts must be careful to police conflicts). Such a ruling would have the added benefit on keeping relative strangers from becoming parties to a case that may involve management of significant amounts of personal and confidential information.

Contrary to the DD Board's assertion, it is not the protector of the ward's interests. As the superior guardian of the ward, the probate court may use its discretion to appoint a guardian ad litem pursuant to Civ.R. 17(B) and Civ.R. 73 when necessary to advocate on behalf of the ward's interests. Additionally, the court receives regular reports, R.C. § 2111.49, and the probate court may appoint an investigator to follow up on issues raised by the report, *id.* at (A)(2). In the absence of a provision where an interested party may file for guardianship removal, and in light of the probate court's plenary authority, the Court of Appeals correctly determined that it was unnecessary to expand the statutorily-defined role of an interested party in guardianship proceedings.

**B. The Court of Appeals correctly concluded that the DD Board lacked standing to seek the removal of the guardian under other doctrines of standing.**

The DD Board does not have any unique relationship as a service provider such that it should be granted standing to seek the removal of a guardian. Standing is defined as “[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.” Black’s Law Dictionary (8Ed.Rev. 2004) 1442. “[T]he question of standing depends upon whether the party has alleged such a ‘personal stake in the outcome of the controversy’ as to ensure that ‘the

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<sup>3</sup> Thus, in this case, the board could have objected to the guardians' consent to services, but are not given authority under the statute to seek their removal.

dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.” *State ex rel. Dallman v. Court of Common Pleas* (1973), 35 Ohio St.2d 176, 178-179, 298 N.E.2d 515 quoting *Sierra Club v. Morton* (1972), 405 U.S. 727, 732, 31 L.Ed.2d 636. It is a fundamental rule that a party lacks standing to invoke the jurisdiction of the court unless it has some real interest in the subject matter of the action. *Id.* at 179, 298 N.E.2d 515. Because the only real party in interest in a guardianship proceeding is the ward, third party standing is inherently limited and the requirements for standing are more elaborate. *Whitmore v. Arkansas*, (1990) 495 U.S. 149, 163; see also, *In re Guardianship of Santrucek*, 120 Ohio St.3d 67, 2008 Ohio 4915 at ¶12; *In re Guardianship of Love* (1969), 19 Ohio St.2d 111, 48 O.O.2d 107, 249 N.E.2d 794.

Here, the DD Board had no “personal stake” in the outcome of this case because its functions revolve around arranging and providing services for individuals with developmental disabilities, not filing for the removal of a guardian. *In the Matter of the Guardianship of Spangler*, 2008-Ohio-6978 at ¶61. The DD Board’s greatest interest is in the provision of services to individual with developmental disabilities. The DD Board can file a complaint in the probate court to arrange services under R.C. 5126.33 when necessary fulfill this statutory role.

A threat of sanctions for failure to follow state law does not support a DD Board's standing to file for the removal of a guardian. The DD Board seeks to establish that it has standing to file for the removal of a guardian by citing to the provision for sanctions where a DD Board fails to correct serious health and safety issues under R.C. 5126.081(F). This argument lacks merit. Requiring a DD Board to follow the provisions under R.C. 5126.33 does not prohibit the DD Board from acting to avoid serious health and safety issues. In fact, it provides an additional avenue for the DD Board to address such issues prospectively. A hypothetical

threat of health and safety violations does not create a mandate to expand the DD Board's authority outside the statutory provision that already addresses it.

Moreover, before a DD Board may be sanctioned for any serious health and safety issues, it is first given a chance to request assistance from the Department and an opportunity to correct those issues without the imposition of sanctions. R.C. 5126.081(C) and (F). Significantly, the DD Board fails to cite to a single instance in which a DD Board has been subject to sanctions for failure to file for the removal of a guardian in probate court.

The DD Board also fails to establish third party standing as a governmental entity seeking to assert a claim on behalf of John Spangler. The DD Board attempts to compare the instant case to *Kowalski v. Tesmer*, which sets forth an exception to the general rule that a political subdivision lacks standing to assert the rights of a third party. *Kowalski v. Tesmer* (2004), 543 U.S. 125, 129-130, 125 S.Ct. 564, 160 L.Ed.2d 519. The exception may apply only if that political subdivision (a) suffers its own injury in fact; (b) possesses a sufficiently close relationship with the person who possesses the right; and (c) shows some hindrance that stands in the way of the claimant seeking relief. *Id.* To support its claim, the DD Board cites to a case in which a city was granted standing to file an equal protection claim on behalf of its residents in order to apportion funds in the city treasury differently. *City of East Liverpool v. Columbiana Cty. Budget Comm.* (2007), 114 Ohio St.3d 133, 2007 Ohio 3759, 870 N.E.2d 705. *City of East Liverpool* is clearly distinguishable from the instant case for purposes of a standing exception.

The DD Board in the instant case suffers no injury in fact. The DD Board suggests that an injury could follow from an inability to file for the removal of a guardian because it might be subject to sanctions or tort liability. The DD Board would not be failing to act if it could not file for the removal of a guardian because it still has an avenue within its authority to fulfill its role

of ensuring the provision of services. The DD Board will not be held liable or subject to sanctions for properly carrying out its statutory charge. The DD Board will not "lose [its] voice" if it is not granted the authority to file for the removal of a guardian because its "voice" is expressly provided under R.C. 5126.33 and the accompanying statutes. See, Appellant's Brief at 25.

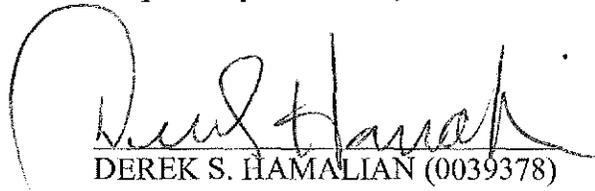
John Spangler was not hindered from seeking the relief that the DD Board sought. In *City of East Liverpool*, the city's residents had already attempted to assert an equal protection claim but had been denied for lack of standing. *City of East Liverpool* at ¶25. In the instant case, had John Spangler wished to file a motion for the removal of his guardian, he would have had standing to do so as the only real party in interest. Instead, the interests of the DD Board and John Spangler diverged the instant the DD Board sought to remove John's guardians. The DD Board filed a motion that was contrary to John's stated wishes. See, T. 6/13/2007, p.181; T. 8/9/2007, p.4 (John Spangler stated on two separate occasions that he wishes his father to remain as his guardian). As a consequence, the DD Board's interest was different than John's and he was not kept from seeking any relief regarding his guardianship.

Rather than seeking removal of the guardian, the DD Board has the authority under R.C. 5126.33 to alert the probate court of any perceived harm and request that the court allow the DD Board to adjust the provision of services accordingly.

## CONCLUSION

For the foregoing reasons, this Court should uphold the ruling of the Eleventh District Court of Appeals that R.C. 5126.33 is the exclusive means by which a DD Board may petition the probate court to ensure the health, safety and welfare of its service recipients.

Respectfully Submitted,



DEREK S. HAMALIAN (0039378)

JASON C. BOYLAN (0082409)

Ohio Legal Rights Service

50 West Broad Street, Suite 1400

Columbus, Ohio 43215

Tel: (614) 466-7264

Fax: (614) 644-1888

dhamalian@olrs.state.oh.us

jboylan@olrs.state.oh.us

## CERTIFICATE OF SERVICE

A copy of the above-styled Merit Brief was served upon the following by ordinary U.S.

Mail on this 14th day of September, 2009.

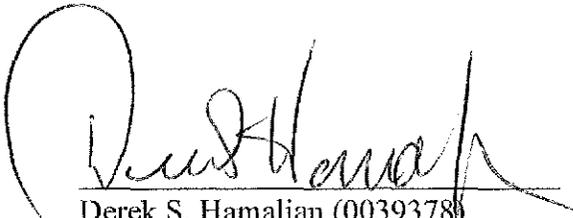
DAVID P. JOYCE  
Geauga County Prosecutor  
JUDITH A. MIEDEMA  
Assistant Prosecuting Attorney  
Courthouse Annex  
231 Main Street, Suite 3A  
Chardon, Ohio 44024

FRANKLIN J. HICKMAN  
JUDITH C. SALTZMAN  
Hickman & Lowder Co., L.P.A.  
1300 East Ninth Street, Suite 1020  
Cleveland, Ohio 44114

PAMELA WALKER MAKOWSKI  
Law Office of Pamela Walker Makowski  
503 South High Street, Suite 205  
Columbus, Ohio 43215

SHANE EGAN  
4110 North High Street, 2nd Floor  
Columbus, Ohio 43214

RICHARD CORDRAY  
Attorney General of Ohio  
BENJAMIN C. MIZER  
Solicitor General  
DAVID LIEBERMAN  
Deputy Solicitor  
30 East Broad Street, 17th Floor  
Columbus, OH 43215



Derek S. Hamalian (0039378)

## APPENDIX

## APPENDIX

### Statutes

R.C. 1.11 .....	1
R.C. 2111.02 .....	1
R.C. 2111.13 .....	4
R.C. 4112.99 .....	5
R.C. 5123.601 .....	5
R.C. 5126.03 .....	5
R.C. 5126.046 .....	8
R.C. 5126.051 .....	9
R.C. 5126.30(L) .....	10
Section 1396, Title 42, U.S.C. ....	11

### Other Authorities

S.B. 178.....	19
---------------	----

### Rules

Civ.R. 17(B).....	80
Civ.R. 73 .....	80
Ohio Adm. Code 5123:2-3-13 .....	84
Section 160.102, Title 45, U.S.C. ....	86
Section 160.103, Title 45, U.S.C. ....	86

**R.C. 1.11**

**GENERAL PROVISIONS**

**CHAPTER 1: DEFINITIONS; RULES OF CONSTRUCTION**

**1.11 Remedial laws liberally construed.**

Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice. The rule of the common law that statutes in derogation of the common law must be strictly construed has no application to remedial laws; but this section does not require a liberal construction of laws affecting personal liberty, relating to amercement, or of a penal nature.

Effective Date: 10-01-1953

**R.C. 2111.02**

**TITLE [21] XXI COURTS -- PROBATE -- JUVENILE**

**CHAPTER 2111: GUARDIANS; CONSERVATORSHIPS**

**2111.02 Appointment of guardian - limited, interim, emergency, or standby guardian - nomination.**

(A) When found necessary, the probate court on its own motion or on application by any interested party shall appoint, subject to divisions (C) and (D) of this section and to section 2109.21 and division (B) of section 2111.121 of the Revised Code, a guardian of the person, the estate, or both, of a minor or incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county and, except in the case of a minor, has had the opportunity to have the assistance of counsel in the proceeding for the appointment of such guardian. An interested party includes, but is not limited to, a person nominated in a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or in a writing as described in division (A) of section 2111.121 of the Revised Code.

Except when the guardian of an incompetent is an agency under contract with the department of mental retardation and developmental disabilities for the provision of protective services under sections 5123.55 to 5123.59 of the Revised Code, the guardian of an incompetent, by virtue of such appointment, shall be the guardian of the minor children of the guardian's ward, unless the court appoints some other person as their guardian.

When the primary purpose of the appointment of a guardian is, or was, the collection, disbursement, or administration of moneys awarded by the veterans administration to the ward, or assets derived from such moneys, no court costs shall be charged in the proceeding for the appointment or in any subsequent proceedings made in pursuance of the appointment, unless the value of the estate, including the moneys then due under the veterans administration award, exceeds one thousand five hundred dollars.

(B)(1) If the probate court finds it to be in the best interest of an incompetent or minor, it may appoint pursuant to divisions (A) and (C) of this section, on its own motion or on application by an

interested party, a limited guardian with specific limited powers. The sections of the Revised Code, rules, and procedures governing guardianships apply to a limited guardian, except that the order of appointment and letters of authority of a limited guardian shall state the reasons for, and specify the limited powers of, the guardian. The court may appoint a limited guardian for a definite or indefinite period. An incompetent or minor for whom a limited guardian has been appointed retains all of the incompetent's or minor's rights in all areas not affected by the court order appointing the limited guardian.

(2) If a guardian appointed pursuant to division (A) of this section is temporarily or permanently removed or resigns, and if the welfare of the ward requires immediate action, at any time after the removal or resignation, the probate court may appoint, ex parte and with or without notice to the ward or interested parties, an interim guardian for a maximum period of fifteen days. If the court appoints the interim guardian ex parte or without notice to the ward, the court, at its first opportunity, shall enter upon its journal with specificity the reason for acting ex parte or without notice, and, as soon as possible, shall serve upon the ward a copy of the order appointing the interim guardian. For good cause shown, after notice to the ward and interested parties and after hearing, the court may extend an interim guardianship for a specified period, but not to exceed an additional thirty days.

(3) If a minor or incompetent has not been placed under a guardianship pursuant to division (A) of this section and if an emergency exists, and if it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours. A written copy of any order issued by a court under this division shall be served upon the incompetent or minor as soon as possible after its issuance. Failure to serve such an order after its issuance or prior to the taking of any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian shall be specified in the letters of appointment, and shall be limited to those powers that are necessary to prevent injury to the person or estate of the minor or incompetent. If the court acts ex parte or without notice to the minor or incompetent, the court, at its first opportunity, shall enter upon its journal a record of the case and, with specificity, the reason for acting ex parte or without notice. For good cause shown, after notice to the minor or incompetent and interested parties, and after hearing, the court may extend an emergency guardianship for a specified period, but not to exceed an additional thirty days.

(C) Prior to the appointment of a guardian or limited guardian under division (A) or (B)(1) of this section, the court shall conduct a hearing on the matter of the appointment. The hearing shall be conducted in accordance with all of the following:

(1) The proposed guardian or limited guardian shall appear at the hearing and, if appointed, shall swear under oath that the proposed guardian or limited guardian has made and will continue to make diligent efforts to file a true inventory in accordance with section 2111.14 of the Revised Code and find and report all assets belonging to the estate of the ward and that the proposed guardian or limited guardian faithfully and completely will fulfill the other duties of guardian, including the filing of timely and accurate reports and accountings;

(2) If the hearing is conducted by a referee, the procedures set forth in Civil Rule 53 shall be followed;

(3) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the burden of proving incompetency shall be by clear and convincing evidence;

(4) Upon request of the applicant, the alleged incompetent for whom the appointment is sought or the alleged incompetent's counsel, or any interested party, a recording or record of the hearing shall be made;

(5) Evidence of a less restrictive alternative to guardianship may be introduced, and when introduced, shall be considered by the court;

(6) The court may deny a guardianship based upon a finding that a less restrictive alternative to guardianship exists;

(7) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the alleged incompetent has all of the following rights:

(a) The right to be represented by independent counsel of his choice;

(b) The right to have a friend or family member of his choice present;

(c) The right to have evidence of an independent expert evaluation introduced;

(d) If the alleged incompetent is indigent, upon his request:

(i) The right to have counsel and an independent expert evaluator appointed at court expense;

(ii) If the guardianship, limited guardianship, or standby guardianship decision is appealed, the right to have counsel appointed and necessary transcripts for appeal prepared at court expense.

(D)(1) When a person has been nominated to be a guardian of the estate of a minor in or pursuant to a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or a writing as described in division (A) of section 2111.121 of the Revised Code, the person nominated has preference in appointment over a person selected by the minor. A person who has been nominated to be a guardian of the person of a minor in or pursuant to a durable power of attorney or writing of that nature does not have preference in appointment over a person selected by the minor, but the probate court may appoint the person named in the durable power of attorney or the writing, the person selected by the minor, or another person as guardian of the person of the minor.

(2) A person nominated as a guardian of an incompetent adult child pursuant to section 1337.09 or 2111.121 of the Revised Code shall have preference in appointment over a person applying to be guardian if the person nominated is competent, suitable, and willing to accept the appointment, and

if the incompetent adult child does not have a spouse or an adult child and has not designated a guardian prior to the court finding the adult child incompetent.

Effective Date: 01-14-1997; 2008 SB157 05-14-2008

**R.C. 2111.13**

**TITLE [21] XXI COURTS -- PROBATE -- JUVENILE  
CHAPTER 2111: GUARDIANS; CONSERVATORSHIPS**

**2111.13 Duties of guardian of person.**

(A) When a guardian is appointed to have the custody and maintenance of a ward, and to have charge of the education of the ward if the ward is a minor, the guardian's duties are as follows:

- (1) To protect and control the person of the ward;
- (2) To provide suitable maintenance for the ward when necessary, which shall be paid out of the estate of such ward upon the order of the guardian of the person;
- (3) To provide such maintenance and education for such ward as the amount of the ward's estate justifies when the ward is a minor and has no father or mother, or has a father or mother who fails to maintain or educate the ward, which shall be paid out of such ward's estate upon the order of the guardian of the person;
- (4) To obey all the orders and judgments of the probate court touching the guardianship.

(B) Except as provided in section 2111.131 of the Revised Code, no part of the ward's estate shall be used for the support, maintenance, or education of such ward unless ordered and approved by the court.

(C) A guardian of the person may authorize or approve the provision to the ward of medical, health, or other professional care, counsel, treatment, or services unless the ward or an interested party files objections with the probate court, or the court, by rule or order, provides otherwise.

(D) Unless a person with the right of disposition for a ward under section 2108.70 or 2108.81 of the Revised Code has made a decision regarding whether or not consent to an autopsy or post-mortem examination on the body of the deceased ward under section 2108.50 of the Revised Code shall be given, a guardian of the person of a ward who has died may consent to the autopsy or post-mortem examination .

(E) If a deceased ward did not have a guardian of the estate , the estate is not required to be administered by a probate court, and a person with the right of disposition for a ward, as described in section 2108.70 or 2108.81 of the Revised Code, has not made a decision regarding the disposition of the ward's body or remains, the guardian of the person of the ward may authorize the burial or cremation of the ward.

(F) A guardian who gives consent or authorization as described in divisions (D) and (E) of this

section shall notify the probate court as soon as possible after giving the consent or authorization.

Effective Date: 09-22-2000; 10-12-2006

**R.C. 4112.99**  
**TITLE [41] XLI LABOR AND INDUSTRY**  
**CHAPTER 4112: CIVIL RIGHTS COMMISSION**

**4112.99 Civil penalty.**

Whoever violates this chapter is subject to a civil action for damages, injunctive relief, or any other appropriate relief.

Effective Date: 07-06-2001

**R.C. 5123.50 (D)**  
**TITLE [51] LI PUBLIC WELFARE**  
**CHAPTER 5123: DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**5123.50 Registry of employees guilty of abuse, neglect or misappropriation definitions.**

As used in this section and sections 5123.51, 5123.52, and 5123.541 of the Revised Code:

(D) "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services that are necessary to maintain the health and safety of the individual.

**R.C. 5123.601**  
**TITLE [51] LI PUBLIC WELFARE**  
**CHAPTER 5123: DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**5123.601 Ombudsman section in legal rights service.**

(A) As used in sections 5123.601 to 5123.604 of the Revised Code, "provider" means any person or governmental agency that furnishes one or more services to one or more mentally retarded, developmentally disabled, or mentally ill persons.

(B) There is hereby created within the legal rights service the ombudsman section. The administrator of the legal rights service shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints from mentally retarded, developmentally disabled, or mentally ill persons, their relatives, their guardians, and interested citizens, public officials, and governmental agencies or any deficiencies which come to its attention concerning any

activity, practice, policy, or procedure it determines is adversely affecting or may adversely affect the health, safety, welfare, and civil or human rights of any mentally retarded, developmentally disabled, or mentally ill persons. After initial investigation, the section may decline to accept any complaint it determines is frivolous, vexatious, or not made in good faith. The section shall attempt to resolve the complaint at the lowest appropriate administrative level, unless otherwise provided by law. The procedures shall require the section to:

(1) Acknowledge the receipt of a complaint by sending written notice to the complainant no more than seven days after it receives the complaint;

(2) When appropriate, provide written notice to the department of mental retardation and developmental disabilities or the department of mental health and any other appropriate agency within seven days after receiving the complaint;

(3) Immediately refer a complaint made under this section to the department of mental retardation and developmental disabilities and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally retarded or developmentally disabled person, or to the department of mental health and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally ill person. The department or an agency designated by the department shall report its findings and actions no later than forty-eight hours following its receipt of the complaint.

