

AN ACT

To amend sections 109.57, 109.572, 2108.50, 2111.13, 5123.01, 5123.02, 5123.041, 5123.042, 5123.05, 5123.082, 5123.09, 5123.092, 5123.11, 5123.17, 5123.18, 5123.181, 5123.183, 5123.19, 5123.21, 5123.27, 5123.34, 5123.351, 5123.353, 5123.55, 5123.62, 5123.63, 5123.64, 5123.67, 5123.801, 5123.85, 5123.89, 5123.93, 5126.02, 5126.023, 5126.042, 5126.044, 5126.081, 5126.082, 5126.12, 5126.13, 5126.28, 5126.281, and 5126.357; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 5123.05 (5123.06) and 5123.183 (5123.051); to enact new sections 5123.05, 5123.081, and 5126.252 and sections 5123.611, 5123.612, 5123.613, 5126.311, and 5126.312; and to repeal sections 5123.081, 5123.16, 5123.231, and 5126.252 of the Revised Code to revise the law governing the Department of Mental Retardation and Developmental Disabilities and county boards of mental retardation and developmental disabilities and the law governing criminal records checks conducted by the Bureau of Criminal Identification and Investigation.

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

SECTION 1. That sections 109.57, 109.572, 2108.50, 2111.13, 5123.01, 5123.02, 5123.041, 5123.042, 5123.05, 5123.082, 5123.09, 5123.092, 5123.11, 5123.17, 5123.18, 5123.181, 5123.183, 5123.19, 5123.21, 5123.27, 5123.34, 5123.351, 5123.353, 5123.55, 5123.62, 5123.63, 5123.64, 5123.67, 5123.801, 5123.85, 5123.89, 5123.93, 5126.02, 5126.023, 5126.042, 5126.044, 5126.081, 5126.082, 5126.12, 5126.13, 5126.28, 5126.281, and 5126.357 be amended; sections 5123.05 (5123.06) and 5123.183 (5123.051)

be amended for the purpose of adopting new section numbers as indicated in parentheses; and new sections 5123.05, 5123.081, and 5126.252 and sections 5123.611, 5123.612, 5123.613, 5126.311, and 5126.312 of the Revised Code be enacted to read as follows:

Sec. 109.57. (A)(1) The superintendent of the bureau of criminal identification and investigation shall procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within this state a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor described in division (A)(1)(a) of section 109.572 of the Revised Code, of all children under eighteen years of age who have been adjudicated delinquent children for committing within this state an act that would be a felony or an offense of violence if committed by an adult or who have been convicted of or pleaded guilty to committing within this state a felony or an offense of violence, and of all well-known and habitual criminals. The person in charge of any county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor described in division (A)(1)(a) of section 109.572 of the Revised Code or having custody of a child under eighteen years of age with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult shall furnish such material to the superintendent of the bureau. Fingerprints, photographs, or other descriptive information of a child who is under eighteen years of age, has not been arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult, has not been adjudicated a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, has not been convicted of or pleaded guilty to committing a felony or an offense of violence, and is not a child with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult shall not be procured by the superintendent or furnished by any person in charge of any county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house,

alternative residential facility, or state correctional institution, except as authorized in section 2151.313 of the Revised Code.

(2) Every clerk of a court of record in this state, other than the supreme court or a court of appeals, shall send to the superintendent of the bureau a weekly report containing a summary of each case involving a felony, involving any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, involving a misdemeanor described in division (A)(1)(a) of section 109.572 of the Revised Code, or involving an adjudication in a case in which a child under eighteen years of age was alleged to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult. The clerk of the court of common pleas shall include in the report and summary the clerk sends under this division all information described in divisions (A)(2)(a) to (f) of this section regarding a case before the court of appeals that is served by that clerk. The summary shall be written on the standard forms furnished by the superintendent pursuant to division (B) of this section and shall include the following information:

(a) The incident tracking number contained on the standard forms furnished by the superintendent pursuant to division (B) of this section;

(b) The style and number of the case;

(c) The date of arrest;

(d) The date that the person was convicted of or pleaded guilty to the offense, adjudicated a delinquent child for committing the act that would be a felony or an offense of violence if committed by an adult, found not guilty of the offense, or found not to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, the date of an entry dismissing the charge, an entry declaring a mistrial of the offense in which the person is discharged, an entry finding that the person or child is not competent to stand trial, or an entry of a nolle prosequi, or the date of any other determination that constitutes final resolution of the case;

(e) A statement of the original charge with the section of the Revised Code that was alleged to be violated;

(f) If the person or child was convicted, pleaded guilty, or was adjudicated a delinquent child, the sentence or terms of probation imposed or any other disposition of the offender or the delinquent child.

If the offense involved the disarming of a law enforcement officer or an attempt to disarm a law enforcement officer, the clerk shall clearly state that fact in the summary, and the superintendent shall ensure that a clear statement of that fact is placed in the bureau's records.

(3) The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a charge of a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a misdemeanor described in division (A)(1)(a) of section 109.572 of the Revised Code and of all children under eighteen years of age arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult. The superintendent also shall file for record the fingerprint impressions of all persons confined in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution for the violation of state laws and of all children under eighteen years of age who are confined in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution or in any facility for delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, and any other information that the superintendent may receive from law enforcement officials of the state and its political subdivisions.

(4) The superintendent shall carry out Chapter 2950. of the Revised Code with respect to the registration of persons who are convicted of or plead guilty to a sexually oriented offense and with respect to all other duties imposed on the bureau under that chapter.

(B) The superintendent shall prepare and furnish to every county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution and to every clerk of a court in this state specified in division (A)(2) of this section standard forms for reporting the information required under division (A) of this section. The standard forms that the superintendent prepares pursuant to this division may be in a tangible format, in an electronic format, or in both tangible formats and electronic formats.

(C) The superintendent may operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals and to children under eighteen years of age who are adjudicated delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult,

criminal activity, crime prevention, law enforcement, and criminal justice, and may establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies. The superintendent may gather, store, retrieve, and disseminate information, data, and statistics that pertain to children who are under eighteen years of age and that are gathered pursuant to sections 109.57 to 109.61 of the Revised Code together with information, data, and statistics that pertain to adults and that are gathered pursuant to those sections.

(D) The information and materials furnished to the superintendent pursuant to division (A) of this section and information and materials furnished to any board or person under division (F) or (G) of this section are not public records under section 149.43 of the Revised Code.

(E) The attorney general shall adopt rules, in accordance with Chapter 119. of the Revised Code, setting forth the procedure by which a person may receive or release information gathered by the superintendent pursuant to division (A) of this section. A reasonable fee may be charged for this service. If a temporary employment service submits a request for a determination of whether a person the service plans to refer to an employment position has been convicted of or pleaded guilty to an offense listed in division (A)(1), (3), (4), or (5) of section 109.572 of the Revised Code, the request shall be treated as a single request and only one fee shall be charged.

(F)(1) As used in division (F)(2) of this section, "head start agency" means an entity in this state that has been approved to be an agency for purposes of subchapter II of the "Community Economic Development Act," 95 Stat. 489 (1981), 42 U.S.C.A. 9831, as amended.

(2)(a) In addition to or in conjunction with any request that is required to be made under section 109.572, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 5104.012, 5104.013, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code, the board of education of any school district; the director of mental retardation and developmental disabilities; any county board of mental retardation and developmental disabilities; any entity under contract with a county board of mental retardation and developmental disabilities; the chief administrator of any chartered nonpublic school; the chief administrator of any home health agency; the chief administrator of or person operating any child day-care center, type A family day-care home, or type B family day-care home licensed or certified under Chapter 5104. of the Revised Code; the administrator of any type C family day-care home certified pursuant to Section 1 of Sub. H.B. 62 of the 121st general assembly

or Section 5 of Am. Sub. S.B. 160 of the 121st general assembly; the chief administrator of any head start agency; or the executive director of a public children services agency may request that the superintendent of the bureau investigate and determine, with respect to any individual who has applied for employment in any position after October 2, 1989, or any individual wishing to apply for employment with a board of education may request, with regard to the individual, whether the bureau has any information gathered under division (A) of this section that pertains to that individual. On receipt of the request, the superintendent shall determine whether that information exists and, upon request of the person, board, or entity requesting information, also shall request from the federal bureau of investigation any criminal records it has pertaining to that individual. Within thirty days of the date that the superintendent receives a request, the superintendent shall send to the board, entity, or person a report of any information that the superintendent determines exists, including information contained in records that have been sealed under section 2953.32 of the Revised Code, and, within thirty days of its receipt, shall send the board, entity, or person a report of any information received from the federal bureau of investigation, other than information the dissemination of which is prohibited by federal law.

(b) When a board of education is required to receive information under this section as a prerequisite to employment of an individual pursuant to section 3319.39 of the Revised Code, it may accept a certified copy of records that were issued by the bureau of criminal identification and investigation and that are presented by an individual applying for employment with the district in lieu of requesting that information itself. In such a case, the board shall accept the certified copy issued by the bureau in order to make a photocopy of it for that individual's employment application documents and shall return the certified copy to the individual. In a case of that nature, a district only shall accept a certified copy of records of that nature within one year after the date of their issuance by the bureau.

(3) The state board of education may request, with respect to any individual who has applied for employment after October 2, 1989, in any position with the state board or the department of education, any information that a school district board of education is authorized to request under division (F)(2) of this section, and the superintendent of the bureau shall proceed as if the request has been received from a school district board of education under division (F)(2) of this section.

(4) When the superintendent of the bureau receives a request for information that is authorized under section 3319.291 of the Revised Code,

the superintendent shall proceed as if the request has been received from a school district board of education under division (F)(2) of this section.

(5) When a recipient of an OhioReads classroom or community reading grant paid under section 3301.86 or 3301.87 of the Revised Code or an entity approved by the OhioReads council requests, with respect to any individual who applies to participate in providing any program or service through an entity approved by the OhioReads council or funded in whole or in part by the grant, the information that a school district board of education is authorized to request under division (F)(2)(a) of this section, the superintendent of the bureau shall proceed as if the request has been received from a school district board of education under division (F)(2)(a) of this section.

(G) In addition to or in conjunction with any request that is required to be made under section 173.41, 3701.881, 3712.09, 3721.121, or 3722.151 of the Revised Code with respect to an individual who has applied for employment in a position that involves providing direct care to an older adult, the chief administrator of a PASSPORT agency that provides services through the PASSPORT program created under section 173.40 of the Revised Code, home health agency, hospice care program, home licensed under Chapter 3721. of the Revised Code, adult day-care program operated pursuant to rules adopted under section 3721.04 of the Revised Code, or adult care facility may request that the superintendent of the bureau investigate and determine, with respect to any individual who has applied after January 27, 1997, for employment in a position that does not involve providing direct care to an older adult, whether the bureau has any information gathered under division (A) of this section that pertains to that individual. On receipt of the request, the superintendent shall determine whether that information exists and, on request of the administrator requesting information, shall also request from the federal bureau of investigation any criminal records it has pertaining to that individual. Within thirty days of the date a request is received, the superintendent shall send to the administrator a report of any information determined to exist, including information contained in records that have been sealed under section 2953.32 of the Revised Code, and, within thirty days of its receipt, shall send the administrator a report of any information received from the federal bureau of investigation, other than information the dissemination of which is prohibited by federal law.