(4) Within seven days after identifying a deficiency in the treatment of a mentally retarded, developmentally disabled, or mentally ill person that pertains to misconduct, breach of duty, or noncompliance with state or federal laws, local ordinances, or rules or regulations adopted under those laws or ordinances that are administered by a governmental agency, refer the matter in writing to the appropriate state agency. The state agency shall report on its actions and findings within seven days of receiving the matter.

(5) Advise the complainant and any mentally retarded, developmentally disabled, or mentally ill person mentioned in the complaint, no more than thirty days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint.

(6) Attempt to resolve the complaint by using informal techniques of mediation, conciliation, and persuasion. If the complaint cannot be resolved by the use of these informal techniques or if the act, practice, policy, or procedure that is the subject of the complaint adversely affects the health, safety, welfare, or civil or human rights of a mentally retarded, developmentally disabled, or mentally ill person, the section may recommend to the appropriate authorities or the administrator of the legal rights service that appropriate actions be taken.

(7) Report its opinions or recommendations to the parties involved after attempting to resolve a complaint through informal techniques of mediation, conciliation, or persuasion. The section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the section, of any action the party has taken on the section's recommendations.

(C) The section may make public any of its opinions or recommendations concerning a complaint,

the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or civil or human rights of a mentally retarded, developmentally disabled, or mentally ill person.

(D) The section shall at all times maintain confidentiality under sections 5123.601 to 5123.604 of the Revised Code concerning the identities of mentally retarded, developmentally disabled, or mentally ill persons, complainants, witnesses, and other involved parties who provide it with information unless the person, in writing, authorizes the release of the information.

Nothing in this section shall prohibit the legal rights service from taking appropriate action when the administrator determines it is necessary.

(E) Whenever information is disclosed indicating the commission of a crime or a violation of standards of professional conduct, the legal rights service shall, within seven days of receiving the complaint or identifying the information during its investigation, refer the matter to the attorney general, county prosecutor, other law enforcement official, or regulatory board, as appropriate, to investigate the crime or violation. The section may disclose any information permitted by law that is necessary to resolve the matter referred. The section shall monitor and maintain records on every matter it refers under this division.

Effective Date: 07-01-1988

### **R.C. 5126.03**

#### **TITLE [51] LI PUBLIC WELFARE**

#### **CHAPTER 5126: COUNTY BOARDS OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

#### **5126.03 Direct services contract definitions.**

As used in this section and in sections 5126.031 to 5126.034 of the Revised Code:

(A) "Direct services contract" means any legally enforceable agreement with an individual, agency, or other entity that, pursuant to its terms or operation, may result in a payment from a county board of mental retardation and developmental disabilities to an eligible person or to a member of the immediate family of an eligible person for services rendered to the eligible person. "Direct services contract" includes a contract for supported living pursuant to sections 5126.40 to 5126.47 of the Revised Code, family support services under section 5126.11 of the Revised Code, and reimbursement for transportation expenses.

(B) "Eligible person" means a person eligible to receive services from a county board or from an entity under contract with a county board.

(C) "Former board member" means a person whose service on the county board ended less than one year prior to commencement of services under a direct services contract.

(D) "Former employee" means a person whose employment by the county board ended less than

one year prior to commencement of services under a direct services contract.

Effective Date: 03-13-1997; 2005 SB10 09-05-2005

**R.C. 5126.046**

**TITLE [51] LI PUBLIC WELFARE**

**CHAPTER 5126: COUNTY BOARDS OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**5126.046 List of eligible entities to provide such habilitation, vocational, or community employment services.**

(A) Each county board of mental retardation and developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for habilitation, vocational, or community employment services provided as part of home and community-based services shall create a list of all persons and government entities eligible to provide such habilitation, vocational, or community employment services. If the county board chooses and is eligible to provide such habilitation, vocational, or community employment services, the county board shall include itself on the list. The county board shall make the list available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such habilitation, vocational, or community employment services. The county board shall also make the list available to such individuals' families.

An individual with mental retardation or other developmental disability who is eligible for habilitation, vocational, or community employment services may choose the provider of the services.

(B) Each month, the department of mental retardation and developmental disabilities shall create a list of all persons and government entities eligible to provide residential services and supported living. The department shall include on the list all residential facilities licensed under section 5123.19 of the Revised Code and all supported living providers certified under section 5123.161 of the Revised Code. The department shall distribute the monthly lists to county boards that have local administrative authority under division (A) of section 5126.055 of the Revised Code for residential services and supported living provided as part of home and community-based services. A county board that receives a list shall make it available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such residential services or supported living. The county board shall also make the list available to the families of those individuals.

An individual who is eligible for residential services or supported living may choose the provider of the residential services or supported living.

(C) If a county board that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services violates the right established by this section of an individual to choose a provider that is qualified and willing to provide services to the individual, the individual shall receive timely notice that the individual may

request a hearing under section 5101.35 of the Revised Code.

(D) The departments of mental retardation and developmental disabilities and job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code governing the implementation of this section. The rules shall include procedures for individuals to choose their service providers. The rules shall not be limited by a provider selection system established under section 5126.42 of the Revised Code, including any pool of providers created pursuant to a provider selection system.

Effective Date: 12-13-2001; 2007 HB119 06-30-2007

**R.C. 5126.051**

**TITLE [51] LI PUBLIC WELFARE**

**CHAPTER 5126: COUNTY BOARDS OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**5126.051 Residential services and supported living services.**

(A) To the extent that resources are available, a county board of mental retardation and developmental disabilities shall provide for or arrange residential services and supported living for individuals with mental retardation and developmental disabilities.

A county board may acquire, convey, lease, or sell property for residential services and supported living and enter into loan agreements, including mortgages, for the acquisition of such property. A county board is not required to comply with provisions of Chapter 307. of the Revised Code providing for competitive bidding or sheriff sales in the acquisition, lease, conveyance, or sale of property under this division, but the acquisition, lease, conveyance, or sale must be at fair market value determined by appraisal of one or more disinterested persons appointed by the board.

Any action taken by a county board under this division that will incur debt on the part of the county shall be taken in accordance with Chapter 133. of the Revised Code. A county board shall not incur any debt on the part of the county without the prior approval of the board of county commissioners.

(B)(1) To the extent that resources are available, in addition to sheltered employment and work activities provided as adult services pursuant to division (A)(3) of section 5126.05 of the Revised Code, a county board of mental retardation and developmental disabilities may provide or arrange for job training, vocational evaluation, and community employment services to mentally retarded and developmentally disabled individuals who are age eighteen and older and not enrolled in a program or service under Chapter 3323. of the Revised Code or age sixteen or seventeen and eligible for adult services under rules adopted by the director of mental retardation and developmental disabilities under Chapter 119. of the Revised Code. These services shall be provided in accordance with the individual's individual service or habilitation plan and shall include support services specified in the plan.

(2) A county board may, in cooperation with the Ohio rehabilitation services commission, seek federal funds for job training and community employment.

(3) A county board may contract with any agency, board, or other entity that is accredited by the commission on accreditation of rehabilitation facilities to provide services. A county board that is accredited by the commission on accreditation of rehabilitation facilities may provide services for which it is certified by the commission.

(C) To the extent that resources are available, a county board may provide services to an individual with mental retardation or other developmental disability in addition to those provided pursuant to this section, section 5126.05 of the Revised Code, or any other section of this chapter. The services shall be provided in accordance with the individual's habilitation or service plan and may be provided in collaboration with other entities of state or local government.

Effective Date: 06-06-2001

**R.C. 5126.30**

**TITLE [51] LI PUBLIC WELFARE**

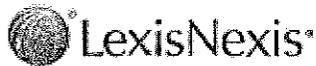
**CHAPTER 5126: COUNTY BOARDS OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**5126.30 Protective services for adults with mental retardation or developmental disability definitions.**

As used in sections 5126.30 to 5126.34 of the Revised Code:

(L) "Party" means all of the following:

- (1) An adult who is the subject of a probate proceeding under sections 5126.30 to 5126.33 of the Revised Code;
- (2) A caretaker, unless otherwise ordered by the probate court;
- (3) Any other person designated as a party by the probate court including but not limited to, the adult's spouse, custodian, guardian, or parent.



LEXSTAT 42 USC 1396

UNITED STATES CODE SERVICE  
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\*\*\* CURRENT THROUGH PL 111-62, APPROVED 08/19/ 2009 \*\*\*

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 7. SOCIAL SECURITY ACT  
TITLE XIX. GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

**Go to the United States Code Service Archive Directory**

*42 USCS § 1396*

§ 1396. Medicaid and CHIP Payment and Access Commission

(a) Establishment. There is hereby established the Medicaid and CHIP Payment and Access Commission (in this section referred to as "MACPAC").

(b) Duties.

(1) Review of access policies and annual reports. MACPAC shall--

(A) review policies of the Medicaid program established under this *title* [42 USCS §§ 1396 et seq.] (in this section referred to as "Medicaid") and the State Children's Health Insurance Program established under title XXI [42 USCS §§ 1397aa et seq.] (in this section referred to as "CHIP") affecting children's access to covered items and services, including topics described in paragraph (2);

(B) make recommendations to Congress concerning such access policies;

(C) by not later than March 1 of each year (beginning with 2010), submit a report to Congress containing the results of such reviews and MACPAC's recommendations concerning such policies; and

(D) by not later than June 1 of each year (beginning with 2010), submit a report to Congress containing an examination of issues affecting Medicaid and CHIP, including the implications of changes in health care delivery in the United States and in the market for health care services on such programs.

(2) Specific topics to be reviewed. Specifically, MACPAC shall review and assess the following:

(A) Medicaid and CHIP payment policies. Payment policies under Medicaid and CHIP, including--

(i) the factors affecting expenditures for items and services in different sectors, including the process for updating hospital, skilled nursing facility, physician, Federally-qualified health center, rural health center, and other fees;

(ii) payment methodologies; and

(iii) the relationship of such factors and methodologies to access and quality of care for Medicaid and CHIP beneficiaries.

(B) Interaction of Medicaid and CHIP payment policies with health care delivery generally. The effect of Medicaid and CHIP payment policies on access to items and services for children and other Medicaid and CHIP populations other than under this title or title XXI [42 USCS §§ 1396 et seq. or 1397aa et seq.] and the implications of changes in health care delivery in the United States and in the general market for health care items and services on Medicaid and CHIP.

(C) Other access policies. The effect of other Medicaid and CHIP policies on access to covered items and services, including policies relating to transportation and language barriers.

(3) Creation of early-warning system. MACPAC shall create an early-warning system to identify provider shortage areas or any other problems that threaten access to care or the health care status of Medicaid and CHIP beneficiaries.

(4) Comments on certain secretarial reports. If the Secretary submits to Congress (or a committee of Congress) a report that is required by law and that relates to access policies, including with respect to payment policies, under Medicaid or CHIP, the Secretary shall transmit a copy of the report to MACPAC. MACPAC shall review the report and, not later than 6 months after the date of submittal of the Secretary's report to Congress, shall submit to the appropriate committees of Congress written comments on such report. Such comments may include such recommendations as MACPAC deems appropriate.

(5) Agenda and additional reviews. MACPAC shall consult periodically with the chairmen and ranking minority members of the appropriate committees of Congress regarding MACPAC's agenda and progress towards achieving the agenda. MACPAC may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this title or title XXI [42 USCS §§ 1396 et seq. or 1397aa et seq.] as may be requested by such chairmen and members and as MACPAC deems appropriate.

(6) Availability of reports. MACPAC shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.

(7) Appropriate committee of Congress. For purposes of this section, the term "appropriate committees of Congress" means the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

(8) Voting and reporting requirements. With respect to each recommendation contained in a report submitted under paragraph (1), each member of MACPAC shall vote on the recommendation, and MACPAC shall include, by member, the results of that vote in the report containing the recommendation.

(9) Examination of budget consequences. Before making any recommendations, MACPAC shall examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities.

(c) Membership.

(1) Number and appointment. MACPAC shall be composed of 17 members appointed by the Comptroller General of the United States.

(2) Qualifications.

(A) In general. The membership of MACPAC shall include individuals who have had direct experience as enrollees or parents of enrollees in Medicaid or CHIP and individuals with national recognition for their expertise in Federal safety net health programs, health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, health information technology, pediatric physicians, dentists, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(B) Inclusion. The membership of MACPAC shall include (but not be limited to) physicians and other health professionals, employers, third-party payers, and individuals with expertise in the delivery of health services. Such membership shall also include consumers representing children, pregnant women, the elderly, and individuals with disabilities, current or former representatives of State agencies responsible for administering Medicaid, and current or former representatives of State agencies responsible for administering CHIP.

(C) Majority nonproviders. Individuals who are directly involved in the provision, or management of the delivery, of items and services covered under Medicaid or CHIP shall not constitute a majority of the membership of MACPAC.

(D) Ethical disclosure. The Comptroller General of the United States shall establish a system for public disclosure by members of MACPAC of financial and other potential conflicts of interest relating to such members. Members of MACPAC shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 [5 *USCS Appx.* §§ 101 et seq.] (Public Law 95-521).

(3) Terms.

(A) In general. The terms of members of MACPAC shall be for 3 years except that the Comptroller General of the United States shall designate staggered terms for the members first appointed.

(B) Vacancies. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in MACPAC shall be filled in the manner in which the original appointment was made.

(4) Compensation. While serving on the business of MACPAC (including travel time), a member of MACPAC shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under *section 5315 of title 5, United States Code*; and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of MACPAC. Physicians serving as personnel of MACPAC may be provided a physician comparability allowance by MACPAC in the same manner as Government physicians may be provided such an allowance by an agency under *section 5948 of title 5, United States Code*, and for such purpose subsection (i) of such section shall apply to MACPAC in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of MACPAC) and employment benefits, rights, and privileges, all personnel of MACPAC shall be treated as if they were employees of the United States Senate.

(5) Chairman; Vice Chairman. The Comptroller General of the United States shall designate a member of MACPAC, at the time of appointment of the member as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the Chairmanship

or Vice Chairmanship, the Comptroller General of the United States may designate another member for the remainder of that member's term.

(6) Meetings. MACPAC shall meet at the call of the Chairman.

(d) Director and staff; experts and consultants. Subject to such review as the Comptroller General of the United States deems necessary to assure the efficient administration of MACPAC, MACPAC may--

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General of the United States) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of MACPAC (without regard to section 3709 of the Revised Statutes (*41 U.S.C. 5*));

(4) make advance, progress, and other payments which relate to the work of MACPAC;

(5) provide transportation and subsistence for persons serving without compensation; and

(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of MACPAC.

(e) Powers.

(1) Obtaining official data. MACPAC may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to MACPAC on an agreed upon schedule.

(2) Data collection. In order to carry out its functions, MACPAC shall--

(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section;

(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate; and

(C) adopt procedures allowing any interested party to submit information for MACPAC's use in making reports and recommendations.

(3) Access of GAO to information. The Comptroller General of the United States shall have unrestricted access to all deliberations, records, and nonproprietary data of MACPAC, immediately upon request.

(4) Periodic audit. MACPAC shall be subject to periodic audit by the Comptroller General of the United States.

(f) Authorization of appropriations.

(1) Request for appropriations. MACPAC shall submit requests for appropriations in the same manner as the Comptroller General of the United States submits requests for appropriations, but amounts appropriated for MACPAC shall be separate from amounts appropriated for the Comptroller General of the United States.

(2) Authorization. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

## **HISTORY:**

(Aug. 14, 1935, ch 531, Title XIX, § 1900, as added Feb. 4, 2009, P.L. 111-3, Title V, § 506(a), 123 Stat. 91.)

## **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

### Explanatory notes:

A prior § 1396 (Aug. 14, 1935, ch 531, Title XIX, § 1901, as added July 30, 1965, P.L. 89-97, Title I, Part 2, § 121(a), 79 Stat. 343; Dec. 31, 1973, P.L. 93-233, § 13(a)(1), 87 Stat. 960; July 18, 1984, P.L. 98-369, Division B, Title VI, Subtitle D, § 2663(j)(3)(C), 98 Stat. 1171), relating to appropriations, was transferred to *42 USCS § 1396-1* by the compilers of the official United States Code.

### Effective date of section:

This section is effective on April 1, 2009, pursuant to § 3(a) of Act Feb. 4, 2009, P.L. 111-3, which appears as a note to this section.

### Other provisions:

**Application of section.** This section is applicable to child health assistance and medical assistance provided on or after April 1, 2009, as provided by § 3(a) of Act Feb. 4, 2009, P.L. 111-3, which appears as a note to this section.

**Act Feb. 4, 2009; references to CHIP; Medicaid; Secretary.** Act Feb. 4, 2009, P.L. 111-3, § 1(c), 123 Stat. 8 (effective on 4/1/2009, and applicable to child health assistance and medical assistance provided on or after that date, as provided by § 3(a) of such Act, which appears as a note to this section), provides:

" In this Act [for full classification, consult USCS Tables volumes]:

"(1) CHIP. The term 'CHIP' means the State Children's Health Insurance Program established under title XXI of the Social Security Act (*42 U.S.C. 1397aa et seq.*).

"(2) Medicaid. The term 'Medicaid' means the program for medical assistance established under title XIX of the Social Security Act (*42 U.S.C. 1396 et seq.*).

"(3) Secretary. The term 'Secretary' means the Secretary of Health and Human Services."

**Children's Health Insurance Program Reauthorization Act of 2009; purpose.** Act Feb. 4, 2009, P.L. 111-3, § 2, 123 Stat. 10 (effective on 4/1/2009, and applicable to child health assistance and medical assistance provided on or after that date, as provided by § 3(a) of such Act, which appears as a note to this section), provides: "It is the purpose of this Act [for full classification, consult USCS Tables volumes] to provide dependable and stable funding for children's health insurance under titles XXI and XIX of the Social Security Act [*42 USCS §§ 1397aa et seq.* and *1396 et seq.*] in order to enroll all six million uninsured children who are eligible, but not enrolled, for coverage today through such titles."

**Act Feb. 4, 2009; general effective date; exception for State legislation; contingent effective date; reliance on law.** Act Feb. 4, 2009, P.L. 111-3, § 3, 123 Stat. 10, provides:

"(a) General effective date. Unless otherwise provided in this Act [for full classification, consult USCS Tables volumes], subject to subsections (b) through (d), this Act (and the amendments made by this Act) [for full classification, consult USCS Tables volumes] shall take effect on April 1, 2009, and shall apply to child health assistance and medical assistance provided on or after that date.

"(b) Exception for State legislation. In the case of a State plan under title XIX [42 USCS §§ 1396 et seq.] or State child health plan under XXI of the Social Security Act [42 USCS §§ 1397aa et seq.], which the Secretary of Health and Human Services determines requires State legislation in order for the respective plan to meet one or more additional requirements imposed by amendments made by this Act [for full classification, consult USCS Tables volumes], the respective plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such an additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

"(c) Coordination of CHIP funding for Fiscal Year 2009. Notwithstanding any other provision of law, insofar as funds have been appropriated under section 2104(a)(11), 2104(k), or 2104(l) of the Social Security Act [42 USCS § 1397dd(a)(11), (k), or (l)], as amended by section 201 of Public Law 110-173, to provide allotments to States under CHIP for fiscal year 2009--

"(1) any amounts that are so appropriated that are not so allotted and obligated before April 1, 2009 are rescinded; and

"(2) any amount provided for CHIP allotments to a State under this Act (and the amendments made by this Act) [for full classification, consult USCS Tables volumes] for such fiscal year shall be reduced by the amount of such appropriations so allotted and obligated before such date.

"(d) Reliance on law. With respect to amendments made by this Act (other than title VII) [for full classification, consult USCS Tables volumes] that become effective as of a date--

"(1) such amendments are effective as of such date whether or not regulations implementing such amendments have been issued; and

"(2) Federal financial participation for medical assistance or child health assistance furnished under title XIX or XXI [42 USCS §§ 1396 et seq. or 1397aa et seq.], respectively, of the Social Security Act on or after such date by a State in good faith reliance on such amendments before the date of promulgation of final regulations, if any, to carry out such amendments (or before the date of guidance, if any, regarding the implementation of such amendments) shall not be denied on the basis of the State's failure to comply with such regulations or guidance."

**Model of interstate coordinated enrollment and coverage process.** Act Feb. 4, 2009, P.L. 111-3, Title II, Subtitle B, § 213, 123 Stat. 56 (effective on 4/1/2009, and applicable to child health assistance and medical assistance provided on or after that date, as provided by § 3(a) of such Act, which appears as 42 USCS § 1396 note), provides:

"(a) In general. In order to assure continuity of coverage of low-income children under the Medicaid program and the State Children's Health Insurance Program (CHIP), not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with State Medicaid and CHIP directors and organizations representing program beneficiaries, shall develop a model process for the coordination of the enrollment, retention, and

coverage under such programs of children who, because of migration of families, emergency evacuations, natural or other disasters, public health emergencies, educational needs, or otherwise, frequently change their State of residency or otherwise are temporarily located outside of the State of their residency.

"(b) Report to Congress. After development of such model process, the Secretary of Health and Human Services shall submit to Congress a report describing additional steps or authority needed to make further improvements to coordinate the enrollment, retention, and coverage under CHIP and Medicaid of children described in subsection (a)."

**Improved accessibility of dental provider information to enrollees under Medicaid and CHIP.** Act Feb. 4, 2009, P.L. 111-3, Title V, § 501(f), 123 Stat. 88 (effective on 4/1/2009, and applicable to child health assistance and medical assistance provided on or after that date, as provided by § 3(a) of such Act, which appears as *42 USCS § 1396* note), provides:

"The Secretary shall--

"(1) work with States, pediatric dentists, and other dental providers (including providers that are, or are affiliated with, a school of dentistry) to include, not later than 6 months after the date of the enactment of this Act, on the Insure Kids Now website (<http://www.insurekidsnow.gov/>) and hotline (1-877-KIDS-NOW) (or on any successor websites or hotlines) a current and accurate list of all such dentists and providers within each State that provide dental services to children enrolled in the State plan (or waiver) under Medicaid or the State child health plan (or waiver) under CHIP, and shall ensure that such list is updated at least quarterly; and

"(2) work with States to include, not later than 6 months after the date of the enactment of this Act, a description of the dental services provided under each State plan (or waiver) under Medicaid and each State child health plan (or waiver) under CHIP on such Insure Kids Now website, and shall ensure that such list is updated at least annually."

**Deadline for initial appointments.** Act Feb. 4, 2009, P.L. 111-3, Title V, § 506(b), 123 Stat. 95 (effective on 4/1/2009, and applicable to child health assistance and medical assistance provided on or after that date, as provided by § 3(a) of such Act, which appears as a note to this section), provides: "Not later than January 1, 2010, the Comptroller General of the United States shall appoint the initial members of the Medicaid and CHIP Payment and Access Commission established under section 1900 of the Social Security Act [this section] (as added by subsection (a))."

**Annual report on Medicaid.** Act Feb. 4, 2009, P.L. 111-3, Title V, § 506(c), 123 Stat. 95 (effective on 4/1/2009, and applicable to child health assistance and medical assistance provided on or after that date, as provided by § 3(a) of such Act, which appears as a note to this section), provides: "Not later than January 1, 2010, and annually thereafter, the Secretary, in consultation with the Secretary of the Treasury, the Secretary of Labor, and the States (as defined for purposes of Medicaid), shall submit an annual report to Congress on the financial status of, enrollment in, and spending trends for, Medicaid for the fiscal year ending on September 30 of the preceding year."

**No Federal funding for illegal aliens; disallowance for unauthorized expenditures.** Act Feb. 4, 2009, P.L. 111-3, Title VI, Subtitle A, § 605, 123 Stat. 100 (effective on 4/1/2009, and applicable to child health assistance and medical assistance provided on or after that date, as provided by § 3(a) of such Act, which appears as a note to this section), provides: "Nothing in this Act [for full classification, consult USCS Tables volumes] allows Federal payment for individuals who are not legal residents. Titles XI, XIX, and XXI of the Social Security Act [*42 USCS §§ 1301 et seq., 1396 et seq., and 1397aa et seq.*] provide for the disallowance of Federal financial participation for erroneous expenditures under Medicaid and under CHIP, respectively."

**NOTES:**

Research Guide:

Annotations:

*Propriety of Federal Court's Abstention, Under Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943), as to Claim that State or Local Statute or Regulation, or Application Thereof, Violates Federal Constitution or Conflicts with Federal Statute or Regulation--Social Welfare and Family Law Issues . 32 ALR Fed 2d 327.*

Interpretive Notes and Decisions:

# Fiscal Note & Local Impact Statement

125<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
77 South High Street, 9<sup>th</sup> Floor, Columbus, OH 43215-6136 ✦ Phone: (614) 466-3615  
✦ Internet Web Site: <http://www.lsc.state.oh.us/>

**BILL:** Proposed Sub. S.B. 4 (LSC 125 0010-3)      **DATE:** March 26, 2003

**STATUS:** In Senate Judiciary--Criminal Justice      **SPONSOR:** Sen. Spada

**LOCAL IMPACT STATEMENT REQUIRED:** Yes

**CONTENTS:** Implements the recommendations of the MR/DD Victims of Crime Task Force, makes related changes in the law, and provides a mechanism for the closing of developmental centers of the Department of Mental Retardation and Developmental Disabilities that involves independent studies and public hearings

## State Fiscal Highlights

STATE FUND	FY 2003*	FY 2004	FUTURE YEARS
<b>General Revenue Fund (GRF)</b>			
Revenues	-0-	Potential negligible gain	Potential negligible gain
Expenditures	-0-	Minimal effect	Minimal effect
<b>Victims of Crime/Reparations Fund (Fund 402)</b>			
Revenues	-0-	Potential negligible gain	Potential negligible gain
Expenditures	-0-	-0-	-0-

Note: The state fiscal year is July 1 through June 30. For example, FY 2003 is July 1, 2002 – June 30, 2003.

\*This analysis assumes that the state will largely not experience any of the bill's fiscal effects until FY 2004.

- • **MR/DD Abuser Registry.** The bill expands the list of professional occupations that must report suspicions of abuse or neglect to include superintendents, board members, or employees of county boards of MR/DD. If these individuals fail to report such cases, they are eligible for inclusion on the Department's Abuser Registry. Consequently, there might be an increase in the number of persons deemed eligible for the Registry, which in turn could elevate the Department's administrative costs. However, any such costs would likely be minimal annually, if that.
- • **MR/DD Registry hearings.** Under current law, before being put on the Department of Mental Retardation and Developmental Disabilities' (DMR) Abuser Registry, an accused employee must have a public hearing pursuant to Chapter 119. of the Revised Code, even if the individual does not request one. The bill changes this requirement and allows DMR to put a person's name on the Registry without a hearing, if the individual does not request one. Thus, hearing costs could be reduced. It appears, however, that any annual savings resulting from this provision would be minimal, if that.
- • **Sexual misconduct notification.** The bill requires DMR and all county boards of MR/DD to notify all employees within 30 days of the effective date of this bill that any

sexual conduct or contact with an individual with MR/DD is strictly prohibited. This provision could increase administrative costs to both DMR and county boards of MR/DD depending on the type of notification.

- • **Autopsy or post-mortem examination costs.** Under current law, DMR and county boards of MR/DD do not have the authority to request an autopsy or post-mortem examination for individuals with MR/DD that die. Under the bill, DMR or a county board can file a petition in court seeking authorization for the procedure. If the court authorizes an autopsy or post-mortem examination, the bill mandates that DMR or the county board that requested the procedure pay the incurred expenses. Based on conversations with DMR and the Ohio State Coroners' Association (OSCA), it appears that this provision will not cause a significant increase in the number of autopsies or post-mortem examinations than would otherwise be performed under current law. Therefore, any fiscal impact of this provision on DMR seems unlikely to exceed minimal, if that, annually.
- • **MR/DD developmental center closure mechanism.** The bill provides a mechanism for the closing of DMR developmental centers, including independent studies to be performed by the Office of Budget and Management and the creation of the Mental Retardation and Developmental Disabilities Developmental Center Closure Commission. The occasional one-time administrative costs for OBM and the Commission to perform their duties under this provision of the bill appear unlikely to exceed minimal.
- • **Incarceration costs.** The number of additional offenders that might actually be sentenced to prison annually as a result of the bill appears likely to be relatively small. Thus, any related increase in the Department of Rehabilitation and Correction's GRF-funded incarceration and post-release control costs would be no more than minimal annually.
- • **Court cost revenues.** Given the relatively small number of new convictions expected, any potential gain in annual court cost revenues deposited to the credit of the state's GRF and the Victims of Crime/Reparations Fund (Fund 402) is likely to be negligible.

### *Local Fiscal Highlights*

LOCAL GOVERNMENT	FY 2003	FY 2004	FUTURE YEARS
<b>Counties and Municipalities</b>			
Revenues	Potential increase, not likely to exceed minimal	Potential increase, not likely to exceed minimal	Potential increase, not likely to exceed minimal
Expenditures	Increase, possibly exceeding minimal in some jurisdictions	Increase, possibly exceeding minimal in some jurisdictions	Increase, possibly exceeding minimal in some jurisdictions

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- • **MOUs and county boards of MR/DD.** The bill requires a county board of MR/DD to prepare a memorandum of understanding (MOU) to coordinate investigations of abuse or neglect. The administrative burden in preparing the document would likely increase costs for county boards of MR/DD depending upon the infrastructure and level of cooperation already in place.

- • **MOUs and local criminal justice systems generally.** Based on the experience of public children's services agencies (PCSAs) that established MOUs some time ago, it appears very likely that the one-time expenses associated with establishing a MOU for some local criminal justice systems will exceed minimal, which means in excess of \$5,000. These local expenses are probably best viewed as largely an "opportunity cost." It also seems likely that these MOUs will involve some local criminal justice systems in more investigations and prosecutions than would otherwise have been the case under current law and practice. Whether that level of activity will increase the annual expenditures of a given local criminal justice system more than minimally on an ongoing basis is uncertain.
- • **Reports of abuse and neglect.** The bill adds to the list of individuals who act in an official or professional capacity that are required to report knowledge or suspicion of neglect or abuse to the public children's service agency, county board of MR/DD, or local enforcement agency in which the individual resides. Consequently, the bill could increase the number of reports of abuse or neglect. DMR believes that the increased number of reports would not have a major fiscal impact since the Department and each county board already have investigative units in place. Based on conversations with some of the members of the MR/DD Victims of Crime Task Force, the increased number of reported suspicions of neglect, abuse, or exploitation should have, at most, a minimal annual fiscal impact on any PCSA or county board of MR/DD.
- • **Protective service plans.** The bill requires county boards of MR/DD to develop detailed protective service plans describing the services the county board will provide to prevent further abuse, neglect, or exploitation. According to a number of superintendents of county boards of MR/DD, county boards are already providing these services pursuant to a person's individual service plan. Based on this observation, this provision appears unlikely to create any direct and immediate fiscal effects for county boards or probate courts.
- • **Sexual misconduct notification.** The bill requires DMR and all county boards of MR/DD to notify all employees within 30 days of the effective date of this bill that any sexual conduct or contact with an individual with MR/DD is strictly prohibited. This provision could increase administrative costs to both DMR and county boards of MR/DD depending on the type of notification.
- • **Criminal offenses.** Based on a number of conversations, it appears that the number of offenders that will be charged, prosecuted, and sanctioned for "endangerment" or "failure to report" as a result of the bill will be relatively small in any given local jurisdiction. Assuming that were true, then the annual costs for a county and municipal criminal justice system (investigation, prosecution, adjudication, indigent defense, and sanctioning) to dispose of these cases seems unlikely to exceed minimal.
- • **Probate courts.** The bill's modification of provisions regarding a probate court's involvement in the issuance of an order authorizing a county board of MR/DD to arrange emergency services for an adult with mental retardation or a developmental disability appears likely to create little, if any, direct and immediate fiscal effects for the probate court of any given county.
- • **Special testimonial procedures.** In the case of certain violations committed against children, the Revised Code currently provides special testimonial procedures in criminal and delinquent child proceedings. The bill enacts similar mechanisms where the victim of

specified offenses is a functionally impaired person. As courts should already have these mechanisms in place for handling certain violations committed against children, it appears unlikely that the expansion of these special testimonial mechanisms would create more than a minimal annual cost for courts, if that.

- • **Qualified interpreters.** The bill expands an existing provision requiring a court to appoint an interpreter to assist a party or witness to a legal proceeding that, because of an impairment, cannot readily understand or communicate. Under current law, the court determines a reasonable fee for all such interpreter services, which are paid out of the same funds as witness fees. As of this writing, the modification of this provision seems unlikely to generate more than a minimal, if that, annual cost for courts.
  - • **Court cost and fine revenues.** In the matter of local revenues, as the likely number of cases that could be created by the bill appears to be relatively small, any resulting gain in court cost and fine revenues for a given county or municipality annually would not be likely to exceed minimal.
  - • **County coroner notification.** The bill requires the physician, ambulance service, emergency squad, or law enforcement agency on the scene to notify the county coroner when an individual with MR/DD dies, regardless of the circumstances. No such requirement exists in current law. After conversations with the Ohio State Coroners' Association, it appears that this provision could significantly increase the number of coroner notifications. The county coroner, however, is still responsible for determining which cases warrant coroner investigation. Thus, even though the number of notifications will increase, the number of coroner cases will not necessarily increase. Counties could experience increased administrative costs if there are a number of additional coroner cases. However, it appears that any additional costs resulting from this provision would be minimal.
  - • **County coroner autopsies and post-mortem examinations.** The bill allows DMR or a county board of MR/DD to request an autopsy or post-mortem examination if an individual with MR/DD dies. Under current law, the county coroner makes the final decision on the necessity of an autopsy or post-mortem examination. If a county coroner does not conduct an autopsy or post-mortem examination, the bill allows DMR or a county board of MR/DD to file a petition in court seeking authorization. If the court authorizes an autopsy or post-mortem examination, the bill mandates that DMR or the county board that requested the procedure to pay the incurred expenses. Based on conversations with DMR and the Ohio State Coroners' Association, it appears that this provision will not cause a significant increase in the number of autopsies or post-mortem examinations than would otherwise be performed under current law. Consequently, any fiscal impact of this provision on a given county seems unlikely to exceed minimal, if that, annually.
-

## *Detailed Fiscal Analysis*

From a fiscal perspective, the bill contains two notable components as follows:

- (1) (1) Implements recommendations made by the MR/DD Victims of Crime Task Force that will primarily affect: (1) on the state level, the Department of Mental Retardation and Developmental Disabilities (DMR), and (2) on the local level, principally county boards of MR/DD, and county and municipal criminal justice systems, including courts, law enforcement, and prosecutors. There appears to be limited data readily available statewide on the investigation and prosecution of individuals for creating a risk of harm or harming a person who has mental retardation or a developmental disability. Thus, in conducting this analysis, LSC fiscal staff has had to rely largely on qualitative information gleaned from conversations with various professionals who served on the MR/DD Victims of Crime Task Force.
- (2) (2) Provides a mechanism for the closing of DMR developmental centers, including independent studies to be performed by the Office of Budget and Management and the creation of the Mental Retardation and Developmental Disabilities Developmental Center Closure Commission.

### *DMR Abuser Registry*

Under current law, the MR/DD Abuser Registry is used in cases in which there is “clear and convincing” evidence that a departmental employee committed or was responsible for the abuse, neglect, or misappropriation of an individual with MR/DD. Individuals put on the Registry go through the administrative hearing process outlined in Chapter 119. of the Revised Code. DMR is required to notify the accused employee of their right to request a hearing. Current law requires DMR to hold a hearing for all accused employees, even if the employee does not request one. Upon a guilty verdict, the employee’s name is then added to the Registry and is prohibited from working in the MR/DD system as long as the employee’s name remains on the Registry. Furthermore, current law requires DMR to wait until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded. If the employee is found not guilty, DMR is prohibited from putting the employee’s name on the Registry.

The bill changes many of these requirements. Under the bill, DMR could include employees that are found not guilty in a criminal case or collective bargaining arbitration if there is “clear and convincing” evidence that the employee committed or was responsible for the abuse, neglect, or misappropriation of an individual with MR/DD. The bill also removes the provision requiring a hearing for each accused employee. If the accused does not timely request a hearing after notification, the Director of DMR can put the employee’s name on the Registry if the “clear and convincing” standard is met.

Thus, the bill could result in an increase in the number of names placed on the Registry, which would increase some administrative cost for the Department. However, according to DMR, these provisions will not necessarily increase the number of individuals on the registry, but could shorten the adjudication process. As a result, the Department could experience, at most, a minimal annual savings in hearing costs if the number of hearings is reduced.

### MOUs and county boards of MR/DD

The bill requires each county board of MR/DD to prepare a memorandum of understanding (MOU) to coordinate all investigations of abuse or neglect. The memorandum must set forth the normal operating procedure for all concerned parties in the execution of their respective duties. The MOU requires the involvement of local law enforcement, probate judges, prosecutors, coroners, public children's service agencies (PCSAs), and any other entity deemed necessary. Current law provides no such requirement.

Because the bill's requirement of a MOU is identical to that required of PCSAs, LSC fiscal staff discussed the administrative duties and time that would be involved in establishing and maintaining a MOU with the Public Children Services Association of Ohio (PCSAO). Based on a conversation with PCSAO, it appears that the time required and the administrative duty of coordinating all the entities involved in a MOU would likely increase costs for county boards of MR/DD. However, spokespersons for county boards of MR/DD state that county boards already have the infrastructure in place to handle this new requirement. LSC fiscal staff's conversation with various interested parties also suggested that the establishment of MOUs will improve the communication between the local MR/DD and criminal justice systems and, as a result, likely will lead to more individuals being charged and successfully prosecuted for creating a risk of harm or harming a person who has mental retardation or a developmental disability.

### Reports of abuse and neglect

Current law requires the reporting of all major unusual incidents (MUIs) to county boards of MR/DD and DMR. MUIs include abuse, neglect, hospitalization, death, and other events that may significantly affect an individual's life and quality of care. All reported incidents are required to be investigated and reviewed to help prevent reoccurrence. According to the DMR's MUI/Registry Unit, the number of MUIs reported has increased over the last few years from 3,983 in 1998 to 14,116 in 2001. According to the Department, this increase is attributable to a heightened awareness and increased emphasis on reporting. In 2001, DMR received 2,832 allegations of abuse, neglect, or theft. Of those allegations, 798 were substantiated administratively as follows: 285 cases of physical abuse, 79 cases of sexual abuse, 184 cases of neglect, 42 cases of exploitation, and 208 cases of misappropriation. According to DMR, there were 4,163 allegations of abuse (sexual, verbal, or physical) or neglect in FY 2002 with a substantiation rate of approximately 14%.

The bill adds superintendents, board members, or employees of county boards of MR/DD to the list of professionals who act in an official capacity that are required to report all suspicions of abuse or neglect to the PCSA or local law enforcement in the county in which the alleged victim resides. Each allegation is to be investigated by local law enforcement or a county board of MR/DD, depending on the severity of the case, to substantiate the claim. The fact that a case is administratively substantiated as having occurred does not mean that enough evidence exists to justify prosecution. DMR has limited data on the number of cases that were prosecuted.

Based on conversations with some county boards of MR/DD, it appears that there could be an increase in annual investigation costs for both county boards of MR/DD and local law enforcement. DMR believes that the increased number of reports would not have a major fiscal impact since the Department and each county board already have investigative units in place. Based on conversations with some of the members of the MR/DD Victims of Crime

Task Force, the increased number of reported suspicions of neglect, abuse, or exploitation should have, at most, a minimal annual fiscal impact on any PCSA or county board of MR/DD.

### *Sexual misconduct notification*

The bill requires DMR and all county boards of MR/DD to notify all employees within 30 days of the effective date of this bill that any sexual conduct or contact with an individual with MR/DD is strictly prohibited. This provision could increase administrative costs to both DMR and county boards of MR/DD depending on the type of notification.

If an employee violates this provision, the employee can be included on the MR/DD Abuser Registry. Thus, the bill could result in an increase in the number of names placed on the Registry, which would increase some administrative cost for the Department.

### *Protective service plan*

Under current law, a probate court may issue an order authorizing a county board of MR/DD to arrange emergency services for an adult. The services are renewable for an additional 14 days if the county board of MR/DD can show that a continuation is necessary.

The bill requires county boards of MR/DD to develop detailed protective service plans describing the services the county board will provide to prevent further abuse, neglect, or exploitation. The county board must submit the plan to the court for approval and the plan may only be changed by a court order. The bill extends the provision of these services to six months and allows the services to be renewed for an additional six months.