(H) Information obtained by a board, administrator, or other person under this section is confidential and shall not be released or disseminated.

(I) The superintendent may charge a reasonable fee for providing

information or criminal records under division (F)(2) or (G) of this section.

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 ~~in a position that involves providing service directly to individuals with mental retardation and developmental 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 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, 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 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)(5)(a) of this section.

(6) 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, 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.

(7) Not later than thirty days after the date the superintendent receives the request, completed form, and fingerprint impressions, the superintendent shall send the person ~~who~~, 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), or (5) of this section. The superintendent shall send the person ~~who~~, board, or entity that made the request a copy of the list of offenses specified in division (A)(1), (2), (3), (4), or (5) of this section. 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 (5) 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, 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, 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, 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, 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, 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), or (A)(5)(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) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

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

Sec. 2108.50. (A) 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 ~~him~~ the person or on ~~his~~ the person's behalf at ~~his~~ the person's express direction:

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

~~(B)~~(2) The decedent's spouse;

~~(C)~~(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:

~~(1)~~(a) Children;

~~(2)~~(b) Parents;

~~(3)~~(c) Brothers or sisters.

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

~~(E)~~(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 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. 2111.13. (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 ~~he~~ the ward is a minor, the guardian's duties are as follows:

(1) To protect and control the person of ~~his~~ the ward;

(2) To provide suitable maintenance for ~~his~~ 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 ~~his~~ 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 ~~him~~ 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 ~~his~~ 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) A guardian of the person of a ward who has died may consent to an autopsy or post-mortem examination upon the body of the deceased ward under section 2108.50 of the Revised Code and, if the deceased ward did not have a guardian of the estate and the estate is not required to be administered by a probate court, may authorize the burial or cremation of the deceased ward. A guardian who gives consent or authorization as described in this division shall notify the probate court as soon as possible after giving the consent or authorization.

Sec. 5123.01. As used in this chapter:

(A) "Chief medical officer" means the licensed physician appointed by

the managing officer of an institution for the mentally retarded with the approval of the director of mental retardation and developmental disabilities to provide medical treatment for residents of the institution.

(B) "Chief program director" means a person with special training and experience in the diagnosis and management of the mentally retarded, certified according to division (C) of this section in at least one of the designated fields, and appointed by the managing officer of an institution for the mentally retarded with the approval of the director to provide habilitation and care for residents of the institution.

(C) "Comprehensive evaluation" means a study, including a sequence of observations and examinations, of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions if any, by a group of persons with special training and experience in the diagnosis and management of ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability, which group shall include individuals who are professionally qualified in the fields of medicine, ~~education~~, psychology, and social work, together with such other specialists as the individual case may require.

(D) "Education" means the process of formal training and instruction to facilitate the intellectual and emotional development of residents.

(E) "Habilitation" means the process by which the staff of the institution assists the resident in acquiring and maintaining those life skills that enable the resident to cope more effectively with the demands of the resident's own person and of the resident's environment and in raising the level of the resident's physical, mental, social, and vocational efficiency. Habilitation includes but is not limited to programs of formal, structured education and training.

(F) "Health officer" means any public health physician, public health nurse, or other person authorized or designated by a city or general health district.

(G) "Indigent person" means a person who is unable, without substantial financial hardship, to provide for the payment of an attorney and for other necessary expenses of legal representation, including expert testimony.

(H) "Institution" means a public or private facility, or a part of a public or private facility, that is licensed by the appropriate state department and is equipped to provide residential habilitation, care, and treatment for the mentally retarded.

(I) "Licensed physician" means a person who holds a valid certificate issued under Chapter 4731. of the Revised Code authorizing the person to practice medicine and surgery or osteopathic medicine and surgery, or a

medical officer of the government of the United States while in the performance of the officer's official duties.

(J) "Managing officer" means a person who is appointed by the director of mental retardation and developmental disabilities to be in executive control of an institution for the mentally retarded under the jurisdiction of the department.

(K) "Mentally retarded person" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.

(L) "Mentally retarded person subject to institutionalization by court order" means a person eighteen years of age or older who is at least moderately mentally retarded and in relation to whom, because of the person's retardation, either of the following conditions exist:

(1) The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community;

(2) The person needs and is susceptible to significant habilitation in an institution.

(M) "A person who is at least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate degree and to be functioning at the moderate level of intellectual functioning in accordance with standard measurements as recorded in the most current revision of the manual of terminology and classification in mental retardation published by the American association on mental retardation.

(N) As used in this division, "substantial functional limitation," "developmental delay," and "established risk" have the meanings established pursuant to section 5123.011 of the Revised Code.

"Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code.

(2) It is manifested before age twenty-two.

(3) It is likely to continue indefinitely.

(4) It results in one of the following:

(a) In the case of a person under three years of age, at least one

developmental delay or an established risk;

(b) In the case of a person at least three years of age but under six years of age, at least two developmental delays or an established risk;

(c) In the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least sixteen years of age, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

(O) "Developmentally disabled person" means a person with a developmental disability.

(P) "State institution" means an institution that is tax-supported and under the jurisdiction of the department.

(Q) "Residence" and "legal residence" have the same meaning as "legal settlement," which is acquired by residing in Ohio for a period of one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, disability assistance under Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given. A person having a legal settlement in the state shall be considered as having legal settlement in the assistance area in which the person resides. No adult person coming into this state and having a spouse or minor children residing in another state shall obtain a legal settlement in this state as long as the spouse or minor children are receiving public assistance, care, or support at the expense of the other state or its subdivisions. For the purpose of determining the legal settlement of a person who is living in a public or private institution or in a home subject to licensing by the department of job and family services, the department of mental health, or the department of mental retardation and developmental disabilities, the residence of the person shall be considered as though the person were residing in the county in which the person was living prior to the person's entrance into the institution or home. Settlement once acquired shall continue until a person has been continuously absent from Ohio for a period of one year or has acquired a legal residence in another state. A woman who marries a man with legal settlement in any county immediately acquires the settlement of her husband. The legal settlement of a minor is that of the parents, surviving parent, sole parent, parent who is designated

e residential parent and legal custodian by a court, other adult having permanent custody awarded by a court, or guardian of the person of the minor, provided that:

(1) A minor female who marries shall be considered to have the legal settlement of her husband and, in the case of death of her husband or divorce, she shall not thereby lose her legal settlement obtained by the marriage.

(2) A minor male who marries, establishes a home, and who has resided in this state for one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, disability assistance under Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given shall be considered to have obtained a legal settlement in this state.

(3) The legal settlement of a child under eighteen years of age who is in the care or custody of a public or private child caring agency shall not change if the legal settlement of the parent changes until after the child has been in the home of the parent for a period of one year.

No person, adult or minor, may establish a legal settlement in this state for the purpose of gaining admission to any state institution.

(R)(1) "Resident" means, subject to division (R)(2) of this section, a person who is admitted either voluntarily or involuntarily to an institution or other facility pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a finding of not guilty by reason of insanity or incompetence to stand trial or under this chapter who is under observation or receiving habilitation and care in an institution.

(2) "Resident" does not include a person admitted to an institution or other facility under section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code to the extent that the reference in this chapter to resident, or the context in which the reference occurs, is in conflict with any provision of sections 2945.37 to 2945.402 of the Revised Code.

(S) "Respondent" means the person whose detention, commitment, or continued commitment is being sought in any proceeding under this chapter.

(T) "Working day" and "court day" mean Monday, Tuesday, Wednesday, Thursday, and Friday, except when such day is a legal holiday.

(U) "Prosecutor" means the prosecuting attorney, village solicitor, city director of law, or similar chief legal officer who prosecuted a criminal case in which a person was found not guilty by reason of insanity, who would have had the authority to prosecute a criminal case against a person if the person had not been found incompetent to stand trial, or who prosecuted a case in which a person was found guilty.

(V) "Court" means the probate division of the court of common pleas.

Sec. 5123.02. ~~(A)~~ The department of mental retardation and developmental disabilities shall do the following:

~~(1)~~(A) Promote comprehensive statewide programs and services for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability and their families wherever they reside in the state. These programs shall include public education, prevention, diagnosis, treatment, training, and care.

~~(2)~~(B) Provide administrative leadership for statewide services which include residential facilities, evaluation centers, and community classes which are wholly or in part financed by the department of mental retardation and developmental disabilities as provided by section 5123.26 of the Revised Code;

~~(3)~~(C) Develop and maintain, to the extent feasible, data on all services and programs for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability, that are provided by governmental and private agencies;

~~(4)~~(D) Make periodic determinations of the number of ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability requiring services in the state;

~~(5)~~(E) Provide leadership to local authorities in planning and developing community-wide services for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability and their families;

~~(6)~~(F) Promote programs of professional training and research in cooperation with other state departments, agencies, and institutions of higher learning.

~~(B)~~ The department may conduct audits of the services and programs that either receive funds through the department or are subject to regulation by the department. Audits shall be conducted in accordance with procedures prescribed by the department. Records created or received by the department in connection with an audit are not public records under section 149.43 of the Revised Code until a report of the audit is released by the department.

Sec. 5123.041. (A) As used in this section, "habilitation center" means a center certified under division (C) of this section for the provision of habilitation services.

(B) The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Specify standards ~~and procedures~~ for certification of habilitation

centers;

(2) Define habilitation services and programs, other than services provided by the department of education;

(3) Establish the fee that may be assessed under division (D) of this section;

(4) Specify how the department of mental retardation and developmental disabilities will implement and administer the habilitation services program.

(C) The director shall certify habilitation centers that meet the standards specified by rules adopted under this section.

(D) The department of mental retardation and developmental disabilities may assess the fee established under division (B)(3) of this section for providing services related to the habilitation services program. The fee may be retained from any funds the department receives for a habilitation center under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

Sec. 5123.042. (A) The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing the following:

(1) Uniform standards ~~and procedures~~ under which:

(a) A person or agency shall submit plans to the county board of mental retardation and developmental disabilities for the development of residential services for ~~mentally retarded and developmentally disabled~~ individuals with mental retardation or a developmental disability within the county;

(b) The county board must review the plans and recommend providers for the services.

(2) The eligibility criteria for selecting persons and agencies to provide residential services, which shall take into consideration the recommendations of the county board.

(B) The county board, in accordance with its comprehensive service plan ~~as approved by the director~~, shall review all proposals for the development of residential services that are submitted to it and shall, if the proposals are acceptable to the county board, recommend providers for the development of residential services within the county. The department shall approve proposals for the development of residential services within counties based upon the availability of funds and in accordance with rules adopted under division (A)(2) of this section.