According to a number of superintendents of county boards of MR/DD, county boards are already providing these services pursuant to an adult's individual service plan. Thus, the protective service plan will not contain new services for most individuals. Based on this observation, this provision appears unlikely to create any direct and immediate fiscal effects for county boards or probate courts.

### *MR/DD developmental center closure mechanism*

Following the Governor's announcement of the intended closure of a Department of Mental Retardation and Developmental Disabilities developmental center, the bill requires the following:

- • The announced closure is to be placed on hold.
- • Not later than 90 days after the Governor's announcement, the Office of Budget and Management (OBM) must conduct an independent study of the Department's developmental centers and of the Department's operation of the centers and prepare a report of its findings.
- • Not later than the date on which OBM is required to complete its report, the Mental Retardation and Developmental Disabilities Developmental Center Closure Commission must be created.
- • The Commission will consist of seven appointed members (two Senate members, two House members, and three private executives with expertise in facility utilization), who serve without compensation.

- • Not later than 90 days after it receives the OBM report, the Commission is required to prepare a report containing its recommendations to the Governor.
- • The Governor has the option of following the Commission's recommendations, proceeding with the previously announced closure or closures, or deciding not to close any center.
- • Upon the Governor's making of that decision, the Commission ceases to exist, and would be recreated in the future only if the Governor subsequently makes an official, public announcement to close one or more developmental centers.

The occasional one-time administrative costs for OBM and the Commission to perform their duties under this provision of the bill appear unlikely to exceed minimal.

### *MOUs and local criminal justice systems generally*

The bill will essentially require county and municipal criminal justice systems to establish and maintain formal agreements (MOUs) with county boards of MR/DD. These agreements will facilitate the sharing of information, with the intent of better protecting individuals with mental retardation or a developmental disability and improving the investigation and prosecution of persons who have harmed or endangered such individuals.

Based on the experience of PCSAs that established such agreements some time ago, it appears very likely that the one-time expenses associated with establishing a MOU for some local criminal justice systems will exceed minimal, which means in excess of \$5,000. These local expenses are probably best viewed as largely an "opportunity cost." In other words, various local criminal justice participants will absorb this task within their existing mix of duties and responsibilities, and most likely will have to delay as appropriate the performance of some of those other duties and responsibilities. If one were able to then put a price (time spent) on that one-time involvement across all of the criminal justice participants, then, in some local jurisdictions, it likely would exceed minimal.

It also seems likely that these MOUs will involve some local criminal justice systems in more investigations and prosecutions than would otherwise have been the case under current law and practice. Whether that level of activity will increase the annual expenditures of a given local criminal justice system more than minimally on an ongoing basis is uncertain.

### *Criminal offenses*

The bill makes the following notable changes to the state's criminal law:

- (1) (1) Creates the offense of "endangering a functionally impaired person," a misdemeanor of the first degree.
- (2) (2) Creates the offense of "patient endangerment," a misdemeanor of the first degree. All subsequent violations are a felony of the fifth degree.
- (3) (3) Revises existing penalties for specified violations of the reporting law and expands the persons to whom the reporting law applies. A violation is a misdemeanor of the fourth degree or, if the abuse or neglect constitutes a felony, a misdemeanor of the second degree.

The sentences and fines associated with those offense levels under current law, unchanged by the bill, are summarized in Table 1 below.

Table 1 Existing Sentences & Fines for Certain Offense Levels		
Offense Level	Maximum Fine	Maximum Term
Felony 5th degree	\$2,500	6-12 month definite prison term
Misdemeanor 1st degree	\$1,000	6 month jail stay
Misdemeanor 2nd degree	\$750	90 day jail stay
Misdemeanor 4th degree	\$250	30 day jail stay

According to a detective with the Columbus Police Department who investigates cases involving allegations that a person with mental retardation or a developmental disability has been victimized, current law does not cover caretaker recklessness. Thus, law enforcement can take no action unless physical harm occurs, regardless of the fact that the person may have been in danger. The bill addresses this issue by creating an offense that is comparable to the child endangerment statute.

The law currently requires certain individuals (“mandated reporters”), such as medical professionals, teachers, social workers, and MR/DD employees, to report suspected cases of abuse, neglect and exploitation. This statute differs from the children’s protective services statute in that it does not require mandated reporters to report when an individual with MR/DD faces a threat of physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect. The bill amends this provision to include these situations and enhances the penalties associated with the failure to report.

As noted, there must be proof of serious harm before a charge can be filed. By including language that makes placing a person at substantial risk a criminal act, law enforcement officials should be able to charge an individual when there is no clear evidence of abuse. Prosecutors will then, theoretically, be able to more effectively prosecute such cases. Based on a conversation with the Ohio Prosecuting Attorneys Association, as well as the chief assistant prosecutor of Cuyahoga County, it appears that the number of offenders that will be charged, prosecuted, and sanctioned for “endangerment” or “failure to report” as a result of the bill will be relatively small in any given local jurisdiction. Assuming that were true, then the annual costs for a county and municipal criminal justice system (investigation, prosecution, adjudication, indigent defense, and sanctioning) to dispose of these cases seems unlikely to exceed minimal. And in the matter of local revenues, as the likely number of cases that could be created by the bill appears to be relatively small, any resulting gain in court cost and fine revenues for a given county or municipality annually would not be likely to exceed minimal either.

**State incarceration costs**

It is possible as a result of the bill that a few more offenders could end up being sentenced to prison, which would increase the Department of Rehabilitation and Correction’s (DRC) annual incarceration and post-release control costs. The number of additional offenders, however, that might actually be sentenced to prison annually appears likely to be so small that any related increase in DRC’s GRF-funded incarceration and post-release control costs would be no more than minimal annually.

### State court cost revenues

As a result of the bill, it is possible that some individuals, who may not have been prosecuted and convicted under existing law, will be prosecuted and sanctioned. This outcome creates the possibility that the state may gain locally collected court cost revenues that are deposited to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). As the number of affected offenders appears to be very small, the amount of court cost moneys that those state funds will gain annually is likely to be negligible.

### Probate courts

The bill's modification of provisions regarding a probate court's involvement in the issuance of an order authorizing a county board of MR/DD to arrange emergency services for an adult with mental retardation or a developmental disability appears likely to create little, if any, direct and immediate fiscal effects for the probate court of any given county.

### Special testimonial procedures

In the case of certain violations committed against children, the Revised Code currently provides special testimonial procedures in criminal and delinquent child proceedings. The bill enacts similar mechanisms where the victim of specified offenses is a functionally impaired person. As courts should already have these mechanisms in place for handling certain violations committed against children, it appears unlikely that the expansion of these special testimonial mechanisms would create more than a minimal annual cost for courts, if that.

### Qualified interpreters

The bill expands an existing provision requiring a court to appoint an interpreter to assist a party or witness to a legal proceeding that, because of an impairment, cannot readily understand or communicate. Under current law, the court determines a reasonable fee for all such interpreter services that are paid out of the same funds as witness fees. The interpreter could be a family member or caretaker that is able to aid the parties in formulating methods of questioning the person and interpreting the person's answers. One example would be in the case of a person with autism. As of this writing, the modification of this provision seems unlikely to generate more than a minimal, if that, annual cost for courts.

### County coroner notification

Under current law, when a county coroner is notified of a death, the coroner decides, based on the circumstances, whether the case should be investigated by the coroner's office. If a case is deemed a coroner's case, the county coroner must go into the field, examine the body, determine possible cause of death, and sign the death certificate. If a case is not deemed a coroner's case, the physician on the scene is responsible for the above responsibilities.

The bill requires that the county coroner be notified anytime a person with MR/DD dies, regardless of the circumstances. The physician called in attendance, emergency squad, or law enforcement officer who obtains knowledge of the death arising from the person's duties is responsible for notification. According to DMR, 735 individuals with MR/DD died in calendar year 2002. There are over 61,000 individuals with MR/DD in Ohio.

After conversations with the Ohio State Coroners' Association (OSCA), it appears that this provision could significantly increase the number of coroner notifications. The county coroner, however, is still responsible for determining which cases warrant further investigation by the coroner. Thus, even though the number of notifications will increase, the number of coroner cases will not necessarily increase. Counties could experience increased administrative costs if there are a number of additional coroner cases. However, it appears that any additional costs resulting from this provision would be minimal.

### **County coroner autopsies and post-mortem examinations**

Section 313.131 of the Revised Code gives the county coroner authority to determine when an autopsy or post-mortem examination is necessary. The county in which the death occurred pays the costs associated with an autopsy or post-mortem examination. According to OSCA, the average cost of an autopsy ranges between \$800 and \$1,500. DMR reported 15 adverse or accidental deaths in FY 2001 and 29 in FY 2002.

The bill requires that the county coroner be notified any time an individual with MR/DD dies. If a county coroner decides an autopsy or post-mortem examination is not necessary, DMR or a county board of MR/DD can file a petition in court seeking authorization for an autopsy or post-mortem examination. If the court authorizes an autopsy or post-mortem examination, the bill mandates that DMR or the county board that requested the procedure to pay the incurred expenses

Based on conversations with DMR and OSCA, it appears that this provision will not cause a significant increase in the number of autopsies or post-mortem examinations than would otherwise be performed under current law. Consequently, any fiscal impact of this provision on the Department or a given county seems unlikely to exceed minimal, if that, annually.

*LSC fiscal staff: Holly Wilson, Budget Analyst  
Clay Weidner, Budget Analyst  
Jamie Slotten, Budget Analyst*

(125th General Assembly)  
(Amended Senate Bill Number 178)

**AN ACT**

To amend sections 109.572, 313.12, 2108.50, 2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 and to enact sections 2108.521, 2152.821, 2903.341, 2930.061, 2945.482, 2945.491, 5123.032, 5123.541, 5123.542, 5123.614, 5126.058, 5126.331, 5126.332, and 5126.333 of the Revised Code to implement the recommendations of the MR/DD Victims of Crime Task Force, to make related changes in the law, to provide a mechanism for the closing of developmental centers of the Department of Mental Retardation and Developmental Disabilities that involves independent studies and public hearings, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

**SECTION 1.** That sections 109.572, 313.12, 2108.50, 2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 be amended and sections 2108.521, 2152.821, 2903.341, 2930.061, 2945.482, 2945.491, 5123.032, 5123.541, 5123.542, 5123.614, 5126.058, 5126.331, 5126.332, and 5126.333 of the Revised Code be enacted to read as follows:

**Sec. 109.572.** (A)(1) Upon receipt of a request pursuant to section 2151.86, 3301.32, 3301.541, 3319.39, 5104.012, 5104.013, or 5153.111 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(1)(a) of this section.

(2) On receipt of a request pursuant to section 5123.081 of the Revised Code with respect to an applicant for employment in any position with the department of mental retardation and developmental disabilities, pursuant to section 5126.28 of the Revised Code with respect to an applicant for employment in any position with a county board of mental retardation and developmental disabilities, or pursuant to section 5126.281 of the Revised Code with respect

to an applicant for employment in a direct services position with an entity contracting with a county board for employment, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2903.341, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, or 3716.11 of the Revised Code;

(b) An existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(2)(a) of this section.

(3) On receipt of a request pursuant to section 173.41, 3712.09, 3721.121, or 3722.151 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person who has applied for employment in a position that involves providing direct care to an older adult. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(3)(a) of this section.

(4) On receipt of a request pursuant to section 3701.881 of the Revised Code with respect to an applicant for employment with a home health agency as a person responsible for the care, custody, or control of a child, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04,

2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(4)(a) of this section.

(5) On receipt of a request pursuant to section 5111.95 or 5111.96 of the Revised Code with respect to an applicant for employment with a waiver agency participating in a department of job and family services administered home and community-based waiver program or an independent provider participating in a department administered home and community-based waiver program in a position that involves providing home and community-based waiver services to consumers with disabilities, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.12, 2919.24, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(5)(a) of this section.

(6) On receipt of a request pursuant to section 3701.881 of the Revised Code with respect to an applicant for employment with a home health agency in a position that involves providing direct care to an older adult, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36,

2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(6)(a) of this section.

(7) When conducting a criminal records check upon a request pursuant to section 3319.39 of the Revised Code for an applicant who is a teacher, in addition to the determination made under division (A)(1) of this section, the superintendent shall determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any offense specified in section 3319.31 of the Revised Code.

(8) When conducting a criminal records check on a request pursuant to section 2151.86 of the Revised Code for a person who is a prospective foster caregiver or who is eighteen years old or older and resides in the home of a prospective foster caregiver, the superintendent, in addition to the determination made under division (A)(1) of this section, shall determine whether any information exists that indicates that the person has been convicted of or pleaded guilty to a violation of:

(a) Section 2909.02 or 2909.03 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to section 2909.02 or 2909.03 of the Revised Code.

(9) Not later than thirty days after the date the superintendent receives the request, completed form, and fingerprint impressions, the superintendent shall send the person, board, or entity that made the request any information, other than information the dissemination of which is prohibited by federal law, the superintendent determines exists with respect to the person who is the subject of the request that indicates that the person previously has been convicted of or pleaded guilty to any offense listed or described in division (A)(1), (2), (3), (4), (5), (6), (7), or (8) of this section, as appropriate. The superintendent shall send the person, board, or entity that made the request a copy of the list of offenses specified in division (A)(1), (2), (3), (4), (5), (6), (7), or (8) of this section, as appropriate. If the request was made under section 3701.881 of the Revised Code with regard to an applicant who may be both responsible for the care, custody, or control of a child and involved in providing direct care to an older adult, the superintendent shall provide a list of the offenses specified in divisions (A)(4) and (6) of this section.

(B) The superintendent shall conduct any criminal records check requested under section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code as follows:

(1) The superintendent shall review or cause to be reviewed any relevant information gathered and compiled by the bureau under division (A) of section 109.57 of the Revised Code that relates to the person who is the subject of the request, including any relevant information contained in records that have been sealed under section 2953.32 of the Revised Code;

(2) If the request received by the superintendent asks for information from the federal bureau of investigation, the superintendent shall request from the federal bureau of investigation any information it has with respect to the person who is the subject of the request and shall review or cause to be reviewed any information the superintendent receives from that bureau.

(C)(1) The superintendent shall prescribe a form to obtain the information necessary to conduct a criminal records check from any person for whom a criminal records check is required by section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The form that the superintendent prescribes pursuant to this division may be in a tangible format, in an electronic format, or in both tangible and electronic formats.

(2) The superintendent shall prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is required by section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. Any person for whom a records check is required by any of those sections shall obtain the fingerprint impressions at a county sheriff's office, municipal police department, or any other entity with the ability to make fingerprint impressions on the standard impression sheets prescribed by the superintendent. The office, department, or entity may charge the person a reasonable fee for making the impressions. The standard impression sheets the superintendent prescribes pursuant to this division may be in a tangible format, in an electronic format, or in both tangible and electronic formats.

(3) Subject to division (D) of this section, the superintendent shall prescribe and charge a reasonable fee for providing a criminal records check requested under section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The person making a criminal records request under section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code shall pay the fee prescribed pursuant to this division. A person making a request under section 3701.881 of the Revised Code for a criminal records check for an applicant who may be both responsible for the care, custody, or control of a child and involved in providing direct care to an older adult shall pay one fee for the request.

(4) The superintendent of the bureau of criminal identification and investigation may prescribe methods of forwarding fingerprint impressions and information necessary to conduct a criminal records check, which methods shall include, but not be limited to, an electronic method.

(D) A determination whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to any offense listed or described in division (A)(1)(a) or (b), (A)(2)(a) or (b), (A)(3)(a) or (b), (A)(4)(a) or (b), (A)(5)(a) or (b), (A)(6), (A)(7)(a) or (b), or (A)(8)(a) or (b) of this section that is made by the superintendent with respect to information considered in a criminal records check in accordance with this section is valid for the person who is the subject of the criminal records check for a period of one year from the date upon which the superintendent makes the determination. During the period in which the determination in regard to a person is valid, if another request under this section is made for a criminal records check for that person, the superintendent shall provide the information that is the basis for the superintendent's initial determination at a lower fee than the fee prescribed for the initial criminal records check.

(E) As used in this section:

(1) "Criminal records check" means any criminal records check conducted by the superintendent of the bureau of criminal identification and investigation in accordance with division (B) of this section.

(2) "Home and community-based waiver services" and "waiver agency" have the same meanings as in section 5111.95 of the Revised Code.

(3) "Independent provider" has the same meaning as in section 5111.96 of the Revised Code.

(4) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(5) "Older adult" means a person age sixty or older.

**Sec. 313.12.** (A) When any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or when any person, including a child under two years of age, dies suddenly when in apparent good health, or when any mentally retarded person or developmentally disabled person dies regardless of the circumstances, the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from his the person's duties, shall immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of the death, and any other information which that is required pursuant to sections 313.01 to 313.22 of the Revised Code. In such cases, if a request is made for cremation, the funeral director called in attendance shall immediately notify the coroner.

(B) As used in this section, "mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

**Sec. 2108.50.** (A) An Subject to section 2108.521 of the Revised Code, an autopsy or post-mortem examination may be performed upon the body of a deceased person by a licensed physician or surgeon if consent has been given in the order named by one of the following persons of sound mind and eighteen years of age or older in a written instrument executed by the person or on the person's behalf at the person's express direction:

(1) The deceased person during the deceased person's lifetime;

(2) The decedent's spouse;

(3) If there is no surviving spouse, if the address of the surviving spouse is unknown or outside the United States, if the surviving spouse is physically or mentally unable or incapable of giving consent, or if the deceased person was separated and living apart from such surviving spouse, then a person having the first named degree of relationship in the following list in which a relative of the deceased person survives and is physically and mentally able and capable of giving consent may execute consent:

(a) Children;

(b) Parents;

(c) Brothers or sisters.

(4) If there are no surviving persons of any degree of relationship listed in division (A)(3) of this section, any other relative or person who assumes custody of the body for burial;

(5) A person authorized by written instrument executed by the deceased person to make arrangements for burial;

(6) A person who, at the time of death of the deceased person, was serving as guardian of the person for the deceased person.

(B) Consent to an autopsy or post-mortem examination given under this section may be revoked only by the person executing the consent and in the same manner as required for execution of consent under this section.

(C) As used in this section, "written instrument" includes a telegram or cablegram.

**Sec. 2108.521.** (A) If a mentally retarded person or a developmentally disabled person dies, if the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities has a good faith reason to believe that the deceased person's death occurred under suspicious circumstances, if the coroner was apprised of the circumstances of the death, and if the coroner after being so apprised of the circumstances declines to conduct an autopsy, the department or the board may file a petition in a court of common pleas seeking an order authorizing an autopsy or post-mortem examination under this section.

(B) Upon the filing of a petition under division (A) of this section, the court may conduct, but is not required to conduct, a hearing on the petition. The court may determine whether to grant the petition without a hearing. The department or board, and all other interested parties, may submit information and statements to the court that are relevant to the petition, and, if the court conducts a hearing, may present evidence and testimony at the hearing. The court shall order the requested autopsy or post-mortem examination if it finds that, under the circumstances, the department or board has demonstrated a need for the autopsy or post-mortem examination. The court shall order an autopsy or post-mortem examination in the circumstances specified in this division regardless of whether any consent has been given, or has been given and withdrawn, under section 2108.50 of the Revised Code, and regardless of whether any information was presented to the coroner pursuant to section 313.131 of the Revised Code or to the court under this section regarding an autopsy being contrary to the deceased person's religious beliefs.

(C) An autopsy or post-mortem examination ordered under this section may be performed upon the body of the deceased person by a licensed physician or surgeon. The court may identify in the order the person who is to perform the autopsy or post-mortem examination. If an autopsy or post-mortem examination is ordered under this section, the department or board that requested the autopsy or examination shall pay the physician or surgeon who performs the autopsy or examination for costs and expenses incurred in performing the autopsy or examination.

**Sec. 2151.421.** (A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report that knowledge or suspicion to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section

5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; or a person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendent, board member, or employee of a county board of mental retardation; investigative agent contracted with by a county board of mental retardation; or employee of the department of mental retardation and developmental disabilities.

(2) An attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client or patient is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to that communication and the attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

(a) The client or patient, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(b) The attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(c) The attorney-client or physician-patient relationship does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(B) Anyone, who knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or suspicion to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

- (1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;
- (2) The child's age and the nature and extent of the child's known or suspected injuries, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect;
- (3) Any other information that might be helpful in establishing the cause of the known or suspected injury, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect.

Any person, who is required by division (A) of this section to report known or suspected child abuse or child neglect, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.

(D)(1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall comply with section 2151.422 of the Revised Code.

(E) No township, municipal, or county peace officer shall remove a child about whom a report is made pursuant to this section from the child's parents, stepparents, or guardian or any other persons having custody of the child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician, immediate removal is considered essential to protect the child from further abuse or neglect. The agency that must be consulted shall be the agency conducting the investigation of the report as determined pursuant to section 2151.422 of the Revised Code.

(F)(1) Except as provided in section 2151.422 of the Revised Code, the public children services agency shall investigate, within twenty-four hours, each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. The public children services agency shall report each case to a central registry which the department of job and family services shall maintain in order to determine whether prior reports have been made in other counties concerning the child or other principals in the case. The public children

services agency shall submit a report of its investigation, in writing, to the law enforcement agency.

(2) The public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

(G)(1)(a) Except as provided in division (H)(3) of this section, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding.

(b) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect in any judicial proceeding resulting from a report submitted pursuant to this section.

(2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought.

(H)(1) Except as provided in divisions (H)(4), (M), and (N) of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

(3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 of the Revised Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

(J)(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following:

(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative;

(b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative;

(c) The county peace officer;

(d) All chief municipal peace officers within the county;

(e) Other law enforcement officers handling child abuse and neglect cases in the county;

(f) The prosecuting attorney of the county;

(g) If the public children services agency is not the county department of job and family services, the county department of job and family services;

(h) The county humane society.

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or child neglect and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.

(3) A memorandum of understanding shall include all of the following:

(a) The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;

(b) Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.

(K)(1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report to be provided with the following information:

(a) Whether the agency has initiated an investigation of the report;

(b) Whether the agency is continuing to investigate the report;

(c) Whether the agency is otherwise involved with the child who is the subject of the report;

(d) The general status of the health and safety of the child who is the subject of the report;

(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(2) A person may request the information specified in division (K)(1) of this section only if, at the time the report is made, the person's name, address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (K)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (K)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

(3) A request made pursuant to division (K)(1) of this section is not a substitute for any report required to be made pursuant to division (A) of this section.

(4) If an agency other than the agency that received or was referred the report is conducting the investigation of the report pursuant to section 2151.422 of the Revised Code, the agency conducting the investigation shall comply with the requirements of division (K) of this section.

(L) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation with any other governmental entity to aid in ensuring that

children are protected from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

(M) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(N) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency shall not provide witness statements or police or other investigative reports.

Sec. 2152.821. (A) As used in this section:

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(2) "Mentally retarded or developmentally disabled victim" includes any of the following persons:

(a) A mentally retarded person or developmentally disabled person who was a victim of a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult;

(b) A mentally retarded person or developmentally disabled person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult.

(B)(1) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a mentally retarded person or developmentally disabled person, the juvenile judge, upon motion of the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the

attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the mentally retarded or developmentally disabled victim whose deposition is to be taken.

If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (C) of this section. If a deposition of a mentally retarded or developmentally disabled victim taken under this division is admitted as evidence at the proceeding under division (C) of this section, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the mentally retarded or developmentally disabled victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the mentally retarded or developmentally disabled victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition also shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division.

(2) If the prosecution requests that a deposition to be taken under division (B)(1) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the mentally retarded or developmentally disabled victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the mentally retarded or developmentally disabled victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the mentally retarded or developmentally disabled victim giving the deposition. The person chosen by the mentally retarded or developmentally disabled victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the mentally retarded or developmentally disabled victim giving the deposition during the deposition.

The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the deposition, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the deposition shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (B)(1) of this section and is admissible in the manner described in this division and division (C) of this section. If a deposition that is videotaped under this division is admitted as evidence at the proceeding, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (C) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(C)(1) At any proceeding in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (B) and (C) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act for one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act.

(E) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a juvenile judge may order the testimony of a mentally retarded or developmentally disabled victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the mentally retarded or developmentally disabled victim to testify despite judicial requests to do so;

(2) The inability of the mentally retarded or developmentally disabled victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying.

(G)(1) If a juvenile judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (B)(2) of this section or a proceeding under division (D) or (E) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding.

**Sec. 2311.14.** (A)(1) Whenever because of a hearing, speech, or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such person. Before appointing any interpreter under this division for a party or witness who is a mentally retarded person or developmentally disabled person, the court shall evaluate the qualifications of the interpreter and shall make a determination as to the ability of the interpreter to effectively interpret on behalf of the party or witness that the interpreter will assist, and the court may appoint the interpreter only if the court is satisfied that the interpreter is able to effectively interpret on behalf of that party or witness.

(2) This section is not limited to a person who speaks a language other than English. It also applies to the language and descriptions of any mentally retarded person or developmentally disabled person who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter. The interpreter may aid the parties in formulating methods of questioning the person with mental retardation or a developmental disability and in interpreting the answers of the person.

(B) Before entering upon his official duties, the interpreter shall take an oath that ~~he~~ the interpreter will make a true interpretation of the proceedings to the party or witness, and that ~~he~~ the interpreter will truly repeat the statements made by such party or witness to the court, to the best of his the interpreter's ability. If the interpreter is appointed to assist a mentally retarded person or developmentally disabled person as described in division (A)(2) of this section, the oath also shall include an oath that the interpreter will not prompt, lead, suggest, or otherwise improperly influence the testimony of the witness or party.

(C) The court shall determine a reasonable fee for all such interpreter service which shall be paid out of the same funds as witness fees.

(D) As used in this section, "mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

**Sec. 2903.341.** (A) As used in this section:

(1) "MR/DD caretaker" means any MR/DD employee or any person who assumes the duty to provide for the care and protection of a mentally retarded person or a developmentally

disabled person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "MR/DD caretaker" includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. "MR/DD caretaker" does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to persons with mental retardation or a developmental disability.

(2) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(3) "MR/DD employee" has the same meaning as in section 5123.50 of the Revised Code.

(B) No MR/DD caretaker shall create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person. An MR/DD caretaker does not create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person under this division when the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded person or developmentally disabled person by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(C) No person who owns, operates, or administers a care facility or who is an agent of a care facility shall condone, or knowingly permit, any conduct by an MR/DD caretaker who is employed by or under the control of the owner, operator, administrator, or agent that is in violation of division (B) of this section and that involves a mentally retarded person or a developmentally disabled person who is under the care of the owner, operator, administrator, or agent. A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered endangered under this division for that reason alone.

(D)(1) It is an affirmative defense to a charge of a violation of division (B) or (C) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:

(a) The person has supervisory authority over the actor.

(b) The person has authority over the actor's conduct pursuant to a contract for the provision of services.

(2) It is an affirmative defense to a charge of a violation of division (C) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved mentally retarded person or a developmentally disabled person or that the admission, discharge, and transfer rule set forth in the Administrative Code is being followed.

(3) It is an affirmative defense to a charge of a violation of division (C) of this section that the actor did not have readily available a means to prevent either the harm to the person with mental retardation or a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.

(E)(1) Except as provided in division (E)(2) or (E)(3) of this section, whoever violates division (B) or (C) of this section is guilty of patient endangerment, a misdemeanor of the first degree.

(2) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section, patient endangerment is a felony of the fourth degree.

(3) If the violation results in serious physical harm to the person with mental retardation or a developmental disability, patient endangerment is a felony of the third degree.

**Sec. 2930.03.** (A) A person or entity required or authorized under this chapter to give notice to a victim shall give the notice to the victim by any means reasonably calculated to provide prompt actual notice. Except when a provision requires that notice is to be given in a specific manner, a notice may be oral or written.

(B) Except for receipt of the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code, a victim who wishes to receive any notice authorized by this chapter shall make a request for the notice to the prosecutor or the custodial agency that is to provide the notice, as specified in this chapter. If the victim does not make a request as described in this division, the prosecutor or custodial agency is not required to provide any notice described in this chapter other than the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code.

(C) A person or agency that is required to furnish notice under this chapter shall give the notice to the victim at the address or telephone number provided to the person or agency by the victim. A victim who requests to receive notice under this chapter as described in division (B) of this section shall inform the person or agency of the name, address, or telephone number of the victim and of any change to that information.

(D) A person or agency that has furnished information to a victim in accordance with any requirement or authorization under this chapter shall notify the victim promptly of any significant changes to that information.

(E) Divisions (A) to (D) of this section do not apply regarding a notice that a prosecutor is required to provide under section 2930.061 of the Revised Code. A prosecutor required to provide notice under that section shall provide the notice as specified in that section.

**Sec. 2930.061.** (A) If a person is charged in a complaint, indictment, or information with any crime or specified delinquent act or with any other violation of law, and if the case involves a victim that the prosecutor in the case knows is a mentally retarded person or a developmentally disabled person, in addition to any other notices required under this chapter or under any other provision of law, the prosecutor in the case shall send written notice of the charges to the department of mental retardation and developmental disabilities. The written notice shall specifically identify the person so charged.

(B) As used in this section, "mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

**Sec. 2945.482.** (A) As used in this section:

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(2) "Mentally retarded or developmentally disabled victim" includes a mentally retarded or developmentally disabled person who was a victim of a violation identified in division (B)(1) of this section or an offense of violence or against whom was directed any conduct that

constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an offense of violence.

(B)(1) In any proceeding in the prosecution of a charge of a violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge shall preside at the taking of the deposition and shall rule at the time on any objections of the prosecution or the attorney for the defense. The prosecution and the attorney for the defense shall have the right, as at trial, to full examination and cross-examination of the mentally retarded or developmentally disabled victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the court in which the action is pending and is admissible in the manner described in division (C) of this section.

If a deposition of a mentally retarded or developmentally disabled victim taken under this division is admitted as evidence at the proceeding under division (C) of this section, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the mentally retarded or developmentally disabled victim be taken because new evidence material to the defense has been discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division.

(2) If the prosecution requests that a deposition to be taken under division (B)(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the mentally retarded or developmentally disabled victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to operate the equipment to be used, one person chosen by the mentally retarded or developmentally disabled victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the mentally retarded or developmentally disabled victim giving the deposition. The person chosen by the mentally retarded or developmentally disabled victim shall not be a witness in the proceeding and, both

before and during the deposition, shall not discuss the testimony of the mentally retarded or developmentally disabled victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the mentally retarded or developmentally disabled victim giving the deposition during the deposition.

The defendant shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the deposition, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the deposition shall be provided with a monitor on which the victim can observe, during the testimony, the defendant. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken. If the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (B)(1) of this section and is admissible in the manner described in this division and division (C) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (C) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the defendant are afforded an opportunity to view the recording before it is shown in the proceeding.

(C)(1) At any proceeding in a prosecution in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply:

(a) The defendant had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (B) and (C) of this section are in addition to any other provisions of the Revised Code, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a criminal proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

(D) In any proceeding in the prosecution of any charge of a violation listed in division (B)(1) of this section or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the jury, if applicable, the defendant, and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this section, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant for one or more of the reasons set forth in division (F) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The defendant shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, during the testimony, the defendant.

(E) In any proceeding in the prosecution of any charge of a violation listed in division (B)(1) of this section or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled victim, the prosecution may file

a motion with the judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (F) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The defendant shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim who is giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the victim can observe, during the testimony, the defendant. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a judge may order the testimony of a mentally retarded or developmentally disabled victim to be taken outside the room in which the proceeding is being conducted if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in the physical presence of the defendant due to one or more of the following:

- (1) The persistent refusal of the mentally retarded or developmentally disabled victim to testify despite judicial requests to do so;
- (2) The inability of the mentally retarded or developmentally disabled victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;
- (3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying.

(G)(1) If a judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order.

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding.

Sec. 2945.491. (A) As used in this section:

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(2) "Mentally retarded or developmentally disabled victim" includes a mentally retarded or developmentally disabled person who was a victim of a felony violation identified in division (B)(1) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B)(1) of this section or a felony offense of violence.

(B)(1) At a trial on a charge of a felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the mentally retarded or developmentally disabled victim as evidence at the trial, in lieu of the mentally retarded or developmentally disabled victim appearing as a witness and testifying at trial, if all of the following apply:

(a) The videotape of the testimony was made at the preliminary hearing at which probable cause of the violation charged was found.

(b) The videotape of the testimony was made in accordance with division (C) of section 2937.11 of the Revised Code.

(c) The testimony in the videotape is not excluded by the hearsay rule and otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801, the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803, the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule, or both of the following apply:

(i) The accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the mentally retarded or developmentally disabled victim by direct, cross, or redirect examination.

(ii) The court determines that there is reasonable cause to believe that if the mentally retarded or developmentally disabled victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the victim's participation at the trial.

(2) If a mentally retarded or developmentally disabled victim of an alleged felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an alleged felony offense of violence testifies at the preliminary hearing in the case, if the testimony of the mentally retarded or developmentally disabled victim at the preliminary hearing was videotaped

pursuant to division (C) of section 2937.11 of the Revised Code, and if the defendant in the case files a written objection to the use, pursuant to division (B)(1) of this section, of the videotaped testimony at the trial, the court, immediately after the filing of the objection, shall hold a hearing to determine whether the videotaped testimony of the mentally retarded or developmentally disabled victim should be admissible at trial under division (B)(1) of this section and, if it is admissible, whether the mentally retarded or developmentally disabled victim should be required to provide limited additional testimony of the type described in this division. At the hearing held pursuant to this division, the defendant and the prosecutor in the case may present any evidence that is relevant to the issues to be determined at the hearing, but the mentally retarded or developmentally disabled victim shall not be required to testify at the hearing.

After the hearing, the court shall not require the mentally retarded or developmentally disabled victim to testify at the trial, unless it determines that both of the following apply:

(a) That the testimony of the mentally retarded or developmentally disabled victim at trial is necessary for one or more of the following reasons:

(i) Evidence that was not available at the time of the testimony of the mentally retarded or developmentally disabled victim at the preliminary hearing has been discovered.

(ii) The circumstances surrounding the case have changed sufficiently to necessitate that the mentally retarded or developmentally disabled victim testify at the trial.

(b) That the testimony of the mentally retarded or developmentally disabled victim at the trial is necessary to protect the right of the defendant to a fair trial.

The court shall enter its finding and the reasons for it in the journal. If the court requires the mentally retarded or developmentally disabled victim to testify at the trial, the testimony of the victim shall be limited to the new evidence and changed circumstances, and the mentally retarded or developmentally disabled victim shall not otherwise be required to testify at the trial. The required testimony of the mentally retarded or developmentally disabled victim may be given in person or, upon motion of the prosecution, may be taken by deposition in accordance with division (B) of section 2945.482 of the Revised Code provided the deposition is admitted as evidence under division (C) of that section, may be taken outside of the courtroom and televised into the courtroom in accordance with division (D) of that section, or may be taken outside of the courtroom and recorded for showing in the courtroom in accordance with division (E) of that section.

(3) If videotaped testimony of a mentally retarded or developmentally disabled victim is admitted at trial in accordance with division (B)(1) of this section, the mentally retarded or developmentally disabled victim shall not be compelled in any way to appear as a witness at the trial, except as provided in division (B)(2) of this section.

(C) An order issued pursuant to division (B) of this section shall specifically identify the mentally retarded or developmentally disabled victim concerning whose testimony it pertains. The order shall apply only during the testimony of the mentally retarded or developmentally disabled victim it specifically identifies.

Sec. 5120.173. Any person who is required to report suspected abuse or neglect of a child under eighteen years of age pursuant to division (A) of section 2151.421 of the Revised Code, and any person who is permitted to report or cause a report to be made of suspected abuse or neglect of a child under eighteen years of age pursuant to division (B) of that section, any person who is required to report suspected abuse or neglect of a person with mental

retardation or a developmental disability pursuant to division (C) of section 5123.61 of the Revised Code, and any person who is permitted to report suspected abuse or neglect of a person with mental retardation or a developmental disability pursuant to division (F) of that section and who makes or causes the report to be made, shall direct that report to the state highway patrol if the child or the person with mental retardation or a developmental disability is an inmate in the custody of a state correctional institution. If the state highway patrol determines after receipt of the report that it is probable that abuse or neglect of the inmate occurred, the patrol shall report its findings to the department of rehabilitation and correction, to the court that sentenced the inmate for the offense for which the inmate is in the custody of the department, and to the chairman and vice-chairman of the correctional institution inspection committee established by section 103.71 of the Revised Code.

**Sec. 5123.032.** (A) As used in this section, "developmental center" means any institution or facility of the department of mental retardation and developmental disabilities that, on or after the effective date of this section, is named, designated, or referred to as a developmental center.

(B) Notwithstanding any other provision of law, on and after the effective date of this section, any closure of a developmental center shall be subject to, and in accordance with, this section. Notwithstanding any other provision of law, if the governor announced on or after January 1, 2003, and prior to the effective date of this section the intended closure of a developmental center and if the closure identified in the announcement has not occurred prior to the effective date of this section, the closure identified in the announcement shall be subject to the criteria set forth in this section as if the announcement had been made on or after the effective date of this section, except for the time at which the notice to the general assembly must be provided as identified in division (C) of this section.

(C) Notwithstanding any other provision of law, on and after the effective date of this section, at least ten days prior to making any official, public announcement that the governor intends to close one or more developmental centers, the governor shall notify the general assembly in writing that the governor intends to close one or more developmental centers. Notwithstanding any other provision of law, if the governor announced on or after January 1, 2003, and prior to the effective date of this section the intended closure of a developmental center and if the closure identified in the announcement has not occurred prior to the effective date of this section, not later than ten days after the effective date of this section, the governor shall notify the general assembly in writing of the prior announcement and that the governor intends to close the center identified in the prior announcement, and the notification to the general assembly shall constitute, for purposes of this section, the governor's official, public announcement that the governor intends to close that center.

The notice required by this division shall identify by name each developmental center that the governor intends to close or, if the governor has not determined any specific developmental center to close, shall state the governor's general intent to close one or more developmental centers. When the governor notifies the general assembly as required by this division, the legislative service commission promptly shall conduct an independent study of the developmental centers of the department of mental retardation and developmental disabilities and of the department's operation of the centers, and the study shall address relevant criteria and factors, including, but not limited to, all of the following:

(1) The manner in which the closure of developmental centers in general would affect the safety, health, well-being, and lifestyle of the centers' residents and their family members and would affect public safety and, if the governor's notice identifies by name one or more developmental centers that the governor intends to close, the manner in which the closure of

each center so identified would affect the safety, health, well-being, and lifestyle of the center's residents and their family members and would affect public safety;

(2) The availability of alternate facilities;

(3) The cost effectiveness of the facilities identified for closure;

(4) A comparison of the cost of residing at a facility identified for closure and the cost of new living arrangements;

(5) The geographic factors associated with each facility and its proximity to other similar facilities;

(6) The impact of collective bargaining on facility operations;

(7) The utilization and maximization of resources;

(8) Continuity of the staff and ability to serve the facility population;

(9) Continuing costs following closure of a facility;

(10) The impact of the closure on the local economy;

(11) Alternatives and opportunities for consolidation with other facilities;

(12) How the closing of a facility identified for closure relates to the department's plans for the future of developmental centers in this state;

(13) The effect of the closure of developmental centers in general upon the state's fiscal resources and fiscal status and, if the governor's notice identifies by name one or more developmental centers that the governor intends to close, the effect of the closure of each center so identified upon the state's fiscal resources and fiscal status.

(D) The legislative service commission shall complete the study required by division (C) of this section, and prepare a report that contains its findings, not later than sixty days after the governor makes the official, public announcement that the governor intends to close one or more developmental centers as described in division (C) of this section. The commission shall provide a copy of the report to each member of the general assembly who requests a copy of the report.

Not later than the date on which the legislative service commission is required to complete the report under this division, the mental retardation and developmental disabilities developmental center closure commission is hereby created as described in division (E) of this section. The officials with the duties to appoint members of the closure commission, as described in division (E) of this section, shall appoint the specified members of the closure commission, and, as soon as possible after the appointments, the closure commission shall meet for the purposes described in that division. Upon completion of the report and the creation of the closure commission under this division, the legislative service commission promptly shall provide a copy of the report to the closure commission and shall present the report as described in division (E) of this section.