No county board shall recommend providers for the development of residential services if the county board is an applicant to provide services. In cases of possible conflict of interest, the director shall appoint a committee

that shall, in accordance with the approved county comprehensive service plan, review and recommend to ~~him~~ the director providers for the services.

If a county board fails to establish an approved comprehensive service plan, the director may establish residential services development goals for the county board based on documented need as determined by the department. If a county board fails to develop or implement such a plan in accordance with the rules adopted under this section, the department may, without the involvement of the county board, review and select providers for the development of residential services in the county.

Sec. 5123.05. The department of mental retardation and developmental disabilities may conduct audits of the services and programs that either receive funds through the department or are subject to regulation by the department. Audits shall be conducted in accordance with procedures prescribed by the department. Records created or received by the department in connection with an audit are not public records under section 149.43 of the Revised Code until a report of the audit is released by the department.

~~Sec. 5123.183 5123.051. (A) As used in this section, "contractor" means a person or government agency that has entered into a contract with the department of mental retardation and developmental disabilities under section 5123.18 or 5111.252 of the Revised Code.~~

~~(B) If the department of mental retardation and developmental disabilities determines pursuant to an audit conducted under section 5123.05 of the Revised Code or a reconciliation conducted under section 5123.18 or 5111.252 of the Revised Code that money is owed the state by a contractor provider of a service or program, the ~~office of support within the~~ department may enter into a payment agreement with the ~~contractor~~ provider. The agreement shall include the following:~~

(1) A schedule of installment payments whereby the money owed the state is to be paid in full within a period not to exceed one year;

(2) A provision that the ~~contractor~~ provider may pay the entire balance owed at any time during the term of the agreement;

(3) A provision that if any installment is not paid in full within forty-five days after it is due, the entire balance owed is immediately due and payable;

(4) ~~Such~~ Any other terms and conditions ~~as that~~ are agreed to by the ~~office~~ department and the ~~contractor~~ provider.

~~(B) The~~ office ~~department~~ may include a provision in a payment agreement that requires the ~~contractor~~ provider to pay interest on the money owed the state. The ~~office~~ department, in its discretion, shall determine whether to require the payment of interest and, if it so requires, the rate of

interest. Neither the obligation to pay interest nor the rate of interest is subject to negotiation between the ~~office~~ department and the ~~contractor~~ provider.

(C) If the ~~contractor~~ provider fails to pay any installment in full within forty-five days after its due date, the ~~office~~ department shall certify the entire balance owed to the attorney general for collection under section 131.02 of the Revised Code. The department may withhold funds from payments made to a ~~contractor~~ provider under section 5123.18 or 5111.252 of the Revised Code to satisfy a judgment secured by the attorney general.

(D) ~~All money collected under this section shall be deposited in the state treasury to the credit of the~~ The purchase of service fund, which is hereby created. Money credited to the fund shall be used solely for purposes of ~~sections 5123.18 and 5111.252~~ section 5123.05 of the Revised Code.

~~Sec. 5123.05~~ 5123.06. The director of mental retardation and developmental disabilities may establish divisions in the department of mental retardation and developmental disabilities and prescribe their powers and duties.

Each division shall consist of a ~~chief~~ deputy director and the officers and employees, including those in institutions, necessary for the performance of the functions assigned to it. The director shall supervise the work of each division and be responsible for the determination of general policies in the exercise of powers vested in the department and powers assigned to each division. The ~~chief~~ deputy director of each division shall be responsible to the director for the organization, direction, and supervision of the work of the division and the exercise of the powers and the performance of the duties of the department assigned to ~~such~~ the division, and, with the approval of the director, may establish bureaus or other administrative units in the division.

Appointment to the position of ~~chief~~ deputy director of a division may be made from persons holding positions in the classified service in the department.

The ~~chief~~ deputy director of each division shall be a person who has had special training and experience in the type of work with the performance of which the division is charged.

Each ~~chief~~ deputy director of a division, under the director, shall have entire executive charge of the division to which the ~~chief~~ deputy director is appointed. Subject to sections 124.01 to 124.64 of the Revised Code, and civil service rules, the ~~chief~~ deputy director of a division shall, with the approval of the director, select and appoint the necessary employees in the ~~chief's~~ deputy director's division and may remove ~~such~~ those employees for

cause.

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.

et 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, 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. 5123.082. (A) The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code:

(1) Designating positions of employment for which the director determines that certification or evidence of registration is required as a condition of employment in the department of mental retardation and developmental disabilities, entities that contract with the department or county boards of mental retardation and developmental disabilities to operate programs or provide services to ~~individuals~~ persons with mental retardation and developmental disabilities, or other positions of employment in programs that serve ~~such individuals~~ those persons;

(2) Establishing levels of certification or registration for each position for which certification or registration is required;

(3) Establishing for each level of each position the requirements that must be met to obtain certification or registration, including standards regarding education, specialized training, and experience. The standards shall take into account the nature and needs of ~~mentally retarded and developmentally disabled~~ persons with mental retardation or a developmental disability and the specialized techniques needed to serve them.

(4) Establishing renewal schedules and renewal requirements for certification and registration, including standards regarding education, specialized training, and experience;

(5) Establishing procedures for denial, suspension, and revocation of a certificate or evidence of registration, including appeal procedures;

(6) Establishing other requirements needed to carry out this section.

(B) The director shall issue, renew, deny, suspend, or revoke a certificate or evidence of registration in accordance with rules adopted under this section. The director shall deny, suspend, or revoke a certificate or evidence of registration if the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that an applicant for or holder of a certificate or evidence of registration is guilty of intemperate, immoral, or other conduct unbecoming to the applicant's or holder's position, or is guilty of incompetence or negligence within the scope of the applicant's or holder's duties. The director shall deny or revoke a certificate or evidence of registration after the director finds, pursuant to

an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or holder of the certificate or evidence of registration has been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code, unless the individual meets standards for rehabilitation that the director establishes in the rules adopted under that section. Evidence supporting such allegations must be presented to the director in writing, and the director shall provide prompt notice of the allegations to the person who is the subject of the allegations. A denial, suspension, or revocation may be appealed in accordance with the procedures established in rules adopted under this section.

(C) A person holding a valid certificate or evidence of registration under this section on the effective date of any rules adopted under this section that increase the certification or registration standards shall have ~~such~~ the period as ~~that~~ the rules prescribe, but not less than one year after the effective date of the rules, to meet the new standards.

(D) No person shall be employed in a position for which certification or registration is required under rules adopted under this section, unless the person holds a valid certificate or evidence of registration for the position.

Sec. 5123.09. Subject to the rules of the department of mental retardation and developmental disabilities, each institution under the jurisdiction of the department shall be under the control of a managing officer to be known as a superintendent or by other appropriate title. ~~Such~~ The managing officer shall be appointed by the director of mental retardation and developmental disabilities; and shall be in the unclassified service and serve at the pleasure of the director. Each managing officer shall be of good moral character and have skill, ability, and experience in ~~his~~ the managing officer's profession. Appointment to the position of managing officer of an institution may be made from persons holding positions in the classified service in the department.

The managing officer, under the director, shall have entire executive charge of the institution for which ~~such~~ the managing officer is appointed, ~~except~~ EXCEPT as provided in section 5119.16 of the Revised Code. Subject to civil service rules and rules adopted by the department, the managing officer shall appoint the necessary employees, and ~~he~~ the managing officer or the director may remove ~~such~~ those employees for cause. ~~If required by the director of mental retardation and developmental disabilities, the managing officers shall reside in the institution in which they are employed and devote their entire time to the interests of their particular institution.~~ A report of all appointments, resignations, and

harges shall be filed with the appropriate division at the close of each month.

After conference with the managing officer of each institution, the director shall determine the number of employees to be appointed to the various institutions and clinics.

Sec. 5123.092. (A) There is hereby established at each institution and branch institution under the control of the department of mental retardation and developmental disabilities a citizen's advisory council consisting of thirteen members. At least seven of the members shall be persons who are not providers of mental retardation services. Each council shall include parents or other relatives of residents of institutions under the control of the department, community leaders, professional persons in relevant fields, and persons who have an interest in or knowledge of mental retardation. The managing officer of the institution shall be a nonvoting member of the council.

(B) ~~Except as otherwise provided in this division, the~~ The director of mental retardation and developmental disabilities shall be the appointing authority for the voting members of each citizen's advisory council. Each time the term of a voting member expires, the remaining members of the council shall recommend to the director one or more persons to serve on the council. The director may accept a nominee of the council or reject the nominee or nominees. If the director rejects the nominee or nominees, ~~the joint council on mental retardation and developmental disabilities created by section 101.37 of the Revised Code shall either appoint a person recommended by the advisory council or reject the nominee or nominees. If the joint council rejects the nominee or nominees,~~ the remaining members of the advisory council shall further recommend to the director one or more other persons to serve on the advisory council. This procedure shall continue until a member is appointed to the advisory council. ~~The joint council on mental retardation and developmental disabilities shall appoint the original voting members of any citizen's advisory council created after November 15, 1981. Thereafter, the director of mental retardation and developmental disabilities shall appoint members of the advisory council in accordance with this division. Each~~

Each advisory council shall elect from its ~~twelve~~ appointed members a chairperson, vice-chairperson, and a secretary to serve for terms of one year. Advisory council officers shall not serve for more than two consecutive terms in the same office. A majority of the advisory council members constitutes a quorum.

(C) ~~Terms of office of the original twelve appointees shall be as~~

follows:

~~(1) Four members, at least three of whom shall be persons who are not providers of mental retardation services, shall be appointed for a period of one year;~~

~~(2) Four members, at least two of whom shall be persons who are not providers of mental retardation services, shall be appointed for a period of two years;~~

~~(3) Four members, at least two of whom shall be persons who are not providers of mental retardation services, shall be appointed for a period of three years.~~

Thereafter, terms of office shall be for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. No member shall serve more than two consecutive terms, except that any former member may be appointed if one year or longer has elapsed since the member served two consecutive terms. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any vacancy shall be filled in the same manner in which the original appointment was made, and the appointee to a vacancy in an unexpired term shall serve the balance of the term of the original appointee. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

(D) Members shall be expected to attend all meetings of the advisory council. Unexcused absence from two successive regularly scheduled meetings shall be considered prima-facie evidence of intent not to continue as a member. The chairperson of the board shall, after a member has been absent for two successive regularly scheduled meetings, direct a letter to the member asking if the member wishes to remain in membership. If an affirmative reply is received, the member shall be retained as a member except that, if, after having expressed a desire to remain a member, the member then misses a third successive regularly scheduled meeting without being excused, the chairperson shall terminate the member's membership.

(E) ~~The~~ A citizen's advisory ~~councils~~ council shall meet six times annually, or more frequently if three council members request the chairperson to call a meeting. The council shall keep minutes of each meeting and shall submit them to the managing officer of the institution with which the council is associated, the department of mental retardation and developmental disabilities, and the legal rights service.