(E)(1) A mental retardation and developmental disabilities developmental center closure commission shall be created at the time and in the manner specified in division (D) of this section. The closure commission consists of six members. One member shall be the director of the department of mental retardation and developmental disabilities. One member shall be

the director of the department of health. One member shall be a private executive with expertise in facility utilization, in economics, or in both facility utilization and economics, jointly appointed by the speaker of the house of representatives and the president of the senate. The member appointed for expertise in facility utilization, economics, or both may not be a member of the general assembly and may not have a developmental center identified for closure by the governor in the county in which the member resides. One member shall be a member of the board of the Ohio civil service employees' association, jointly appointed by the speaker of the house of representatives and the president of the senate. One member shall be either a family member of a resident of a developmental center or a representative of a mental retardation and developmental disabilities advocacy group, jointly appointed by the speaker of the house of representatives and the president of the senate. The member appointed who is a family member of a developmental center resident or a representative of an advocacy group may not be a member of the general assembly. One member shall be a member of the law enforcement community, appointed by the governor. The officials with the duties to appoint members of the closure commission shall make the appointments, and the closure commission shall meet, within the time periods specified in division (D) of this section. The members of the closure commission shall serve without compensation. At the closure commission's first meeting, the members shall organize and appoint a chairperson and vice-chairperson.

The closure commission shall meet as often as is necessary for the purpose of making the recommendations to the governor that are described in this division. The closure commission's meetings shall be open to the public, and the closure commission shall accept public testimony. The legislative service commission shall appear before the closure commission and present the report the legislative service commission prepared under division (D) of this section. The closure commission shall meet for the purpose of making recommendations to the governor, which recommendations may include all of the following:

(a) Whether any developmental center should be closed;

(b) If the recommendation described in division (E)(1)(a) of this section is that one or more developmental centers should be closed, which center or centers should be closed;

(c) If the governor's notice described in division (C) of this section identifies by name one or more developmental centers that the governor intends to close, whether the center or centers so identified should be closed.

(2) The mental retardation and developmental disabilities developmental center closure commission, not later than sixty days after it receives the report of the legislative service commission under division (D) of this section, shall prepare a report containing its recommendations to the governor. The closure commission shall send a copy of the report to the governor and to each member of the general assembly who requests a copy of the report. Upon receipt of the closure commission's report, the governor shall review and consider the commission's recommendation. The governor shall do one of the following:

(a) Follow the recommendation of the commission;

(b) Close no developmental center;

(c) Take other action that the governor determines is necessary for the purpose of expenditure reductions or budget cuts and state the reasons for the action.

The governor's decision is final. Upon the governor's making of the decision, the closure commission shall cease to exist. Another closure commission shall be created under this

section each time the governor subsequently makes an official, public announcement that the governor intends to close one or more developmental centers.

**Sec. 5123.081.** (A) As used in this section:

(1) "Applicant" means a person who is under final consideration for appointment to or employment with the department of mental retardation and developmental disabilities, including, but not limited to, a person who is being transferred to the department and an employee who is being recalled or reemployed after a layoff.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(3) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(B) The director of mental retardation and developmental disabilities shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to each applicant, except that the director is not required to request a criminal records check for an employee of the department who is being considered for a different position or is returning after a leave of absence or seasonal break in employment, as long as the director has no reason to believe that the employee has committed any of the offenses listed or described in division (E) of this section.

If the applicant does not present proof that the applicant has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested, the director shall request that the superintendent of the bureau obtain information from the federal bureau of investigation as a part of the criminal records check for the applicant. If the applicant presents proof that the applicant has been a resident of this state for that five-year period, the director may request that the superintendent of the bureau include information from the federal bureau of investigation in the criminal records check. For purposes of this division, an applicant may provide proof of residency in this state by presenting, with a notarized statement asserting that the applicant has been a resident of this state for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the director considers acceptable.

(C) The director shall provide to each applicant a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, provide to each applicant a standard impression sheet to obtain fingerprint impressions prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code, obtain the completed form and impression sheet from each applicant, and forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation at the time the criminal records check is requested.

Any applicant who receives pursuant to this division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a copy of an impression sheet prescribed pursuant to division (C)(2) of that section and who is requested to complete the form and provide a set of fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the material with the impressions of the applicant's fingerprints. If an applicant, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the applicant's fingerprints, the director shall not employ the applicant.

(D) The director may request any other state or federal agency to supply the director with a written report regarding the criminal record of each applicant. With regard to an applicant who becomes a department employee, if the employee holds an occupational or professional license or other credentials, the director may request that the state or federal agency that regulates the employee's occupation or profession supply the director with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials.

(E) Except as provided in division (K)(2) of this section and in rules adopted by the director in accordance with division (M) of this section, the director shall not employ a person to fill a position with the department who has been convicted of or pleaded guilty to any of the following:

(1) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, ~~2903.341~~, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation occurred prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(2) A felony contained in the Revised Code that is not listed in this division, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;

(3) Any offense contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the department;

(4) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in division (E)(1), (2), or (3) of this section.

(F) Prior to employing an applicant, the director shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this section. The director also shall require the applicant to sign an agreement under which the applicant agrees to notify the director within fourteen calendar days if, while employed with the department, the applicant is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in division (E) of this section. The agreement shall inform the applicant that failure to report formal charges, a conviction, or a guilty plea may result in being dismissed from employment.

(G) The director shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check requested and conducted pursuant to this section.

(H)(1) Any report obtained pursuant to this section is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person, other than the applicant who is the subject of the records check or criminal records check or the applicant's representative, the department or its representative, a county board of mental retardation and developmental disabilities, and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant or the denial, suspension, or revocation of a certificate or evidence of registration under section 5123.082 of the Revised Code.

(2) An individual for whom the director has obtained reports under this section may submit a written request to the director to have copies of the reports sent to any state agency, entity of local government, or private entity. The individual shall specify in the request the agencies or entities to which the copies are to be sent. On receiving the request, the director shall send copies of the reports to the agencies or entities specified.

The director may request that a state agency, entity of local government, or private entity send copies to the director of any report regarding a records check or criminal records check that the agency or entity possesses, if the director obtains the written consent of the individual who is the subject of the report.

(I) The director shall request the registrar of motor vehicles to supply the director with a certified abstract regarding the record of convictions for violations of motor vehicle laws of each applicant who will be required by the applicant's employment to transport individuals with mental retardation or a developmental disability or to operate the department's vehicles for any other purpose. For each abstract provided under this section, the director shall pay the amount specified in section 4509.05 of the Revised Code.

(J) The director shall provide each applicant with a copy of any report or abstract obtained about the applicant under this section.

(K)(1) The director shall inform each person, at the time of the person's initial application for employment, that the person is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed in accordance with section 109.572 of the Revised Code if the person comes under final consideration for employment as a precondition to employment in a position.

(2) The director may employ an applicant pending receipt of reports requested under this section. The director shall terminate employment of any such applicant if it is determined from the reports that the applicant failed to inform the director that the applicant had been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this section.

(L) The director may charge an applicant a fee for costs the director incurs in obtaining reports, abstracts, or fingerprint impressions under this section. A fee charged under this division shall not exceed the amount of the fees the director pays under divisions (G) and (I) of this section. If a fee is charged under this division, the director shall notify the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the director will not consider the applicant for employment.

(M) The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section, including rules specifying circumstances under which the director may employ a person who has been convicted of or pleaded guilty to an offense listed or

described in division (E) of this section but who meets standards in regard to rehabilitation set by the director.

**Sec. 5123.50.** As used in this section and sections 5123.51 and, 5123.52, and 5123.541 of the Revised Code:

(A) "Abuse" means all of the following:

- (1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;
- (2) Sexual abuse;
- (3) Verbal abuse.

(B) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including violations of Chapter 2911. or 2913. of the Revised Code.

(C) "MR/DD employee" means all of the following:

- (1) An employee of the department of mental retardation and developmental disabilities;
- (2) An employee of a county board of mental retardation and developmental disabilities;
- (3) An employee in a position that includes providing specialized services to an individual with mental retardation or a another developmental disability.

(D) "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services that are necessary to maintain the health and safety of the individual.

(E) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.

(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, ~~as those terms are defined in section 2907.01 of the Revised Code.~~

(G) "Specialized services" means any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by the department of mental retardation and developmental disabilities. A program or service available to the general public is not a specialized service.

(H) "Verbal abuse" means purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual.

(I) "Sexual conduct," "sexual contact," and "spouse" have the same meanings as in section 2907.01 of the Revised Code.

**Sec. 5123.51.** (A) In addition to any other action required by sections 5123.61 and 5126.31 of the Revised Code, the department of mental retardation and developmental disabilities shall review each report the department receives of abuse or neglect of an individual with mental retardation or a developmental disability or misappropriation of an individual's property that includes an allegation that an MR/DD employee committed or was responsible for the abuse, neglect, or misappropriation. The department shall review a report it receives from a public

children services agency only after the agency completes its investigation pursuant to section 2151.421 of the Revised Code. On receipt of a notice under section 2930.061 or 5123.541 of the Revised Code, the department shall review the notice.

(B) The department shall do both of the following:

(1) Investigate the allegation or adopt the findings of an investigation or review of the allegation conducted by another person or government entity and determine whether there is a reasonable basis for the allegation;

(2) If the department determines that there is a reasonable basis for the allegation, conduct an adjudication pursuant to Chapter 119. of the Revised Code.

(C)(1) The department shall appoint an independent hearing officer to conduct any hearing conducted pursuant to division (B)(2) of this section, except that, if the hearing is regarding an employee of the department who is represented by a union, the department and a representative of the union shall jointly select the hearing officer.

(2) ~~No (a)~~ Except as provided in division (C)(2)(b) of this section, no hearing shall be conducted under division (B)(2) of this section until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded.

(b) The department may conduct a hearing pursuant to division (B)(2) of this section before a criminal proceeding concerning the same allegation is concluded if both of the following are the case:

(i) The department notifies the prosecutor responsible for the criminal proceeding that the department proposes to conduct a hearing.

(ii) The prosecutor consents to the hearing.

(3) In conducting a hearing pursuant to division (B)(2) of this section, the hearing officer shall do ~~both~~ all of the following:

(a) Determine whether there is clear and convincing evidence that the MR/DD employee has done any of the following:

(i) ~~Misappropriated the property of an individual~~ one or more individuals with mental retardation or a developmental disability that has a value, either separately or taken together, of one hundred dollars or more;

(ii) Misappropriated property of an individual with mental retardation or a developmental disability that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine, or cash dispensing machine;

~~(iii)~~ (iii) Knowingly abused or neglected such an individual;

~~(iv)~~ (iv) Recklessly abused or neglected such an individual, with resulting physical harm;

~~(v)~~ (v) Negligently abused or neglected such an individual, with resulting serious physical harm;

(vi) Recklessly neglected such an individual, creating a substantial risk of serious physical harm;

(vii) Engaged in sexual conduct or had sexual contact with an individual with mental retardation or another developmental disability who was not the MR/DD employee's spouse and for whom the MR/DD employee was employed or under a contract to provide care;

(viii) Unreasonably failed to make a report pursuant to division (C) of section 5123.61 of the Revised Code when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual with mental retardation or a developmental disability.

(b) Give weight to the decision in any collective bargaining arbitration regarding the same allegation;

(c) Give weight to any relevant facts presented at the hearing.

~~(D)(1) Unless the director of mental retardation and developmental disabilities determines that there are extenuating circumstances and except as provided in divisions (D)(4) and division (E) of this section, the director shall include in the registry established under section 5123.52 of the Revised Code the name of an MR/DD employee if the director, after considering all of the factors listed in division (C)(3) of this section, finds that there is clear and convincing evidence that the an MR/DD employee has done one or more of the things described in division (C)(3)(a) of this section the director shall include the name of the employee in the registry established under section 5123.52 of the Revised Code.~~

(2) Extenuating circumstances the director must consider include the use of physical force by an MR/DD employee that was necessary as self-defense.

(3) If the director includes an MR/DD employee in the registry established under section 5123.52 of the Revised Code, the director shall notify the employee, the person or government entity that employs or contracts with the employee, the individual with mental retardation or a developmental disability who was the subject of the report and that individual's legal guardian, if any, the attorney general, and the prosecuting attorney or other law enforcement agency. If the MR/DD employee holds a license, certificate, registration, or other authorization to engage in a profession issued pursuant to Title XLVII of the Revised Code, the director shall notify the appropriate agency, board, department, or other entity responsible for regulating the employee's professional practice.

~~(4) The director shall not include in the registry an individual who has been found not guilty by a court or jury of an offense arising from the same facts. If an individual whose name appears on the registry is involved in a court proceeding or arbitration arising from the same facts as the allegation resulting in the individual's placement on the registry, the disposition of the proceeding or arbitration shall be noted in the registry next to the individual's name.~~

(E) In the case of an allegation concerning an employee of the department, after the hearing conducted pursuant to division (B)(2) of this section, the director of health or that director's designee shall review the decision of the hearing officer to determine whether the standard described in division (C)(2)(3) of this section has been met. If the director or designee determines that the standard has been met and that no extenuating circumstances exist, the director or designee shall notify the director of mental retardation and developmental disabilities that the MR/DD employee is to be included in the registry established under section 5123.52 of the Revised Code. If the director of mental retardation and developmental disabilities receives such notification, the director shall include the MR/DD employee in the registry, ~~unless division (D)(4) of this section applies;~~ and shall provide the notification described in division (D)(3) of this section.

(F) If the department is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and the MR/DD employee subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the department is not required to hold a hearing.

(G) Files and records of investigations conducted pursuant to this section are not public records as defined in section 149.43 of the Revised Code, but, on request, the department shall provide copies of those files and records to the attorney general, a prosecuting attorney, or a law enforcement agency.

Sec. 5123.541. (A) No MR/DD employee shall engage in any sexual conduct or have any sexual contact with an individual with mental retardation or another developmental disability for whom the MR/DD employee is employed or under a contract to provide care unless the individual is the MR/DD employee's spouse.

(B) Any MR/DD employee who violates division (A) of this section shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by MR/DD employees established under section 5123.52 of the Revised Code, in addition to any other sanction or penalty authorized or required by law.

(C)(1) Any person listed in division (C)(2) of section 5123.61 of the Revised Code who has reason to believe that an MR/DD employee has violated division (A) of this section shall immediately report that belief to the department of mental retardation and developmental disabilities.

(2) Any person who has reason to believe that an MR/DD employee has violated division (A) of this section may report that belief to the department of mental retardation and developmental disabilities.

Sec. 5123.542. (A) Each of the following shall annually provide a written notice to each of its MR/DD employees explaining the conduct for which an MR/DD employee may be included in the registry established under section 5123.52 of the Revised Code:

(1) The department of mental retardation and developmental disabilities;

(2) Each county board of mental retardation and developmental disabilities;

(3) Each contracting entity, as defined in section 5126.281 of the Revised Code;

(4) Each owner, operator, or administrator of a residential facility, as defined in section 5123.19 of the Revised Code;

(5) Each owner, operator, or administrator of a program certified by the department to provide supported living.

(B) The notice described in division (A) of this section shall be in a form and provided in a manner prescribed by the department of mental retardation and developmental disabilities. The form shall be the same for all persons and entities required to provide notice under division (A) of this section.

(C) The fact that an MR/DD employee does not receive the notice required by this section does not exempt the employee from inclusion in the registry established under section 5123.52 of the Revised Code.

Sec. 5123.61. (A) As used in this section:

(1) "Law enforcement agency" means the state highway patrol, the police department of a municipal corporation, or a county sheriff.

(2) "Abuse" has the same meaning as in section 5123.50 of the Revised Code, except that it includes a misappropriation, as defined in that section.

(3) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.

(B) The department of mental retardation and developmental disabilities shall establish a registry office for the purpose of maintaining reports of abuse, neglect, and other major unusual incidents made to the department under this section and reports received from county boards of mental retardation and developmental disabilities under section 5126.31 of the Revised Code. The department shall establish committees to review reports of abuse, neglect, and other major unusual incidents.

(C)(1) Any person listed in division (C)(2) of this section, having reason to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, shall immediately report or cause reports to be made of such information to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or to the county board of mental retardation and developmental disabilities, ~~except that if~~. If the report concerns a resident of a facility operated by the department of mental retardation and developmental disabilities the report shall be made either to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of mental retardation and developmental disabilities, the report immediately shall be made to the department and to the county board.

(2) All of the following persons are required to make a report under division (C)(1) of this section:

(a) Any physician, including a hospital intern or resident, any dentist, podiatrist, chiropractor, practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code, hospital administrator or employee of a hospital, nurse licensed under Chapter 4723. of the Revised Code, employee of an ambulatory health facility as defined in section 5101.61 of the Revised Code, employee of a home health agency, employee of an adult care facility licensed under Chapter 3722. of the Revised Code, or employee of a community mental health facility;

(b) Any school teacher or school authority, social worker, psychologist, attorney, peace officer, coroner, ~~clergyman~~; or residents' rights advocate as defined in section 3721.10 of the Revised Code;

(c) A superintendent, board member, or employee of a county board of mental retardation and developmental disabilities; an administrator, board member, or employee of a residential facility licensed under section 5123.19 of the Revised Code; an administrator, board member, or employee of any other public or private provider of services to a person with mental retardation or a developmental disability, or any MR/DD employee, as defined in section 5123.50 of the Revised Code;

(d) A member of a citizen's advisory council established at an institution or branch institution of the department of mental retardation and developmental disabilities under section 5123.092 of the Revised Code;

(e) A clergyman who is employed in a position that includes providing specialized services to an individual with mental retardation or another developmental disability, while acting in an official or professional capacity in that position, or a person who is employed in a position that includes providing specialized services to an individual with mental retardation or another developmental disability and who, while acting in an official or professional capacity, renders spiritual treatment through prayer in accordance with the tenets of an organized religion.

(3)(a) The reporting requirements of this division do not apply to members of the legal rights service commission or to employees of the legal rights service.

(b) An attorney or physician is not required to make a report pursuant to division (C)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client or patient is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to that communication and the attorney or physician shall make a report pursuant to division (C)(1) of this section, if both of the following apply:

(i) The client or patient, at the time of the communication, is a person with mental retardation or a developmental disability.

(ii) The attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(4) Any person who fails to make a report required under division (C) of this section and who is an MR/DD employee, as defined in section 5123.50 of the Revised Code, shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by MR/DD employees established under section 5123.52 of the Revised Code.

(D) The reports required under division (C) of this section shall be made forthwith by telephone or in person and shall be followed by a written report. The reports shall contain the following:

(1) The names and addresses of the person with mental retardation or a developmental disability and the person's custodian, if known;

(2) The age of the person with mental retardation or a developmental disability;

(3) Any other information that would assist in the investigation of the report.

(E) When a physician performing services as a member of the staff of a hospital or similar institution has reason to believe that a person with mental retardation or a developmental disability has suffered injury, abuse, or physical neglect, the physician shall notify the person in charge of the institution or that person's designated delegate, who shall make the necessary reports.

(F) Any person having reasonable cause to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering abuse or neglect may report the belief, or cause a report to be made, of that belief to the entity specified in this

division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or the county board of mental retardation and developmental disabilities, or, if the person is a resident of a facility operated by the department of mental retardation and developmental disabilities, the report shall be made to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of mental retardation and developmental disabilities, the report immediately shall be made to the department and to the county board.

(G)(1) Upon the receipt of a report concerning the possible abuse or neglect of a person with mental retardation or a developmental disability, the law enforcement agency shall inform the county board of mental retardation and developmental disabilities or, if the person is a resident of a facility operated by the department of mental retardation and developmental disabilities, the director of the department or the director's designee.

(2) On receipt of a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the department of mental retardation and developmental disabilities shall notify the law enforcement agency.

(3) When a county board of mental retardation and developmental disabilities receives a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the superintendent of the board or an individual the superintendent designates under division (H) of this section shall notify the law enforcement agency. The superintendent or individual shall notify the department of mental retardation and developmental disabilities when it receives any report under this section.

(4) When a county board of mental retardation and developmental disabilities receives a report under this section and believes that the degree of risk to the person is such that the report is an emergency, the superintendent of the board or an employee of the board the superintendent designates shall attempt a face-to-face contact with the person with mental retardation or a developmental disability who allegedly is the victim within one hour of the board's receipt of the report.

(H) The superintendent of the board may designate an individual to be responsible for notifying the law enforcement agency and the department when the county board receives a report under this section.