(F) Members of citizen's advisory councils shall receive no compensation for their services, except that they shall be reimbursed for

their actual and necessary expenses incurred in the performance of their official duties by the institution with which they are associated from funds allocated to it, provided that reimbursement for ~~such~~ those expenses shall not exceed limits imposed upon the department of mental retardation and developmental disabilities by administrative rules regulating travel within this state.

(G) The councils shall have reasonable access to all patient treatment and living areas and records of the institution, except those records of a strictly personal or confidential nature. The councils shall have access to a patient's personal records with the consent of the patient or the patient's legal guardian or, if the patient is a minor, with the consent of the parent or legal guardian of the patient.

(H) As used in this section, "branch institution" means a facility that is located apart from an institution and is under the control of the managing officer of the institution.

Sec. 5123.11. (A) The director of mental retardation and developmental disabilities ~~shall~~ may enter into an agreement with the boards of trustees or boards of directors of two or more universities in which there is a college of medicine or college of osteopathic medicine, or of two or more colleges of medicine or colleges of osteopathic medicine, or any combination ~~thereof~~ of those universities and colleges, to establish, manage, and conduct residency medical training programs. The agreement may also provide for clinical clerkships for medical students. The director shall also enter into an agreement with the boards of trustees or boards of directors of one or more universities in which there is a school of professional psychology to establish, manage, and conduct residency psychological training programs.

(B) The department shall pay all costs incurred by a university or college that relate directly to the training of resident physicians or psychologists in programs developed under this section. The director of mental retardation and developmental disabilities shall ensure that any procedures and limitations imposed for the purpose of reimbursing universities or colleges, or for direct payment of residents' salaries, are incorporated into agreements between the department and the universities or colleges. Any agreement shall provide that residency training for a physician shall not exceed four calendar years.

Sec. 5123.17. The department of mental retardation and developmental disabilities may provide for the custody, supervision, control, treatment, and training of ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability elsewhere than within the enclosure of an institution under its jurisdiction, if the department so

determines with respect to any individual or group of individuals. In all such cases, the department shall ensure adequate and proper supervision for the protection of ~~such~~ those persons and of the public.

Sec. 5123.18. (A) As used in this section:

(1) "Contractor" means a person or government agency that enters into a contract with the department of mental retardation and developmental disabilities under this section.

(2) "Government agency" means a state agency as defined in section 117.01 of the Revised Code or a similar agency of a political subdivision of the state.

(3) "Residential services" means the services necessary for an individual with mental retardation or a developmental disability to live in the community, including room and board, clothing, transportation, personal care, habilitation, supervision, and any other services the department considers necessary for the individual to live in the community.

(B)(1) The department of mental retardation and developmental disabilities may enter into a contract with a person or government agency to provide residential services to individuals with mental retardation or developmental disabilities in need of residential services. Contracts for residential services shall be of the following types:

(a) Companion home contracts - contracts under which the contractor is an individual, the individual is the primary caregiver, and the individual owns or leases and resides in the home in which the services are provided.

(b) Agency-operated companion home contracts - contracts under which the contractor subcontracts, for purposes of coordinating the provision of residential services, with one or more individuals who are primary caregivers and own or lease and reside in the homes in which the services are provided.

(c) Community home contracts - contracts for residential services under which the contractor owns or operates a home that is used solely to provide residential services.

(d) Combined agency-operated companion home and community home contracts.

(2) A companion home contract shall cover not more than one home. An agency-operated companion home contract or a community home contract may cover more than one home.

(C) Contracts shall be in writing and shall provide for payment to be made to the contractor at the times agreed to by the department and the contractor. Each contract shall specify the period during which it is valid, the amount to be paid for residential services, and the number of individuals

for whom payment will be made. Contracts may be renewed.

(D) To be eligible to enter into a contract with the department under this section, the person or government agency and the home in which the residential services are provided must meet all applicable standards for licensing or certification by the appropriate government agency. In addition, if the residential facility is operated as a nonprofit entity, the members of the board of trustees or board of directors of the facility must not have a financial interest in or receive financial benefit from the facility, other than reimbursement for actual expenses incurred in attending board meetings.

~~A home with a companion home contract or an agency operated companion home contract that has five or fewer residents with mental retardation or a developmental disability is a foster family home as defined in section 5123.19 of the Revised Code.~~

(E)(1) The department shall determine the payment amount assigned to an initial contract. To the extent that the department determines sufficient funds are available, the payment amount assigned to an initial contract shall be equal to the average amount assigned to contracts for other homes that are of the same type and size and serve individuals with similar needs, except that if an initial contract is the result of a change of contractor or ownership, the payment amount assigned to the contract shall be the lesser of the amount assigned to the previous contract or the contract's total adjusted predicted funding need calculated under division (I) of this section.

(2) A renewed contract shall be assigned a payment amount in accordance with division (K) of this section.

(3) When a contractor relocates a home to another site at which residential services are provided to the same individuals, the payment amount assigned to the contract for the new home shall be the payment amount assigned to the contract at the previous location.

(F)(1) Annually, a contractor shall complete an assessment of each individual to whom the contractor provides residential services to predict the individual's need for routine direct services staff. The department shall establish by rule adopted in accordance with Chapter 119. of the Revised Code the assessment instrument to be used by contractors to make assessments. Assessments shall be submitted to the department not later than the thirty-first day of January of each year.

A contractor shall submit a revised assessment for an individual if there is a substantial, long-term change in the nature of the individual's needs. A contractor shall submit revised assessments for all individuals receiving residential services if there is a change in the composition of the home's residents.

(2) Annually, a contractor shall submit a cost report to the department specifying the costs incurred in providing residential services during the immediately preceding calendar year. Only costs actually incurred by a contractor shall be reported on a cost report. Cost reports shall be prepared according to a uniform chart of accounts approved by the department and shall be submitted on forms prescribed by the department.

(3) The department shall not renew the contract held by a contractor who fails to submit the assessments or cost reports required under this division.

(4) The department shall adopt rules as necessary regarding the submission of assessments and cost reports under this division. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(G) Prior to renewing a contract entered into under this section, the department shall compute the contract's total predicted funding need and total adjusted predicted funding need. The department shall also compute the contract's unmet funding need if the payment amount assigned to the contract is less than the total adjusted predicted funding need. The results of these calculations shall be used to determine the payment amount assigned to the renewed contract.

(H)(1) A contract's total predicted funding need is an amount equal to the sum of the predicted funding needs for the following cost categories:

- (a) Routine direct services staff;
- (b) Dietary, program supplies, and specialized staff;
- (c) Facility and general services;
- (d) Administration.

(2) Based on the assessments submitted by the contractor, the department shall compute the contract's predicted funding need for the routine direct services staff cost category by multiplying the number of direct services staff predicted to be necessary for the home by the sum of the following:

(a) Entry level wages paid during the immediately preceding cost reporting period to comparable staff employed by the county board of mental retardation and developmental disabilities of the county in which the home is located;

(b) Fringe benefits and payroll taxes as determined by the department using state civil service statistics from the same period as the cost reporting period.

(3) The department shall establish by rule adopted in accordance with Chapter 119. of the Revised Code the method to be used to compute the predicted funding need for the dietary, program supplies, and specialized

staff cost category; the facility and general services cost category; and the administration cost category. The rules shall not establish a maximum amount that may be attributed to the dietary, program supplies, and specialized staff cost category. The rules shall establish a process for determining the combined maximum amount that may be attributed to the facility and general services cost category and the administration cost category.

(I)(1) A contract's total adjusted predicted funding need is the contract's total predicted funding need with adjustments made for the following:

(a) Inflation, as provided under division (I)(2) of this section;

(b) The predicted cost of complying with new requirements established under federal or state law that were not taken into consideration when the total predicted funding need was computed;

(c) Changes in needs based on revised assessments submitted by the contractor.

(2) In adjusting the total predicted funding need for inflation, the department shall use either the consumer price index compound annual inflation rate calculated by the United States department of labor for all items or another index or measurement of inflation designated in rules that the department shall adopt in accordance with Chapter 119. of the Revised Code.

When a contract is being renewed for the first time, and the contract is to begin on the first day of July, the inflation adjustment applied to the contract's total predicted funding need shall be the estimated rate of inflation for the calendar year in which the contract is renewed. If the consumer price index is being used, the department shall base its estimate on the rate of inflation calculated for the three-month period ending the thirty-first day of March of that calendar year. If another index or measurement is being used, the department shall base its estimate on the most recent calculations of the rate of inflation available under the index or measurement. Each year thereafter, the inflation adjustment shall be estimated in the same manner, except that if the estimated rate of inflation for a year is different from the actual rate of inflation for that year, the difference shall be added to or subtracted from the rate of inflation estimated for the next succeeding year.

If a contract begins at any time other than July first, the inflation adjustment applied to the contract's total predicted funding need shall be determined by a method comparable to that used for contracts beginning July first. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing the method to be used.

(J) A contract's unmet funding need is the difference between the

payment amount assigned to the contract and the total adjusted predicted funding need, if the payment amount assigned is less than the total adjusted predicted funding need.

(K) The payment amount to be assigned to a contract being renewed shall be determined by comparing the total adjusted predicted funding need with the payment amount assigned to the current contract.

(1) If the payment amount assigned to the current contract equals or exceeds the total adjusted predicted funding need, the payment amount assigned to the renewed contract shall be the same as that assigned to the current contract, unless a reduction is made pursuant to division (L) of this section.

(2) If the payment amount assigned to the current contract is less than the total adjusted predicted funding need, the payment amount assigned to the renewed contract shall be increased if the department determines that funds are available for such increases. The amount of a contract's increase shall be the same percentage of the available funds that the contract's unmet funding need is of the total of the unmet funding need for all contracts.

(L) When renewing a contract provided for in division (B) of this section other than a companion home contract, the department may reduce the payment amount assigned to a renewed contract if the sum of the contractor's allowable reported costs and the maximum efficiency incentive is less than ninety-one and one-half per cent of the amount received pursuant to this section during the immediately preceding contract year.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing a formula to be used in computing the maximum efficiency incentive, which shall be at least four per cent of the weighted average payment amount to be made to all contractors during the contract year. The maximum efficiency incentive shall be computed annually.

(M) The department may increase the payment amount assigned to a contract based on the contract's unmet funding need at times other than when the contract is renewed. The department may develop policies for determining priorities in making such increases.

(N)(1) In addition to the contracts provided for in division (B) of this section, the department may enter into the following contracts:

(a) A contract to pay the cost of beginning operation of a new home that is to be funded under a companion home contract, agency-operated companion home contract, community home contract, or combined agency-operated companion home and community home contract.

(b) A contract to pay the cost associated with increasing the number of individuals served by a home funded under a companion home contract,

agency-operated companion home contract, community home contract, or combined agency-operated companion home and community home contract.

(2) The department shall adopt rules as necessary regarding contracts entered into under this division. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(O) Except for companion home contracts, the department shall conduct a reconciliation of the amount earned under a contract and the actual costs incurred by the contractor. An amount is considered to have been earned for delivering a service at the time the service is delivered. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for conducting reconciliations.

A reconciliation shall be based on the annual cost report submitted by the contractor. If a reconciliation reveals that a contractor owes money to the state, the amount owed shall be collected in accordance with section ~~5123.183~~ 5123.051 of the Revised Code.

When conducting reconciliations, the department shall review all reported costs that may be affected by transactions required to be reported under division (B)(3) of section 5123.172 of the Revised Code. If the department determines that such transactions have increased the cost reported by a contractor, the department may disallow or adjust the cost allowable for payment. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for disallowances or adjustments.

(P) The department may audit the contracts it enters into under this section. Audits may be conducted by the department or an entity with which the department contracts to perform the audits. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for conducting audits.

An audit may include the examination of a contractor's financial books and records, the costs incurred by a contractor in providing residential services, and any other relevant information specified by the department. An audit shall not be commenced more than four years after the expiration of the contract to be audited, except in cases where the department has reasonable cause to believe that a contractor has committed fraud.

If an audit reveals that a contractor owes money to the state, the amount owed, subject to an adjudication hearing under this division, shall be collected in accordance with section ~~5123.183~~ 5123.051 of the Revised Code. If an audit reveals that a reconciliation conducted under this section resulted in the contractor erroneously paying money to the state, the department shall refund the money to the contractor, or, in lieu of making a

refund, the department may offset the erroneous payment against any money determined as a result of the audit to be owed by the contractor to the state. The department is not required to pay interest on any money refunded under this division.

In conducting audits or making determinations of amounts owed by a contractor and amounts to be refunded or offset, the department shall not be bound by the results of reconciliations conducted under this section, except with regard to cases involving claims that have been certified pursuant to section ~~5123.183~~ 5123.051 of the Revised Code to the attorney general for collection for which a full and final settlement has been reached or a final judgment has been made from which all rights of appeal have expired or been exhausted.

Not later than ninety days after an audit's completion, the department shall provide the contractor a copy of a report of the audit. The report shall state the findings of the audit, including the amount of any money the contractor is determined to owe the state.

~~Until November 9, 1996, a contractor may request that the department conduct an adjudication hearing concerning an audit report that states the contractor owes the state money. The contractor shall specify in the request the audit findings the contractor contests. At the contractor's request, the department shall conduct an adjudication hearing in accordance with Chapter 119. of the Revised Code. If a hearing officer rules in the department's favor on each audit finding that the contractor contests, the department may request the hearing officer to determine whether the request for the adjudication hearing was frivolous. If the hearing officer determines the request was frivolous, the contractor shall, notwithstanding section 119.09 of the Revised Code, pay the fees and expenses charged or incurred by the hearing officer and court reporter in conducting the adjudication hearing.~~

~~No contractor may request an adjudication hearing after November 9, 1996. An adjudication hearing requested before November 9, 1996, may proceed after November 9, 1996.~~

(Q) The department shall adopt rules specifying the amount that will be allowed under a reconciliation or audit for the cost incurred by a contractor for compensation of owners, administrators, and other personnel. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(R) Each contractor shall, for at least seven years, maintain fiscal records related to payments received pursuant to this section.

(S) The department may enter into shared funding agreements with other government agencies to fund contracts entered into under this section.

The amount of each agency's share of the cost shall be determined through negotiations with the department. The department's share shall not exceed the amount it would have paid without entering into the shared funding agreement, nor shall it be reduced by any amounts contributed by the other parties to the agreement.

(T) Except as provided in section 5123.194 of the Revised Code, an individual who receives residential services pursuant to divisions (A) through (U) of this section and the individual's liable relatives or guardians shall pay support charges in accordance with Chapter 5121. of the Revised Code.

(U) The department may make reimbursements or payments for any of the following pursuant to rules adopted under this division:

(1) Unanticipated, nonrecurring costs associated with the health or habilitation of a person who resides in a home funded under a contract provided for in division (B) of this section;

(2) The cost of staff development training for contractors if the director of mental retardation and developmental disabilities has given prior approval for the training;

(3) Fixed costs that the department, pursuant to the rules, determines relate to the continued operation of a home funded under a contract provided for in division (B) of this section when a short term vacancy occurs and the contractor has diligently attempted to fill the vacancy.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for use in determining which costs it may make payment or reimbursements for under this division.

(V) In addition to the rules required or authorized to be adopted under this section, the department may adopt any other rules necessary to implement divisions (A) through (U) of this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(W) The department may delegate to county boards of mental retardation and developmental disabilities its authority under this section to negotiate and enter into contracts or subcontracts for residential services. In the event that it elects to delegate its authority, the department shall adopt rules in accordance with Chapter 119. of the Revised Code for the boards' administration of the contracts or subcontracts. In administering the contracts or subcontracts, the boards shall be subject to all applicable provisions of Chapter 5126. of the Revised Code and shall not be subject to the provisions of divisions (A) to (V) of this section.

Subject to the department's rules, a board may require the following to contribute to the cost of the residential services an individual receives

ant to this division: the individual or the individual's estate, the individual's spouse, the individual's guardian, and, if the individual is under age eighteen, either or both of the individual's parents. Chapter 5121. of the Revised Code shall not apply to individuals or entities that are subject to making contributions under this division. In calculating contributions to be made under this division, a board, subject to the department's rules, may allow an amount to be kept for meeting the personal needs of the individual who receives residential services.

Sec. 5123.181. The director of mental retardation and developmental disabilities and the director of job and family services shall, in concert with each other, eliminate all double billings and double payments for services on behalf of ~~mentally retarded and developmentally disabled~~ persons with mental retardation or another developmental disability in intermediate care facilities. The department of mental retardation and developmental disabilities may enter into contracts with providers of services for the purpose of making payments to ~~such the~~ providers for services rendered to eligible clients who are ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability over and above the services authorized and paid under Chapter 5111. of the Revised Code. Payments authorized under this section and section 5123.18 of the Revised Code shall not be subject to audit findings pursuant to Chapter 5111. of the Revised Code, unless ~~such an~~ audit determines that payment was made to the provider for services that were not rendered in accordance with the provisions of the provider agreement entered into with the department of job and family services or the department of mental retardation and developmental disabilities pursuant to this section.

Sec. 5123.19. (A) As used in this section and in sections 5123.191, 5123.194, and 5123.20 of the Revised Code:

(1) "Residential facility" means a home or facility in which a mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified under section 5126.05 of the Revised Code, a county home or district home operated pursuant to Chapter 5155. of the Revised Code, or a dwelling in which the only mentally retarded or developmentally disabled residents are in an independent living arrangement or are being provided supported living.

(2) ~~"Family home" means a residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least six but not more than eight mentally retarded or developmentally disabled persons.~~

~~(3) "Group home" means a residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen mentally retarded or developmentally disabled persons.~~

(4) "Political subdivision" means a municipal corporation, county, or township.

~~(5) "Foster family home" means a residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for not more than five mentally retarded or developmentally disabled persons.~~

~~(6) "Semi-independent living home" means a residential facility for a mentally retarded or developmentally disabled person where, according to the person's individual habilitation plan, the person demonstrates skills that would enable the person to function for specified periods of time without supervision. Such skills include, but are not limited to, home management, community mobility, personal hygiene, interpersonal relationship skills, and self-preservation.~~

~~(7)~~(3) "Independent living arrangement" means an arrangement in which a mentally retarded or developmentally disabled person resides in an individualized setting chosen by the person or the person's guardian, which is not dedicated principally to the provision of residential services for mentally retarded or developmentally disabled persons, and for which no financial support is received for rendering such service from any governmental agency by a provider of residential services.

~~(8)~~(4) "Supported living" has the same meaning as in section 5126.01 of the Revised Code.

~~(9)~~(5) "Licensee" means the person or government agency that has applied for a license to operate a residential facility and to which the license was issued under this section.

(B) Every person or government agency desiring to operate a residential facility shall apply for licensure of the facility to the director of mental retardation and developmental disabilities unless the residential facility is subject to section 3721.02, 3722.04, 5103.03, or 5119.20 of the Revised Code. Notwithstanding Chapter 3721. of the Revised Code, a nursing home that is certified as an intermediate care facility for the mentally retarded under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, shall apply for licensure of the portion of the home that is certified as an intermediate care facility for the mentally retarded.

(C) The director of mental retardation and developmental disabilities

shall license and inspect the operation of residential facilities. The director may deny or revoke such licenses.

Except as provided in divisions (G) and (O) of this section, a license is valid until it is revoked or voluntarily surrendered. Appeals from proceedings initiated to deny applications for licenses or to revoke licenses shall be conducted in accordance with Chapter 119. of the Revised Code.

In accordance with Chapter 119. of the Revised Code, the director shall adopt and may amend and rescind rules for licensing and regulating the operation of residential facilities. The rules shall establish the following:

- (1) Procedures for issuing, denying, and revoking licenses;
- (2) Fees for issuing licenses;
- (3) Procedures for the inspection of residential facilities;
- (4) Requirements for the training of residential facility personnel;
- (5) Classifications for the various types of residential facilities;
- (6) Certification procedures for licensees and management contractors that the director determines are necessary to ensure that they have the skills and qualifications to properly operate or manage residential facilities;
- (7) The maximum number of persons who may be served in a particular type of residential facility;
- (8) Uniform procedures for admission of persons to and transfers and discharges of persons from residential facilities;
- (9) Other standards for the operation of residential facilities and the services provided at residential facilities;
- (10) Procedures for waiving any provision of any rule adopted under this section.

(D) Before issuing a license, the director of the department or the director's designee shall conduct an inspection of the residential facility for which application is made. The director or the director's designee shall conduct an inspection of each licensed residential facility at least once each year and may conduct additional inspections as needed. An inspection includes but is not limited to an on-site examination and evaluation of the residential facility, its personnel, and the services provided there.

In conducting inspections, the director or the director's designee shall be given access to the residential facility; all records, accounts, and any other documents related to the operation of the facility; the licensee; the residents of the facility; and all persons acting on behalf of, under the control of, or in connection with the licensee. The licensee and all persons on behalf of, under the control of, or in connection with the licensee shall cooperate with the director or the director's designee in conducting the inspection.

Following each inspection, unless the director initiates a license

cation proceeding, the director or the director's designee shall provide the licensee with a report listing any deficiencies, specifying a timetable within which the licensee shall submit a plan of correction describing how the deficiencies will be corrected, and, when appropriate, specifying a timetable within which the licensee must correct the deficiencies. After a plan of correction is submitted, the director or the director's designee shall approve or disapprove the plan. A copy of the report and any approved plan of correction shall be provided to any person who requests it.

If it is determined that a residential facility is not being operated in compliance with this chapter or the rules adopted under it, the director may take such steps as are necessary, including, but not limited to, suspension of admissions to the residential facility, placement of a monitor at the residential facility, and the initiation of license revocation proceedings.