(I) An adult with mental retardation or a developmental disability about whom a report is made may be removed from the adult's place of residence only by law enforcement officers who consider that the adult's immediate removal is essential to protect the adult from further injury or abuse or in accordance with the order of a court made pursuant to section 5126.33 of the Revised Code.

(J) A law enforcement agency shall investigate each report of abuse or neglect it receives under this section. In addition, the department, in cooperation with law enforcement officials, shall investigate each report regarding a resident of a facility operated by the department to determine the circumstances surrounding the injury, the cause of the injury, and the person responsible. The investigation shall be in accordance with the memorandum of understanding prepared under section 5126.058 of the Revised Code. The department shall determine, with the registry office which shall be maintained by the department, whether prior reports have been made concerning ~~and~~ an adult with mental retardation or a developmental disability or other principals in the case. If the department finds that the report involves action or inaction that may constitute a crime under federal law or the law of this state, it shall submit a report of

its investigation, in writing, to the law enforcement agency. If the person with mental retardation or a developmental disability is an adult, with the consent of the adult, the department shall provide such protective services as are necessary to protect the adult. The law enforcement agency shall make a written report of its findings to the department.

If the person is an adult and is not a resident of a facility operated by the department, the county board of mental retardation and developmental disabilities shall review the report of abuse or neglect in accordance with sections 5126.30 to 5126.33 of the Revised Code and the law enforcement agency shall make the written report of its findings to the county board.

(K) Any person or any hospital, institution, school, health department, or agency participating in the making of reports pursuant to this section, any person participating as a witness in an administrative or judicial proceeding resulting from the reports, or any person or governmental entity that discharges responsibilities under sections 5126.31 to 5126.33 of the Revised Code shall be immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of such actions except liability for perjury, unless the person or governmental entity has acted in bad faith or with malicious purpose.

(L) No employer or any person with the authority to do so shall discharge, demote, transfer, prepare a negative work performance evaluation, reduce pay or benefits, terminate work privileges, or take any other action detrimental to an employee or retaliate against an employee as a result of the employee's having made a report under this section. This division does not preclude an employer or person with authority from taking action with regard to an employee who has made a report under this section if there is another reasonable basis for the action.

(M) Reports made under this section are not public records as defined in section 149.43 of the Revised Code. Information contained in the reports on request shall be made available to the person who is the subject of the report, to the person's legal counsel, and to agencies authorized to receive information in the report by the department or by a county board of mental retardation and developmental disabilities.

(N) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding the injuries or physical neglect of a person with mental retardation or a developmental disability or the cause thereof in any judicial proceeding resulting from a report submitted pursuant to this section.

Sec. 5123.614. (A) Subject to division (B) of this section, on receipt of a report of a major unusual incident made pursuant to section 5123.61 or 5126.31 of the Revised Code or rules adopted under section 5123.612 of the Revised Code, the department of mental retardation and developmental disabilities may do either of the following:

(1) Conduct an independent review or investigation of the incident;

(2) Request that an independent review or investigation of the incident be conducted by a county board of mental retardation and developmental disabilities that is not implicated in the report, a regional council of government, or any other entity authorized to conduct such investigations.

(B) If a report described in division (A) of this section concerning the health or safety of a person with mental retardation or a developmental disability involves an allegation that an employee of a county board of mental retardation and developmental disabilities has created a substantial risk of serious physical harm to a person with mental retardation or a developmental disability, the department shall do one of the following:

(1) Conduct an independent investigation regarding the incident;

(2) Request that an independent review or investigation of the incident be conducted by a county board of mental retardation and developmental disabilities that is not implicated in the report, a regional council of government, or any other entity authorized to conduct such investigations.

**Sec. 5123.99.** (A) Whoever violates section 5123.20 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (C), (E), or (G)(3) of section 5123.61 of the Revised Code ~~shall be fined not more than five hundred dollars~~ is guilty of a misdemeanor of the fourth degree or, if the abuse or neglect constitutes a felony, a misdemeanor of the second degree. In addition to any other sanction or penalty authorized or required by law, if a person who is convicted of or pleads guilty to a violation of division (C), (E), or (G)(3) of section 5123.61 of the Revised Code is an MR/DD employee, as defined in section 5123.50 of the Revised Code, the offender shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by MR/DD employees established under section 5123.52 of the Revised Code.

(C) Whoever violates division (A) of section 5123.604 of the Revised Code is guilty of a misdemeanor of the second degree.

(D) Whoever violates division (B) of section 5123.604 of the Revised Code shall be fined not more than one thousand dollars. Each violation constitutes a separate offense.

**Sec. 5126.058.** (A) Each county board of mental retardation and developmental disabilities shall prepare a memorandum of understanding that is developed by all of the following and that is signed by the persons identified in divisions (A)(3) to (8) of this section:

(1) If there is only one probate judge in the county, the probate judge of the county or the probate judge's representative;

(2) If there is more than one probate judge in the county, a probate judge or the probate judge's representative selected by the probate judges or, if they are unable to do so for any reason, the probate judge who is senior in point of service or the senior probate judge's representative;

(3) The county peace officer;

(4) All chief municipal peace officers within the county;

(5) Other law enforcement officers handling abuse, neglect, and exploitation of mentally retarded and developmentally disabled persons in the county;

(6) The prosecuting attorney of the county;

(7) The public children services agency;

(8) The coroner of the county.

(B) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and sections 313.12, 2151.421, 2903.16, 5126.31, and 5126.33 of the Revised Code and shall have as its primary goal the elimination of all unnecessary interviews of

persons who are the subject of reports made pursuant to this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charge or complaint arising from any reported case of abuse, neglect, or exploitation or the suppression of any evidence obtained as a result of any reported abuse, neglect, or exploitation and does not give any rights or grounds for appeal or post-conviction relief to any person.

(C) A memorandum of understanding shall include, but is not limited to, all of the following:

(1) The roles and responsibilities for handling emergency and nonemergency cases of abuse, neglect, or exploitation;

(2) The roles and responsibilities for handling and coordinating investigations of reported cases of abuse, neglect, or exploitation and methods to be used in interviewing the person who is the subject of the report and who allegedly was abused, neglected, or exploited;

(3) The roles and responsibilities for addressing the categories of persons who may interview the person who is the subject of the report and who allegedly was abused, neglected, or exploited;

(4) The roles and responsibilities for providing victim services to mentally retarded and developmentally disabled persons pursuant to Chapter 2930, of the Revised Code;

(5) The roles and responsibilities for the filing of criminal charges against persons alleged to have abused, neglected, or exploited mentally retarded or developmentally disabled persons.

(D) A memorandum of understanding may be signed by victim advocates, municipal court judges, municipal prosecutors, and any other person whose participation furthers the goals of a memorandum of understanding, as set forth in this section.

**Sec. 5126.28.** (A) As used in this section:

(1) "Applicant" means a person who is under final consideration for appointment or employment in a position with a county board of mental retardation and developmental disabilities, including, but not limited to, a person who is being transferred to the county board and an employee who is being recalled or reemployed after a layoff.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(3) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(B) The superintendent of a county board of mental retardation and developmental disabilities shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to any applicant who has applied to the board for employment in any position, except that a county board superintendent is not required to request a criminal records check for an employee of the board who is being considered for a different position or is returning after a leave of absence or seasonal break in employment, as long as the superintendent has no reason to believe that the employee has committed any of the offenses listed or described in division (E) of this section.

If the applicant does not present proof that the applicant has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested, the county board superintendent shall request that the superintendent of the bureau

obtain information from the federal bureau of investigation as a part of the criminal records check for the applicant. If the applicant presents proof that the applicant has been a resident of this state for that five-year period, the county board superintendent may request that the superintendent of the bureau include information from the federal bureau of investigation in the criminal records check. For purposes of this division, an applicant may provide proof of residency in this state by presenting, with a notarized statement asserting that the applicant has been a resident of this state for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the superintendent considers acceptable.

(C) The county board superintendent shall provide to each applicant a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, provide to each applicant a standard impression sheet to obtain fingerprint impressions prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code, obtain the completed form and impression sheet from each applicant, and forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation at the time the criminal records check is requested.

Any applicant who receives pursuant to this division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a copy of an impression sheet prescribed pursuant to division (C)(2) of that section and who is requested to complete the form and provide a set of fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the impression sheet with the impressions of the applicant's fingerprints. If an applicant, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the applicant's fingerprints, the county board superintendent shall not employ that applicant.

(D) A county board superintendent may request any other state or federal agency to supply the board with a written report regarding the criminal record of each applicant. With regard to an applicant who becomes a board employee, if the employee holds an occupational or professional license or other credentials, the superintendent may request that the state or federal agency that regulates the employee's occupation or profession supply the board with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials.

(E) Except as provided in division (K)(2) of this section and in rules adopted by the department of mental retardation and developmental disabilities in accordance with division (M) of this section, no county board of mental retardation and developmental disabilities shall employ a person to fill a position with the board who has been convicted of or pleaded guilty to any of the following:

(1) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2903.341, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation occurred prior to that date, a violation of section 2925.11 of the

Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(2) A felony contained in the Revised Code that is not listed in this division, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;

(3) Any offense contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the county board;

(4) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in division (E)(1), (2), or (3) of this section.

(F) Prior to employing an applicant, the county board superintendent shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this section. The superintendent also shall require the applicant to sign an agreement under which the applicant agrees to notify the superintendent within fourteen calendar days if, while employed by the board, the applicant is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in division (E) of this section. The agreement shall inform the applicant that failure to report formal charges, a conviction, or a guilty plea may result in being dismissed from employment.

(G) A county board of mental retardation and developmental disabilities shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check requested and conducted pursuant to this section.

(H)(1) Any report obtained pursuant to this section is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person, other than the applicant who is the subject of the records check or criminal records check or the applicant's representative, the board requesting the records check or criminal records check or its representative, the department of mental retardation and developmental disabilities, and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant or the denial, suspension, or revocation of a certificate or evidence of registration under section 5126.25 of the Revised Code.

(2) An individual for whom a county board superintendent has obtained reports under this section may submit a written request to the county board to have copies of the reports sent to any state agency, entity of local government, or private entity. The individual shall specify in the request the agencies or entities to which the copies are to be sent. On receiving the request, the county board shall send copies of the reports to the agencies or entities specified.

A county board may request that a state agency, entity of local government, or private entity send copies to the board of any report regarding a records check or criminal records check that the agency or entity possesses, if the county board obtains the written consent of the individual who is the subject of the report.

(I) Each county board superintendent shall request the registrar of motor vehicles to supply the superintendent with a certified abstract regarding the record of convictions for violations of motor vehicle laws of each applicant who will be required by the applicant's employment

to transport individuals with mental retardation or developmental disabilities or to operate the board's vehicles for any other purpose. For each abstract provided under this section, the board shall pay the amount specified in section 4509.05 of the Revised Code.

(J) The county board superintendent shall provide each applicant with a copy of any report or abstract obtained about the applicant under this section. At the request of the director of mental retardation and developmental disabilities, the superintendent also shall provide the director with a copy of a report or abstract obtained under this section.

(K)(1) The county board superintendent shall inform each person, at the time of the person's initial application for employment, that the person is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed in accordance with section 109.572 of the Revised Code if the person comes under final consideration for appointment or employment as a precondition to employment in a position.

(2) A board may employ an applicant pending receipt of reports requested under this section. The board shall terminate employment of any such applicant if it is determined from the reports that the applicant failed to inform the county board that the applicant had been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this section.

(L) The board may charge an applicant a fee for costs it incurs in obtaining reports, abstracts, or fingerprint impressions under this section. A fee charged under this division shall not exceed the amount of the fees the board pays under divisions (G) and (I) of this section. If a fee is charged under this division, the board shall notify the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the board will not consider the applicant for employment.

(M) The department of mental retardation and developmental disabilities shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this section and section 5126.281 of the Revised Code, including rules specifying circumstances under which a county board or contracting entity may hire a person who has been convicted of or pleaded guilty to an offense listed or described in division (E) of this section but who meets standards in regard to rehabilitation set by the department. The rules may not authorize a county board or contracting entity to hire an individual who is included in the registry established under section 5123.52 of the Revised Code.

**Sec. 5126.30.** As used in sections 5126.30 to 5126.34 of the Revised Code:

(A) "Adult" means a person eighteen years of age or older with mental retardation or a developmental disability.

(B) "Caretaker" means a person who is responsible for the care of an adult by order of a court, including an order of guardianship, or who assumes the responsibility for the care of an adult as a volunteer, as a family member, by contract, or by the acceptance of payment for care.

(C) "Abuse" has the same meaning as in section 5123.50 of the Revised Code, except that it includes a misappropriation, as defined in that section.

(D) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.

(E) "Exploitation" means the unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain, including misappropriation, as defined in section 5123.50 of the Revised Code, of an adult's resources.

(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday, except when that day is a holiday as defined in section 1.14 of the Revised Code.

~~(F)~~(G) "Incapacitated" means lacking understanding or capacity, with or without the assistance of a caretaker, to make and carry out decisions regarding food, clothing, shelter, health care, or other necessities, but does not include mere refusal to consent to the provision of services.

(H) "Emergency protective services" means protective services furnished to a person with mental retardation or a developmental disability to prevent immediate physical harm.

(I) "Protective services" means services provided by the county board of mental retardation and developmental disabilities to an adult with mental retardation or a developmental disability for the prevention, correction, or discontinuance of an act of as well as conditions resulting from abuse, neglect, or exploitation.

(J) "Protective service plan" means an individualized plan developed by the county board of mental retardation and developmental disabilities to prevent the further abuse, neglect, or exploitation of an adult with mental retardation or a developmental disability.

(K) "Substantial risk" has the same meaning as in section 2901.01 of the Revised Code.

(L) "Party" means all of the following:

(1) An adult who is the subject of a probate proceeding under sections 5126.30 to 5126.33 of the Revised Code;

(2) A caretaker, unless otherwise ordered by the probate court;

(3) Any other person designated as a party by the probate court including but not limited to, the adult's spouse, custodian, guardian, or parent.

(M) "Board" has the same meaning as in section 5126.02 of the Revised Code.

**Sec. 5126.33.** (A) A county board of mental retardation and developmental disabilities may file a complaint with the probate court of the county in which an adult with mental retardation or a developmental disability resides for an order authorizing the board to arrange services described in division (C) of section 5126.31 of the Revised Code for that adult if the adult is eligible to receive services or support under section 5126.041 of the Revised Code and the board has been unable to secure consent. The complaint shall include:

(1) The name, age, and address of the adult;

(2) Facts describing the nature of the abuse ~~or~~, neglect, or exploitation and supporting the board's belief that services are needed;

(3) The types of services proposed by the board, as set forth in the individualized protective service plan prepared pursuant to described in division (J) of section 5126.31 5126.30 of the Revised Code and filed with the complaint;

(4) Facts showing the board's attempts to obtain the consent of the adult or the adult's guardian to the services.

(B) The board shall give the adult notice of the filing of the complaint and in simple and clear language shall inform the adult of the adult's rights in the hearing under division (C) of this section and explain the consequences of a court order. This notice shall be personally served upon ~~the adult~~ all parties, and also shall be given to ~~the adult's caretaker~~, the adult's legal counsel, if any, and the legal rights service. The notice shall be given at least twenty-four hours prior to the hearing, although the court may waive this requirement upon a showing that there is a substantial risk that the adult will suffer immediate physical harm in the twenty-four hour period and that the board has made reasonable attempts to give the notice required by this division.

(C) Upon the filing of a complaint for an order under this section, the court shall hold a hearing at least twenty-four hours and no later than seventy-two hours after the notice under division (B) of this section has been given unless the court has waived the notice. ~~The adult~~ All parties shall have the right to be present at the hearing, present evidence, and examine and cross-examine witnesses. The Ohio Rules of Evidence shall apply to a hearing conducted pursuant to this division. The adult shall be represented by counsel unless the court finds that the adult has made a voluntary, informed, and knowing waiver of the right to counsel. If the adult is indigent, the court shall appoint counsel to represent the adult. The board shall be represented by the county prosecutor or an attorney designated by the board.

(D)(1) The court shall issue an order authorizing the board to arrange the protective services if it finds, on the basis of clear and convincing evidence, all of the following:

(a) The adult has been abused ~~or~~, neglected, or exploited;

(b) The adult is incapacitated;

(c) There is a substantial risk to the adult of immediate physical harm or death;

(d) The adult is in need of the services;

(e) No person authorized by law or court order to give consent for the adult is available or willing to consent to the services.

(2) The board shall develop a detailed protective service plan describing the services that the board will provide, or arrange for the provision of, to the adult to prevent further abuse, neglect, or exploitation. The board shall submit the plan to the court for approval. The protective service plan may be changed only by court order.

(3) In formulating the order, the court shall consider the individual protective service plan and shall specifically designate the services that are necessary to deal with the abuse ~~or~~, neglect, or exploitation or condition resulting from abuse ~~or~~, neglect, or exploitation and that are available locally, and authorize the board to arrange for these services only. The court shall limit the provision of these services to a period not exceeding ~~fourteen days~~ six months, renewable for an additional ~~fourteen-day~~ six-month period on a showing by the board that continuation of the order is necessary.

(E) If the court finds that all other options for meeting the adult's needs have been exhausted, it may order that the adult be removed from the adult's place of residence and placed in another residential setting. Before issuing that order, the court shall consider the adult's choice of residence and shall determine that the new residential setting is the least restrictive alternative available for meeting the adult's needs and is a place where the adult can obtain the necessary requirements for daily living in safety. The court shall not order an adult to a

hospital or public hospital as defined in section 5122.01 or a state institution as defined in section 5123.01 of the Revised Code.

(F) The court shall not authorize a change in an adult's placement ordered under division (E) of this section unless it finds compelling reasons to justify a change. The parties to whom notice was given in division (B) of this section shall be given notice of a proposed change at least five working days prior to the change.

(G) The adult, the board, or any other person who received notice of the petition may file a motion for modification of the court order at any time.

(H) The county board shall pay court costs incurred in proceedings brought pursuant to this section. The adult shall not be required to pay for court-ordered services.

(I)(1) After the filing of a complaint for an order under this section, the court, prior to the final disposition, may enter any temporary order that the court finds necessary to protect the adult with mental retardation or a developmental disability from abuse, neglect, or exploitation including, but not limited to, the following:

(a) A temporary protection order;

(b) An order requiring the evaluation of the adult;

(c) An order requiring a party to vacate the adult's place of residence or legal settlement, provided that, subject to division (K)(1)(d) of this section, no operator of a residential facility licensed by the department may be removed under this division;

(d) In the circumstances described in, and in accordance with the procedures set forth in, section 5123.191 of the Revised Code, an order of the type described in that section that appoints a receiver to take possession of and operate a residential facility licensed by the department.

(2) The court may grant an ex parte order pursuant to this division on its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it if it appears to the court that the best interest and the welfare of the adult require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an ex parte order, to the extent possible, shall give notice of its intent or of the request to all parties, the adult's legal counsel, if any, and the legal rights service. If the court issues an ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court shall give written notice of the hearing to all parties to the action.

Sec. 5126.331. (A) A probate court, through a probate judge or magistrate, may issue by telephone an ex parte emergency order authorizing any of the actions described in division (B) of this section if all of the following are the case:

(1) The court receives notice from the county board of mental retardation and developmental disabilities, or an authorized employee of the board, that the board or employee believes an emergency order is needed as described in this section.

(2) The adult who is the subject of the notice is eligible to receive services or support under section 5126.041 of the Revised Code.

(3) There is reasonable cause to believe that the adult is incapacitated.

(4) There is reasonable cause to believe that there is a substantial risk to the adult of immediate physical harm or death.

(B) An order issued under this section may authorize the county board of mental retardation and developmental disabilities to do any of the following:

(1) Provide, or arrange for the provision of, emergency protective services for the adult;

(2) Remove the adult from the adult's place of residence or legal settlement;

(3) Remove the adult from the place where the abuse, neglect, or exploitation occurred.

(C) A court shall not issue an order under this section to remove an adult from a place described in division (B)(2) or (3) of this section until the court is satisfied that reasonable efforts have been made to notify the adult and any person with whom the adult resides of the proposed removal and the reasons for it, except that, the court may issue an order prior to giving the notice if one of the following is the case:

(1) Notification could jeopardize the physical or emotional safety of the adult.