When the director initiates license revocation proceedings, no opportunity for submitting a plan of correction shall be given. The director shall notify the licensee by letter of the initiation of such proceedings. The letter shall list the deficiencies of the residential facility and inform the licensee that no plan of correction will be accepted. The director shall also notify each affected resident, the resident's guardian if the resident is an adult for whom a guardian has been appointed, the resident's parent or guardian if the resident is a minor, and the county board of mental retardation and developmental disabilities.

Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may order the immediate removal of residents from a residential facility whenever conditions at the facility present an immediate danger of physical or psychological harm to the residents.

In determining whether a residential facility is being operated in compliance with this chapter or the rules adopted under it, or whether conditions at a residential facility present an immediate danger of physical or psychological harm to the residents, the director may rely on information obtained by a county board of mental retardation and developmental disabilities or other governmental agencies in the course of investigating major unusual incidents. The director shall adopt rules in accordance with Chapter 119. of the Revised Code that specify what constitute "major unusual incidents."

The director shall suspend without pay for a period of at least three days any department employee who notifies or causes the notification to any unauthorized person of an unannounced inspection of a residential facility by an authorized representative of the department.

(E) In proceedings initiated to deny or revoke licenses under this section, the director may deny or revoke a license regardless of whether some or all of the deficiencies that prompted the proceedings have been corrected at the time of the hearing.

(F) In addition to any other information which may be required of applicants for a license pursuant to this section, the director shall require each applicant to provide a copy of an approved plan for a proposed residential facility pursuant to section 5123.042 of the Revised Code.

(G) Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may require notification to the department of any significant change in the ownership of a residential facility or in the identity of the licensee or management contractor. When such notification is not given, the director may cancel the residential facility's license. If the director determines that a significant change of ownership is proposed, the director shall consider the proposed change to be an application for development by a new operator pursuant to section 5123.042 of the Revised Code and shall advise the applicant within sixty days of such notification that the current license shall continue in effect or a new license will be required pursuant to this section.

(H) A county board of mental retardation and developmental disabilities, the legal rights service, and any interested person may file complaints alleging violations of statute or department rule relating to residential facilities with the department. All complaints shall be in writing and shall state the facts constituting the basis of the allegation. The department shall not reveal the source of any complaint unless the complainant agrees in writing to waive the right to confidentiality or until so ordered by a court of competent jurisdiction.

The department shall acknowledge receipt of the complaint and notify the complainant of the action that will be taken with respect to it within five working days of receiving it.

The substance of a complaint shall not be provided to a licensee until the commencement of an inspection or investigation.

(I) The department shall establish procedures for the notification of interested parties of the transfer or interim care of residents from residential facilities that are closing or are losing their license.

(J) Before issuing a license under this section to a residential facility that will accommodate at any time more than one mentally retarded or developmentally disabled individual, the director shall, by first class mail, notify the following:

(1) If the facility will be located in a municipal corporation, the clerk of

the legislative authority of the municipal corporation;

(2) If the facility will be located in unincorporated territory, the clerk of the appropriate board of county commissioners and the clerk of the appropriate board of township trustees.

The director shall not issue the license for ten days after mailing the notice, excluding Saturdays, Sundays, and legal holidays, in order to give the notified local officials time in which to comment on the proposed issuance.

Any legislative authority of a municipal corporation, board of county commissioners, or board of township trustees that receives notice under this division of the proposed issuance of a license for a residential facility may comment on it in writing to the director within ten days after the director mailed the notice, excluding Saturdays, Sundays, and legal holidays. If the director receives written comments from any notified officials within the specified time, the director shall make written findings concerning the comments and the director's decision on the issuance of the license. If the director does not receive written comments from any notified local officials within the specified time, the director shall continue the process for issuance of the license.

(K) Any person may operate a licensed ~~family home~~ residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least six but not more than eight persons with mental retardation or a developmental disability as a permitted use in any residential district or zone, including any single-family residential district or zone, of any political subdivision. ~~Family homes~~ these residential facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(L) Any person may operate a licensed ~~group home~~ residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen persons with mental retardation or a developmental disability as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned unit development districts may exclude ~~group homes~~ these residential facilities from such districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate ~~group homes~~ these residential facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and

ions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the ~~home~~ residential facility and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation;

(3) Limit excessive concentration of ~~homes~~ these residential facilities.

(M) This section does not prohibit a political subdivision from applying to residential facilities nondiscriminatory regulations requiring compliance with health, fire, and safety regulations and building standards and regulations.

(N) Divisions (K) and (L) of this section are not applicable to municipal corporations that had in effect on June 15, 1977, an ordinance specifically permitting in residential zones licensed residential facilities by means of permitted uses, conditional uses, or special exception, so long as such ordinance remains in effect without any substantive modification.

(O) The director may issue an interim license to operate a residential facility to an applicant for a license under this section if all of the following conditions are met:

(1) The director determines that an emergency exists that requires immediate placement of persons in a residential facility, and insufficient licensed beds are available.

(2) The residential facility meets standards in rules for interim licenses that the director shall adopt in accordance with Chapter 119. of the Revised Code.

(3) The director determines that the residential facility is likely to receive a license under this section within thirty days after issuance of the interim license.

An interim license shall be valid for thirty days and may be renewed by the director no more than twice.

(P) Notwithstanding rules adopted pursuant to this section establishing the maximum number of persons who may be served in a particular type of residential facility, a residential facility shall be permitted to serve the same number of persons being served by the facility on the effective date of such rules or the number of persons for which the facility is authorized pursuant to a current application for a certificate of need with a letter of support from the department of mental retardation and developmental disabilities and which is in the review process prior to April 4, 1986.

(Q) The director or the director's designee may enter at any time, for purposes of investigation, any home, facility, or other structure that has been

reported to the director or that the director has reasonable cause to believe is being operated as a residential facility without a license issued under this section.

The director may petition the court of common pleas of the county in which an unlicensed residential facility is located for an order enjoining the person or governmental agency operating the facility from continuing to operate without a license. The court may grant the injunction on a showing that the person or governmental agency named in the petition is operating a residential facility without a license. The court may grant the injunction, regardless of whether the residential facility meets the requirements for receiving a license under this section.

Sec. 5123.21. The director of ~~the department of~~ mental retardation and developmental disabilities or the director's designee may transfer or authorize the transfer of an involuntary resident or a consenting voluntary resident from one public institution to another or to an institution other than a public institution or other facility, if the director determines that it would be consistent with the habilitation needs of the resident to do so.

Before an involuntary resident may be transferred to a more restrictive setting, the ~~head~~ managing officer of the ~~hospital~~ institution shall file a motion with the court requesting the court to amend its order of placement issued under section 5123.76 of the Revised Code. At the resident's request, the court shall hold a hearing on the motion at which the resident has the same rights as at a full hearing under section 5123.76 of the Revised Code.

Whenever a resident is transferred, the director shall give written notice of the transfer to the resident's legal guardian, parents, spouse, and counsel, or, if none is known, to the resident's nearest known relative or friend. If the resident is a minor, the department before making such a transfer shall make a minute of the order for the transfer and the reason for it upon its record and shall send a certified copy at least seven days prior to the transfer to the person shown by its record to have had the care or custody of the minor immediately prior to the minor's commitment. Whenever a consenting voluntary resident is transferred, the notification shall be given only at the resident's request. The managing officer shall advise a voluntary resident who is being transferred that the patient may decide if such a notification shall be given. In all such transfers, due consideration shall be given to the relationship of the resident to the resident's family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the resident.

Sec. 5123.27. The director of mental retardation and developmental disabilities may accept, hold, and administer in trust on behalf of the state, if

it is for the public interest, any grant, devise, gift, or bequest of money or property made to the state for the use or benefit of any institution under the jurisdiction of the department of mental retardation and developmental disabilities or for the use and benefit of ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability under the control of the department. If the trust so provides, the money or property may be used for any work which the department is authorized to undertake.

The department shall keep such gift, grant, devise, or bequest as a distinct property or fund and, if it is in money, shall invest it in the manner provided by law. The department may deposit in a proper trust company or savings bank any money left in trust during a specified life or lives and shall adopt rules governing the deposit, transfer, withdrawal, or investment of ~~such~~ the money and the income ~~thereof~~ from it.

The department shall, in the manner prescribed by the director of budget and management pursuant to section 126.21 of the Revised Code, account for all money or property received or expended under this section. The records, together with a statement certified by the depository showing the money deposited there to the credit of the trust, shall be open to public inspection. The director of budget and management may require the department to file a report with ~~him~~ the director on any particular portion, or the whole, of any trust property received or expended by it.

The department shall, upon the expiration of any trust according to its terms, dispose of the money or property held ~~thereunder~~ under the trust in the manner provided in the instrument creating the trust. If the instrument creating the trust failed to make any terms of disposition, or if no trust was in evidence, ~~then~~ the decedent resident's money, saving or commercial deposits, dividends or distributions, bonds, or any other interest-bearing debt certificate or stamp issued by the United States government shall escheat to the state. All such unclaimed intangible personal property of a former resident shall be retained by the managing officer in such institution for the period of one year, during which time every possible effort shall be made to find ~~such~~ the former resident or ~~his~~ the former resident's legal representative.

If after a period of one year from the time the resident has left the institution or has died, the managing officer has been unable to locate ~~such~~ the person or ~~his~~ the person's legal representative, ~~then,~~ upon proper notice of ~~such~~ that fact, the director shall at that time formulate in writing a method of disposition on the minutes of the department authorizing the managing officer to convert such intangible personal property to cash to be paid into

the state treasury to the credit of the general revenue fund.

The department shall include in its annual report a statement of all such money and property and the terms and conditions relating ~~thereto to them~~.

Sec. 5123.34. This chapter attempts to do all of the following:

(A) Provide humane and scientific treatment and care and the highest attainable degree of individual development for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability;

(B) Promote the study of the causes of mental retardation and developmental disabilities, with a view to ultimate prevention;

(C) Secure by uniform and systematic management the highest attainable degree of economy in the administration of the institutions under the control of the department of mental retardation and developmental disabilities.

Sections 5123.02 to 5123.04, 5123.041 to 5123.043, 5123.10, 5123.21, 5123.221, 5123.25, and 5123.31 of the Revised Code shall be liberally construed to attain ~~such~~ these purposes.

Sec. 5123.351. The director of mental retardation and developmental disabilities, with respect to the eligibility for state reimbursement of expenses incurred by facilities and programs established and operated under Chapter 5126. of the Revised Code for ~~mentally retarded and developmentally disabled~~ persons with mental retardation or a developmental disability, shall do all of the following:

(A) Make rules that may be necessary to carry out the purposes of Chapter 5126. and sections 5123.35, 5123.351, and 5123.36 of the Revised Code;

(B) Define minimum standards for qualifications of personnel, professional services, and in-service training and educational leave programs;

(C) Review and evaluate community programs and make recommendations for needed improvements to county boards of mental retardation and developmental disabilities and to program directors;

(D) Withhold state reimbursement, in whole or in part, from any county or combination of counties for failure to comply with Chapter 5126. or section 5123.35 or 5123.351 of the Revised Code or rules of the department of mental retardation and developmental disabilities;

(E) Withhold state funds from an agency, corporation, or association denying or rendering service on the basis of race, color, sex, religion, ancestry, national origin, disability as defined in section 4112.01 of the Revised Code, or inability to pay;

(F) Provide consultative staff service to communities to assist in ascertaining needs and in planning and establishing programs.