(2) The notification could result in the adult being removed from the court's jurisdiction.

(D) An order issued under this section shall be in effect for not longer than twenty-four hours, except that if the day following the day on which the order is issued is a weekend-day or legal holiday, the order shall remain in effect until the next business day.

(E)(1) Except as provided in division (E)(2) of this section, not later than twenty-four hours after an order is issued under this section, the county board or employee that provided notice to the probate court shall file a complaint with the court in accordance with division (A) of section 5126.33 of the Revised Code.

(2) If the day following the day on which the order was issued is a weekend-day or a holiday, the county board or employee shall file the complaint with the probate court on the next business day.

(3) Except as provided in section 5126.332 of the Revised Code, proceedings on the complaint filed pursuant to this division shall be conducted in accordance with section 5126.33 of the Revised Code.

Sec. 5126.332. (A) If an order is issued pursuant to section 5126.331 of the Revised Code, the court shall hold a hearing not later than twenty-four hours after the issuance to determine whether there is probable cause for the order, except that if the day following the day on which the order is issued is a weekend-day or legal holiday, the court shall hold the hearing on the next business day.

(B) At the hearing, the court:

(1) Shall consider the adult's choice of residence and determine whether protective services are the least restrictive alternative available for meeting the adult's needs;

(2) May issue temporary orders to protect the adult from immediate physical harm, including, but not limited to, temporary protection orders, evaluations, and orders requiring a party to vacate the adult's place of residence or legal settlement;

(3) May order emergency protective services.

(C) A temporary order issued pursuant to division (B)(2) of this section is effective for thirty days. The court may renew the order for an additional thirty-day period.

Sec. 5126.333. Any person who has reason to believe that there is a substantial risk to an adult with mental retardation or a developmental disability of immediate physical harm or death and that the responsible county board of mental retardation and developmental disabilities has failed to seek an order pursuant to section 5126.33 or 5126.331 of the Revised Code may notify the department of mental retardation and developmental disabilities. Within twenty-four hours of receipt of such notice, the department shall cause an investigation to be conducted regarding the notice. The department shall provide assistance to the county board to provide for the health and safety of the adult as permitted by law.

**SECTION 2.** That existing sections 109.572, 313.12, 2108.50, 2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 of the Revised Code are hereby repealed.

**SECTION 3.** The Department of Mental Retardation and Developmental Disabilities shall adopt rules pursuant to Chapter 119. of the Revised Code that provide standards for the substantiation by the Department and by county boards of mental retardation of reports of abuse or neglect filed under section 5123.61 of the Revised Code.

**SECTION 4.** Section 2151.421 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 374, Sub. H.B. 510, and Am. Sub. S.B. 221 all of the 124th General Assembly. Section 5126.28 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 538 and Sub. S.B. 171 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

**SECTION 5.** This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that persons who are mentally retarded or developmentally disabled crucially need the protections this act affords against their victimization by criminal conduct, and the procedures this act provides regarding the investigation and prosecution of criminal conduct committed against them. Therefore, this act shall go into immediate effect.

**RULE 17 Parties Plaintiff and Defendant; Capacity**  
**RULES OF CIVIL PROCEDURE**  
**TITLE IV. PARTIES**

**RULE 17. Parties Plaintiff and Defendant; Capacity**

**(B) Minors or incompetent persons.**

Whenever a minor or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative the minor may sue by a next friend or defend by a guardian ad litem. When a minor or incompetent person is not otherwise represented in an action the court shall appoint a guardian ad litem or shall make such other order as it deems proper for the protection of such minor or incompetent person.

[Effective: July 1, 1970; amended effective July 1, 1975; July 1, 1985.]

**RULE 73 Probate Division of the Court of Common Pleas**  
**RULES OF CIVIL PROCEDURE**  
**TITLE IX. PROBATE, JUVENILE, AND DOMESTIC RELATIONS PROCEEDINGS**

**RULE 73. Probate Division of the Court of Common Pleas**

**(A) Applicability.**

These Rules of Civil Procedure shall apply to proceedings in the probate division of the court of common pleas as indicated in this rule. Additionally, all of the Rules of Civil Procedure, though not specifically mentioned in this rule, shall apply except to the extent that by their nature they would be clearly inapplicable.

**(B) Venue.**

Civ. R. 3(B) shall not apply to proceedings in the probate division of the court of common pleas, which shall be venued as provided by law. Proceedings under Chapters 2101. through 2131. of the Revised Code, which may be venued in the general division or the probate division of the court of common pleas, shall be venued in the probate division of the appropriate court of common pleas.

Proceedings that are improperly venued shall be transferred to a proper venue provided by law and division (B) of this rule, and the court may assess costs, including reasonable attorney fees, to the time of transfer against the party who commenced the action in an improper venue.

**(C) Service of summons.**

Civ. R. 4 through 4.6 shall apply in any proceeding in the probate division of the court of common pleas requiring service of summons.

**(D) Service and filing of pleadings and papers subsequent to original pleading.**

In proceedings requiring service of summons, Civ. R. 5 shall apply to the service and filing of pleadings and papers subsequent to the original pleading.

**(E) Service of notice.**

In any proceeding where any type of notice other than service of summons is required by law or deemed necessary by the court, and the statute providing for notice neither directs nor authorizes the court to direct the manner of its service, notice shall be given in writing and may be served by or on behalf of any interested party without court intervention by one of the following methods:

(1) By delivering a copy to the person to be served;

(2) By leaving a copy at the usual place of residence of the person to be served;

(3) By certified or express mail, addressed to the person to be served at the person's usual place of residence with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered, provided that the certified or express mail envelope is not returned with an endorsement showing failure of delivery;

(4) By ordinary mail after a certified or express mail envelope is returned with an endorsement showing that it was refused;

(5) By ordinary mail after a certified or express mail envelope is returned with an endorsement showing that it was unclaimed, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery;

(6) By publication once each week for three consecutive weeks in some newspaper of general circulation in the county when the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained; provided that before publication may be utilized, the person giving notice shall file an affidavit which states that the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained;

(7) By other method as the court may direct.

Civ. R. 4.2 shall apply in determining who may be served and how particular persons or entities must be served.

**(F) Proof of service of notice; when service of notice complete.**

When service is made through the court, proof of service of notice shall be in the same manner as proof of service of summons.

When service is made without court intervention, proof of service of notice shall be made by affidavit. When service is made by certified or express mail, the certified or express mail return receipt which shows delivery shall be attached to the affidavit. When service is made by ordinary mail, the prior returned certified or express mail envelope which shows that the mail was refused or unclaimed shall be attached to the affidavit.

Service of notice by ordinary mail shall be complete when the fact of mailing is entered of record except as stated in division (E)(5) of this rule. Service by publication shall be complete at the date of the last publication.

**(G) Waiver of service of notice.**

Civ. R. 4(D) shall apply in determining who may waive service of notice.

**(H) Forms used in probate practice.**

Forms used in proceedings in the probate division of the courts of common pleas shall be those prescribed in the rule applicable to standard probate forms in the Rules of Superintendence. Forms not prescribed in such rule may be used as permitted in that rule.

Blank forms reproduced for use in probate practice for any filing to which the rule applicable to specifications for printing probate forms of the Rules of Superintendence applies shall conform to the specifications set forth in that rule.

No pleading, application, acknowledgment, certification, account, report, statement, allegation, or other matter filed in the probate division of the courts of common pleas shall be required to be executed under oath, and it is sufficient if it is made upon the signature alone of the person making it.

**(I) Notice of Filing of Judgments.**

Civ. R. 58(B) shall apply to all judgments entered in the probate division of the court of common pleas in any action or proceeding in which any party other than a plaintiff, applicant, or movant has filed a responsive pleading or exceptions. Notice of the judgment shall be given to each plaintiff, applicant, or movant, to each party filing a responsive pleading or exceptions, and to other parties as the court directs.

**(J) Filing with the court defined.**

The filing of documents with the court, as required by these rules, shall be made by filing them with the probate judge as the ex officio clerk of the court. A court may provide, by local rules adopted pursuant to the Rules of Superintendence, for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(1) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(2) A provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(3) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1975; July 1, 1977; July 1, 1980; July 1, 1996; July 1, 1997; July 1, 2001.]

Staff Note (July 1, 1997 Amendment)

Rule 73 Probate division of the court of common pleas

Prior to the 1997 amendment, service of process under this rule was permitted only by certified mail. It appears that service of process by express mail, i.e. as that sort of mail is

delivered by the United States Postal Service, can always be obtained return receipt requested, and thus could accomplish the purpose of notification equally well as certified mail. Therefore, the amendment provides for this additional option for service.

Division (H) was amended to delete the specific reference to Rule 16 of the Rules of Superintendence for Courts of Common Pleas, and instead a generic reference is made to the applicable rule. This amendment was made because the rules of superintendence were being revised and renumbered in 1997, and the rule number that will apply to probate forms was not known at the time of this amendment.

Other amendments to this rule are nonsubstantive grammatical or stylistic changes.

Staff Note (July 1, 1996 Amendment)

Rule 73(I), Notice of Filing of Judgments

In 1989, Civ. R. 58 was amended to, among other things, make clear that a clerk of courts shall serve signed judgments upon parties. After that amendment, there apparently has been some confusion as to the effect of that amendment upon probate proceedings. The amendment to division (I) makes clear that Civ. R. 58(B) does apply to probate proceedings, in the manner indicated.

**5123:2 Community Services**  
**Chapter 5123:2-3 Licensing of Residential Facilities**

**5123:2-3-13 Individual records.**

(A) Purpose

The purpose of this rule is to ensure the confidentiality of individual information and to establish standards to ensure that records of the individual are readily accessible for implementation of services and supports and for department review during surveys.

(B) Confidentiality of records

All information contained in an individual's record shall be considered privileged and confidential. Records shall be maintained in accordance with state and federal regulations in such a manner to ensure their confidentiality and protect them from unauthorized disclosure of information.

(C) Records at the residential facility

Records for the current calendar year and the previous twelve months shall be maintained at the residential facility for each individual and shall be made available for review by licensure and other representatives of the department. These records shall include, but not be limited to, the following:

- (1) A current photograph of the individual.
- (2) Legal status of the individual.
- (3) Records of accidents, injuries, seizures, major unusual incidents, and unusual incidents and the treatment or first aid measure administered for each. Information pertaining to abuse/neglect investigations and other confidential information may be maintained at a location other than the residential facility, but shall be provided to licensure for review at the facility upon request.
- (4) All medical and dental examinations and the most recent immunization records as appropriate to age.
- (5) Medication and/or treatment records which shall indicate:
  - (a) The person who prescribed the medication and/or treatment; and
  - (b) The date, time, and person who administered the medication and/or treatment.
- (6) Individual plans.
- (7) Reconciliations of the individual's account transaction records as required in paragraph (J)(2)(i) of rule 5123:2-3-14 of the Administrative Code.
- (8) A signed authorization to seek medical treatment or documentation that attempts to seek such authorization were unsuccessful. The licensee shall provide evidence of an annual review of such authorization and, in cases where authorization was not able to be obtained, evidence that attempts to obtain authorization were made on at least an annual basis.
- (9) If not in the individual's plan, evidence of consents for the participation in services including, but not limited to, medical treatments, behavior support plans, and the use of

psychotropic medications.

(D) Retention of records

Records for each individual shall be maintained by the licensee at an accessible location and such records shall be provided to licensure for review at the residential facility upon request. The licensee shall develop a records retention schedule for all records in accordance with applicable state and federal requirements. Records shall include, but not be limited to, the following:

- (1) Admission and referral records;
- (2) All medical and dental examinations, and immunization records as appropriate to age;
- (3) All medication and/or treatment records;
- (4) All service documentation and notations of progress;
- (5) All records of the individual's account transaction record as defined in rule 5123:2-3-14 of the Administrative Code;
- (6) Records of negotiable items owned by the individual which can be converted to cash or transferred such as bonds or promissory notes;
- (7) Investigative files resulting from major unusual incidents or unusual incidents;
- (8) Records of clothing and personal items; and
- (9) Discharge summaries which shall be prepared within seven days following the individual's discharge. The summary shall include the individual's progress during residence and new address of residence.
- (10) In the event of an individual's death, a discharge summary, which shall include the disposition of the individual's personal items, shall be completed within thirty days of the individual's death.

Replaces: 5123:2-3-13

Effective: 01/01/2006

R.C. 119.032 review dates: 01/01/2011

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**45 CFR 160.102 Applicability.**  
**TITLE 45--PUBLIC WELFARE**  
**PART 160--GENERAL ADMINISTRATIVE REQUIREMENTS**

**45 CFR 160.102 Applicability.**

SUBTITLE A--DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subpart A--General Provisions

(a) Except as otherwise provided, the standards, requirements, and implementation specifications adopted under this subchapter apply to the following entities:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

(b) To the extent required under the Social Security Act, 42 U.S.C. 1320a-7c(a)(5), nothing in this subchapter shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978, as amended (5 U.S.C. App.).

[65 FR 82798, Dec. 28, 2000, as amended at 67 FR 53266, Aug. 14, 2002]

**45 CFR 160.103 Definitions.**  
**TITLE 45--PUBLIC WELFARE**  
**PART 160--GENERAL ADMINISTRATIVE REQUIREMENTS**

**45 CFR 160.103 Definitions.**

SUBTITLE A--DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subpart A--General Provisions

Except as otherwise provided, the following definitions apply to this subchapter:

Act means the Social Security Act.

ANSI stands for the American National Standards Institute.

Business associate: (1) Except as provided in paragraph (2) of this definition, business associate means, with respect to a covered entity, a person who:

(i) On behalf of such covered entity or of an organized health care arrangement (as defined in § 164.501 of this subchapter) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of:

(A) A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice

management, and repricing; or

(B) Any other function or activity regulated by this subchapter; or

(ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in § 164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.

(2) A covered entity participating in an organized health care arrangement that performs a function or activity as described by paragraph (1)(i) of this definition for or on behalf of such organized health care arrangement, or that provides a service as described in paragraph (1)(ii) of this definition to or for such organized health care arrangement, does not, simply through the performance of such function or activity or the provision of such service, become a business associate of other covered entities participating in such organized health care arrangement.

(3) A covered entity may be a business associate of another covered entity.

CMS stands for Centers for Medicare & Medicaid Services within the Department of Health and Human Services.

Compliance date means the date by which a covered entity must comply with a standard, implementation specification, requirement, or modification adopted under this subchapter.

Covered entity means:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

Disclosure means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

EIN stands for the employer identification number assigned by the Internal Revenue Service, U.S. Department of the Treasury. The EIN is the taxpayer identifying number of an individual or other entity (whether or not an employer) assigned under one of the following:

(1) 26 U.S.C. 6011(b), which is the portion of the Internal Revenue Code dealing with identifying the taxpayer in tax returns and statements, or corresponding provisions of prior law.

(2) 26 U.S.C. 6109, which is the portion of the Internal Revenue Code dealing with identifying numbers in tax returns, statements, and other required documents.

Electronic media means:

(1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical

disk, or digital memory card; or

(2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

Electronic protected health information means information that comes within paragraphs (1)(i) or (1)(ii) of the definition of protected health information as specified in this section.

Employer is defined as it is in 26 U.S.C. 3401(d).

Group health plan (also see definition of health plan in this section) means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (ERISA), 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act (PHS Act), 42 U.S.C. 300gg-91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that:

(1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or

(2) Is administered by an entity other than the employer that established and maintains the plan.

HHS stands for the Department of Health and Human Services.

Health care means care, services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

Health care clearinghouse means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that does either of the following functions:

(1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.

(2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

Health care provider means a provider of services (as defined in section 1861(u) of the

Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

Health information means any information, whether oral or recorded in any form or medium, that:

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Health insurance issuer (as defined in section 2791(b)(2) of the PHS Act, 42 U.S.C. 300gg-91(b)(2) and used in the definition of health plan in this section) means an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance. Such term does not include a group health plan.

Health maintenance organization (HMO) (as defined in section 2791(b)(3) of the PHS Act, 42 U.S.C. 300gg-91(b)(3) and used in the definition of health plan in this section) means a federally qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such an HMO.

Health plan means an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)).

(1) Health plan includes the following, singly or in combination:

(i) A group health plan, as defined in this section.

(ii) A health insurance issuer, as defined in this section.

(iii) An HMO, as defined in this section.

(iv) Part A or Part B of the Medicare program under title XVIII of the Act.

(v) The Medicaid program under title XIX of the Act, 42 U.S.C. 1396, et seq.

(vi) An issuer of a Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss(g)(1)).

(vii) An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.

(viii) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(ix) The health care program for active military personnel under title 10 of the United States Code.

(x) The veterans health care program under 38 U.S.C. chapter 17.

(xi) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in 10 U.S.C. 1072(4)).

(xii) The Indian Health Service program under the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.

(xiii) The Federal Employees Health Benefits Program under 5 U.S.C. 8902, et seq.

(xiv) An approved State child health plan under title XXI of the Act, providing benefits for child health assistance that meet the requirements of section 2103 of the Act, 42 U.S.C. 1397, et seq.

(xv) The Medicare+Choice program under Part C of title XVIII of the Act, 42 U.S.C. 1395w-21 through 1395w-28.

(xvi) A high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals.

(xvii) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)).

(2) Health plan excludes:

(i) Any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the PHS Act, 42 U.S.C. 300gg-91(c)(1); and

(ii) A government-funded program (other than one listed in paragraph (1)(i)-(xvi) of this definition):

(A) Whose principal purpose is other than providing, or paying the cost of, health care; or

(B) Whose principal activity is:

(1) The direct provision of health care to persons; or

(2) The making of grants to fund the direct provision of health care to persons.

Implementation specification means specific requirements or instructions for implementing a standard.

Individual means the person who is the subject of protected health information.

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Modify or modification refers to a change adopted by the Secretary, through regulation, to a standard or an implementation specification.

Organized health care arrangement means:

(1) A clinically integrated care setting in which individuals typically receive health care from more than one health care provider;

(2) An organized system of health care in which more than one covered entity participates and in which the participating covered entities:

(i) Hold themselves out to the public as participating in a joint arrangement; and

(ii) Participate in joint activities that include at least one of the following:

(A) Utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;

(B) Quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or

(C) Payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk.

(3) A group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are or who have been participants or beneficiaries in such group health plan;

(4) A group health plan and one or more other group health plans each of which are maintained by the same plan sponsor; or

(5) The group health plans described in paragraph (4) of this definition and health insurance issuers or HMOs with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

Person means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

Protected health information means individually identifiable health information:

(1) Except as provided in paragraph (2) of this definition, that is:

(i) Transmitted by electronic media;

(ii) Maintained in electronic media; or

(iii) Transmitted or maintained in any other form or medium.

(2) Protected health information excludes individually identifiable health information in:

(i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;

(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

(iii) Employment records held by a covered entity in its role as employer.

Secretary means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.

Small health plan means a health plan with annual receipts of \$5 million or less.

Standard means a rule, condition, or requirement:

(1) Describing the following information for products, systems, services or practices:

(i) Classification of components.

(ii) Specification of materials, performance, or operations; or

(iii) Delineation of procedures; or

(2) With respect to the privacy of individually identifiable health information.

Standard setting organization (SSO) means an organization accredited by the American National Standards Institute that develops and maintains standards for information transactions or data elements, or any other standard that is necessary for, or will facilitate the implementation of, this part.

State refers to one of the following:

(1) For a health plan established or regulated by Federal law, State has the meaning set forth in the applicable section of the United States Code for such health plan.

(2) For all other purposes, State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

Trading partner agreement means an agreement related to the exchange of information in electronic transactions, whether the agreement is distinct or part of a larger agreement, between each party to the agreement. (For example, a trading partner agreement may specify, among other things, the duties and responsibilities of each party to the agreement in conducting a standard transaction.)

Transaction means the transmission of information between two parties to carry out financial or administrative activities related to health care. It includes the following types of information transmissions:

(1) Health care claims or equivalent encounter information.

(2) Health care payment and remittance advice.

(3) Coordination of benefits.

- (4) Health care claim status.
- (5) Enrollment and disenrollment in a health plan.
- (6) Eligibility for a health plan.
- (7) Health plan premium payments.
- (8) Referral certification and authorization.
- (9) First report of injury.
- (10) Health claims attachments.
- (11) Other transactions that the Secretary may prescribe by regulation.

Use means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

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