Sec. 5123.353. (A) There is hereby established the community mental retardation and developmental disabilities trust fund advisory council, which shall consist of the director of mental retardation and developmental disabilities and the following members appointed by the director:

(1) Two representatives of the Ohio association of county boards of mental retardation and developmental disabilities;

(2) Two representatives of the department of mental retardation and developmental disabilities who have expertise in community services and programs for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability;

(3) One representative of private providers of residential services for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability;

(4) Three consumers or representatives of consumers of community services and programs for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability.

(B) The director shall make initial appointments not later than sixty days after October 29, 1993. All terms shall be two years. Each member shall serve until the member's successor is appointed, and any vacancy shall be filled within thirty days for the remainder of the unexpired term in the same manner as the original appointment. Members may be reappointed. A member is subject to removal by the director for any of the causes specified in section 3.07 of the Revised Code.

(C) Members appointed by the director who are not employees of the department shall serve without compensation from the department, but shall be reimbursed from the community mental retardation and developmental disabilities trust fund for the actual and necessary expenses they incur in the performance of their official duties.

(D) The director shall serve as chairperson of the council and, in consultation with the members, establish the method of operation of the council, including scheduling of consultations with the department and at least quarterly meetings of the council. The department shall provide to the council ~~such~~ the administrative support and technical assistance ~~as~~ that the council requests.

(E) The council shall advise the department on the operation of the trust fund and the distribution of moneys from the trust fund.

Sec. 5123.55. As used in sections 5123.55 to 5123.59 of the Revised Code:

(A) "Guardian" means a guardian of the person, limited guardian, interim guardian, or emergency guardian pursuant to appointment by the probate court under Chapter 2111. of the Revised Code.

(B) "Trustee" means a trustee appointed by and accountable to the probate court, in lieu of a guardian and without a judicial determination of incompetency, with respect to an estate of ~~seven~~ ten thousand dollars or less.

(C) "Protector" means an agency under contract with the department of mental retardation and developmental disabilities acting with or without court appointment to provide guidance, service, and encouragement in the development of maximum self-reliance to a ~~mentally retarded or developmentally disabled~~ person with mental retardation or a developmental disability, independent of any determination of incompetency.

(D) "Protective service" means performance of the duties of a guardian, trustee, or conservator, or acting as a protector, with respect to a ~~mentally retarded or developmentally disabled~~ person with mental retardation or a developmental disability.

(E) "Conservator" means a conservator of the person pursuant to an appointment by a probate court under Chapter 2111. of the Revised Code.

Sec. 5123.611. (A) As used in this section, 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 "ICF/MR worker," as defined in section 5123.193 of the Revised Code;

(4) An individual who is employed in a position that includes providing specialized services to an individual with mental retardation or a developmental disability.

(B) At the conclusion of a review of a report of abuse, neglect, or a major unusual incident that is conducted by a review committee established pursuant to section 5123.61 of the Revised Code, the committee shall issue recommendations to the department. The department shall review the committee's recommendations and issue a report of its findings. The department shall make the report available to all of the following:

(1) The person who is the subject of the report;

(2) That person's guardian or legal counsel;

(3) The licensee, as defined in section 5123.19 of the Revised Code, of a residential facility in which the person resides;

(4) The employer of any MR/DD employee who allegedly committed or

was responsible for the abuse, neglect, or major unusual incident.

(C) Except as provided in this section, the department shall not disclose its report to any person or government entity that is not authorized to investigate reports of abuse, neglect, or other major unusual incidents, unless the person who is the subject of the report or the person's guardian gives the department written consent.

Sec. 5123.612. The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code regarding the reporting of major unusual incidents and unusual incidents concerning persons with mental retardation or a developmental disability. The rules shall specify what constitutes a major unusual incident or an unusual incident.

Sec. 5123.613. (A) When a person who is the subject of a report under section 5123.61 of the Revised Code dies, the department of mental retardation and developmental disabilities or the county board of mental retardation and developmental disabilities, whichever is applicable, shall, on written request, provide to both of the following persons the report and any records relating to the report:

(1) If the report or records are necessary to administer the estate of the person who is the subject of the report, to the executor or administrator of the person's estate;

(2) To the guardian of the person who is the subject of the report or, if the individual had no guardian at the time of death, to a person in the first applicable of the following categories:

- (a) The person's spouse;
- (b) The person's children;
- (c) The person's parents;
- (d) The person's brothers or sisters;
- (e) The person's uncles or aunts;
- (f) The person's closest relative by blood or adoption;
- (g) The person's closest relative by marriage.

(B) The department or county board shall provide the report and related records as required by this section not later than thirty days after receipt of the request."

Sec. 5123.62. The rights of ~~mentally retarded persons and of developmentally disabled~~ persons with mental retardation or a developmental disability include, but are not limited to, the following:

(A) The right to be treated at all times with courtesy and respect and with full recognition of their dignity and individuality;

(B) The right to an appropriate, safe, and sanitary living environment

that complies with local, state, and federal standards and recognizes the persons' need for privacy and independence;

(C) The right to food adequate to meet accepted standards of nutrition;

(D) The right to practice the religion of their choice or to abstain from the practice of religion;

(E) The right of timely access to appropriate medical or dental treatment;

(F) The right of access to necessary ancillary services, including, but not limited to, occupational therapy, physical therapy, speech therapy, and behavior modification and other psychological services;

(G) The right to receive appropriate care and treatment in the least intrusive manner;

(H) The right to privacy, including both periods of privacy and places of privacy;

(I) The right to communicate freely with persons of their choice in any reasonable manner they choose;

(J) The right to ownership and use of personal possessions so as to maintain individuality and personal dignity;

(K) The right to social interaction with members of either sex;

(L) The right of access to opportunities that enable individuals to develop their full human potential;

(M) The right to pursue vocational opportunities that will promote and enhance economic independence;

(N) The right to be treated equally as citizens under the law;

(O) The right to be free from emotional, psychological, and physical abuse;

(P) The right to participate in appropriate programs of education, training, social development, and habilitation and in programs of reasonable recreation;

(Q) The right to participate in decisions that affect their lives;

(R) The right to select a parent or advocate to act on their behalf;

(S) The right to manage their personal financial affairs, based on individual ability to do so;

(T) The right to confidential treatment of all information in their personal and medical records, except to the extent that disclosure or release of records is permitted under sections 5123.89 and 5126.044 of the Revised Code;

(U) The right to voice grievances and recommend changes in policies and services without restraint, interference, coercion, discrimination, or reprisal;

(V) The right to be free from unnecessary chemical or physical restraints;

(W) The right to participate in the political process;

(X) The right to refuse to participate in medical, psychological, or other research or experiments.

Sec. 5123.63. Every state agency, county board of mental retardation and developmental disabilities, or political subdivision that provides services, either directly or through a contract, to ~~mentally retarded and developmentally disabled~~ persons with mental retardation or a developmental disability shall give each provider a copy of the list of rights contained in section 5123.62 of the Revised Code. Each public and private provider of services shall carry out the requirements of this section in addition to any other posting or notification requirements imposed by local, state, or federal law or rules.

The provider shall make copies of the list of rights and shall be responsible for an initial distribution of the list to each individual receiving services from the provider. If the individual is unable to read the list, the provider shall communicate the contents of the list to the individual to the extent practicable in a manner that the individual understands. The individual receiving services or the parent, guardian, or advocate of the individual shall sign an acknowledgement of receipt of a copy of the list of rights, and a copy of the signed acknowledgement shall be placed in the individual's file. The provider shall also be responsible for answering any questions and giving any explanations necessary to assist the individual to understand the rights enumerated. Instruction in these rights shall be ~~a part of all individual habilitation plans~~ documented.

Each provider shall ~~post in a place accessible~~ make available to all persons receiving services and all employees and visitors a copy of the list of rights and the addresses and telephone numbers of the legal rights service, the department of mental retardation and developmental disabilities, and the county board of mental retardation and developmental disabilities of the county in which the provider provides services.

Sec. 5123.64. (A) Every provider of services to persons with mental retardation ~~and or a developmental disabilities~~ disability shall establish policies and programs to ensure that all staff members are familiar with the rights enumerated in section 5123.62 of the Revised Code and observe those rights in their contacts with persons receiving services. Any policy, procedure, or rule of the provider that conflicts with any of the rights enumerated shall be null and void. Every provider shall establish written procedures for resolving complaints of violations of those rights. A copy of

~~the procedures shall be posted at all times in a place accessible to persons receiving services, and a copy shall be provided on request to any person receiving services or to any parent, guardian, or advocate of a person receiving services.~~

(B) Any ~~mentally retarded or developmentally disabled~~ person with mental retardation or a developmental disability who believes that ~~his or her~~ the person's rights as enumerated in section 5123.62 of the Revised Code have been violated may:

(1) Bring the violation to the attention of the provider for resolution;

(2) Report the violation to the department of mental retardation and developmental disabilities, the ~~ombudsman~~ ombudsperson section of the legal rights service, or the appropriate county board of mental retardation and developmental disabilities;

(3) Take any other appropriate action to ensure compliance with sections 5123.60 to 5123.64 of the Revised Code, including the filing of a legal action to enforce rights or to recover damages for violation of rights.

Sec. 5123.67. This chapter shall be liberally interpreted to accomplish the following purposes:

(A) To promote the human dignity and to protect the constitutional rights of ~~mentally retarded persons and developmentally disabled persons~~ with mental retardation or a developmental disability in the state;

(B) To encourage the development of the ability and potential of each ~~mentally retarded person and each developmentally disabled person~~ with mental retardation or a developmental disability in the state to the fullest possible extent, no matter how severe ~~his~~ the degree of disability;

(C) To promote the economic security, standard of living, and meaningful employment of ~~mentally retarded persons and developmentally disabled persons~~ with mental retardation or a developmental disability;

(D) To maximize the assimilation of ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability into the ordinary life of the communities in which they live;

(E) To ~~recognize the need of mentally retarded or developmentally disabled~~ promote opportunities for persons, whenever care in a residential facility is absolutely necessary, to live in surroundings and circumstances as close to normal as possible with mental retardation or a developmental disability to live in surroundings or circumstances that are typical for other community members;

(F) To promote the right of persons with mental retardation or a developmental disability to speak and be heard about the desired direction of

their lives and to use available resources in ways that further that direction.

Sec. 5123.801. If neither a discharged resident, nor a resident granted trial visit, nor the persons requesting ~~his~~ the resident's trial visit or discharge are financially able to bear the expense of ~~his removal~~ the resident's trial visit or discharge, the managing officer of an institution under the control of the department of mental retardation and developmental disabilities may then provide actual traveling and escort expenses to the township of which the resident resided at the time of institutionalization. The amount payable; ~~which sum in no case shall exceed twenty dollars~~, shall be charged to the current expense fund of the ~~hospital~~ institution.

The expense of the return of a resident on trial visit from an institution, if it cannot be paid by the responsible relatives, shall be borne by the county of institutionalization.

The managing officer of the institution shall take all proper measures for the apprehension of an escaped resident. The expense of the return of an escaped resident shall be borne by the institution where the resident is institutionalized.

The managing officer of the institution shall provide sufficient and proper clothing for traveling if neither the resident nor the persons requesting ~~his~~ the resident's trial visit or discharge are financially able to provide ~~such~~ that clothing.

Sec. 5123.85. (A) All residents institutionalized pursuant to ~~Chapter 5123. of the Revised Code~~ this chapter shall receive, within ~~twenty~~ thirty days of their admission, a comprehensive evaluation, a diagnosis, a prognosis, and a description of habilitation goals consistent therewith.

(B) All such residents shall have a written habilitation plan consistent with the comprehensive evaluation, diagnosis, prognosis, and goals which shall be provided, upon request of resident or resident's counsel, to resident's counsel and to any private physician designated by the resident or ~~his~~ the resident's counsel.

(C) All such residents shall receive habilitation and care consistent with the habilitation plan. The department of mental retardation and developmental disabilities shall set standards for habilitation and care provided to such residents, consistent wherever possible with standards set by the joint commission on accreditation of facilities for the mentally retarded.

(D) All such residents shall receive periodic comprehensive re-evaluations of the habilitation plan by the professional staff of the institution at intervals not to exceed ninety days.

(E) All such residents shall be provided with prompt and adequate

medical treatment for any physical or mental disease or injury.

Sec. 5123.89. (A) All certificates, applications, records, and reports made for the purpose of this chapter, other than court journal entries or court docket entries, which directly or indirectly identify a resident or former resident of an institution for the mentally retarded or person whose institutionalization has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except ~~insofar as~~ in the following situations:

(1) It is the judgment of the court for judicial records, and the managing officer for institution records, that disclosure is in the best interest of the person identified, ~~and such that~~ that person or his that person's guardian or, if ~~he~~ that person is a minor, ~~his that person's~~ parent or guardian consents;

(2) Disclosure ~~may be~~ is provided for in other sections of this chapter ~~of the Revised Code;~~

(3) It is the judgment of the managing officer for institution records that disclosure to a mental health facility is in the best interest of the person identified.

(B) The department of mental retardation and developmental disabilities shall adopt ~~and promulgate~~ rules with respect to the systematic and periodic destruction of residents' records.

(C)(1) As used in this division, "family" means a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin.

(2) Upon the death of a resident or former resident of an institution for the mentally retarded or a person whose institutionalization was sought under this chapter, the managing officer of an institution shall provide access to the certificates, applications, records, and reports made for the purposes of this chapter to the resident's, former resident's, or person's guardian if the guardian makes a written request. If a deceased resident, former resident, or person whose institutionalization was sought under this chapter did not have a guardian at the time of death, the managing officer shall provide access to the certificates, applications, records, and reports made for purposes of this chapter to a member of the person's family, upon that family member's written request.

(D) No person shall reveal the contents of a record of a resident except as authorized by this chapter.

Sec. 5123.93. ~~Mentally retarded minors~~ Minors with mental retardation shall remain under the guardianship of their parents or of a guardian appointed pursuant to Chapter 2111. of the Revised Code, notwithstanding institutionalization pursuant to any section of this chapter, unless parental rights have been terminated pursuant to a court finding that the child is

neglected, abused, or dependent pursuant to Chapter 2151. of the Revised Code. If a ~~mentally retarded~~ minor with mental retardation has been found to be dependent, abused, or neglected, the public children services agency to whom permanent custody has been assigned pursuant to Chapter 2151. of the Revised Code shall have the same authority and responsibility it would have if the child were not mentally retarded and were not institutionalized. In no case shall the guardianship of a ~~mentally retarded~~ person with mental retardation be assigned to the managing officer or any other employee of an institution in which the person is institutionalized, or be assigned, unless there is a relationship by blood or marriage or unless the service is a protective service as defined in section 5123.55 of the Revised Code, to a person or agency who provides services to the person with mental retardation.

Sec. 5126.02. (A)(1) There is hereby created in each county a county board of mental retardation and developmental disabilities consisting of seven members, five of whom shall be appointed by the board of county commissioners of the county, and two of whom shall be appointed by the probate judge of the county. Each member shall be a resident of the county. The membership of the board shall, as nearly as possible, reflect the composition of the population of the county.

All ~~persons appointed to the board~~ members shall be persons interested and knowledgeable in the field of mental retardation and other allied fields. All board members shall be citizens of the United States. Of the members appointed by the board of county commissioners, at least two shall be relatives by blood or marriage of persons eligible for and currently receiving services provided by the county board of mental retardation and developmental disabilities, and, whenever possible, one shall be a relative of a person eligible for and currently receiving adult services, and the other shall be a relative of a person eligible for and currently receiving services for pre-school or school-age children. Of the two members appointed by the probate judge, at least one shall be a relative by blood or marriage of a person eligible for or currently receiving services in a public or private residential facility subject to regulation or licensure by the director of mental retardation and developmental disabilities under sections 5123.19 and 5123.20 of the Revised Code.

Both the board of county commissioners and the probate judge shall appoint under this section, to the maximum extent possible, members who fulfill any applicable requirements of this section for appointment and who also have professional training and experience in business management, finance, law, health care practice, personnel administration, or government

service.

(2) All appointments shall be for terms of four years. The membership of a person appointed as a relative of a recipient of services shall not be terminated because the services are no longer received.

Members may be reappointed, except as provided in division (A)(3) of this section and section 5126.022 of the Revised Code. Prior to making a reappointment, the appointing authority shall ascertain, through written communication with the board, that the member being considered for reappointment meets the requirements of this section and section 5126.022 of the Revised Code.

(3) A member who has served during each of two consecutive terms shall not be reappointed for a subsequent term until one year after ceasing to be a member of the board, except that a member who has served for six years or less within two consecutive terms may be reappointed for a subsequent term before becoming ineligible for reappointment for one year.

(4) Within sixty days after a vacancy occurs, it shall be filled by the appointing authority for the unexpired term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Appointment other than appointment to fill a vacancy shall be made no later than the last day of November of each year, and the term of office shall commence on the date of the stated annual organizational meeting.

(5) Board members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the conduct of board business, including those incurred within the county of residence.

(B) Each year each board member shall attend at least one in-service training session provided by or approved by the department of mental retardation and developmental disabilities. ~~Such~~ These training sessions shall not be considered regularly scheduled meetings of the board.

(C) A county board of mental retardation and developmental disabilities shall be operated as a separate administrative and service entity. The board's functions shall not be combined with the functions of any other entity of county government.

Sec. 5126.023. (A) Each county board of mental retardation and developmental disabilities shall either employ a superintendent or obtain the services of the superintendent of another county board of mental retardation and developmental disabilities. The board shall provide for a superintendent who is qualified, as specified in rules adopted by the department of mental retardation and developmental disabilities in accordance with Chapter 119. of the Revised Code. The superintendent shall have no voting privileges on

the board.

The board shall prescribe the duties of its superintendent and review the superintendent's performance. The superintendent may be removed, suspended, or demoted for cause pursuant to section 5126.23 of the Revised Code. The board shall fix the superintendent's compensation and reimburse the superintendent for actual and necessary expenses.

Each county board that employs its own superintendent shall employ the superintendent under a contract. To enter into a contract, the board shall adopt a resolution agreeing to the contract. Each contract for employment or re-employment of a superintendent shall be for a term of not less than one and not more than five years. At the expiration of a superintendent's current term of employment, the superintendent shall be re-employed for a term of one year at the same salary, plus any increments that may be authorized by the board, unless the board gives the superintendent written notification of its intention not to re-employ the superintendent. With regard to an initial contract, if the contract is for one year, the notice shall be provided not less than sixty days prior to the contract's expiration; if the contract is for more than one year, the notice shall be provided not less than ninety days prior to the contract's expiration. With regard to contracts for re-employment, the notice shall be given not less than ninety days prior to the contract's expiration, regardless of its duration.

(B) Two or more county boards may enter into an arrangement under which the superintendent of one county board acts as the superintendent of another county board. To enter into such an arrangement, each board shall adopt a resolution agreeing to the arrangement. The resolutions shall specify the duration of the arrangement and the contribution each board is to make to the superintendent's compensation and reimbursement for expenses.

(C) If a vacancy occurs in the position of superintendent, a county board may appoint a person who holds a valid superintendent's certificate issued under the rules of the department to work under a contract for an interim period not to exceed one hundred eighty days until a permanent superintendent can be employed or arranged for under division (A) or (B) of this section. The director of the department may approve additional periods of time for these types of interim appointments when so requested by a resolution adopted by a county board, if the director determines that the additional periods are warranted and the services of a permanent superintendent are not available.

Sec. 5126.042. (A) As used in this section:

(1) "Emergency" means any situation that creates for an individual with mental retardation or developmental disabilities a risk of substantial

self-harm or substantial harm to others if action is not taken within thirty days. An "emergency" may include one or more of the following situations:

- (a) Loss of present residence for any reason, including legal action;
- (b) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to perform effectively for the individual;
- (c) Abuse, neglect, or exploitation of the individual;
- (d) Health and safety conditions that pose a serious risk to the individual or others of immediate harm or death;
- (e) Change in the emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.

(2) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

(3) "Priority" means any situation that would constitute an emergency except that action to resolve the situation may be taken in more than thirty but less than ninety days without creating a risk of substantial harm to self or others.

(B) If a county board of mental retardation and developmental disabilities determines that available resources are not sufficient to meet the needs of all individuals who request programs and services and may be offered the programs and services, it shall establish waiting lists for services. The board may establish priorities for making placements on its waiting lists according to an individual's emergency or priority status.

The individuals who may be placed on a waiting list include individuals with a need for services on an emergency or priority basis and individuals who have requested services for which resources are not available.

An individual who currently receives a service but would like to change to another service shall not be placed on a waiting list but shall be placed on a service substitution list. The board shall work with the individual, service providers, and all appropriate entities to facilitate the change in service as expeditiously as possible. The board may establish priorities for making placements on its service substitution lists according to an individual's emergency or priority status.

In addition to maintaining waiting lists and service substitution lists, a board shall maintain a long-term service planning registry for individuals who wish to record their intention to request in the future a service they are not currently receiving. The purpose of the registry is to enable the board to document requests and to plan appropriately. The board may not place an individual on the registry who meets the conditions for receipt of services on

an emergency or priority basis.

(C) A county board shall establish a separate waiting list for each of the following categories of services, and may establish separate waiting lists within the waiting lists:

- (1) Early childhood services;
- (2) Educational programs for preschool and school age children;
- (3) Adult services;
- (4) Case management services;
- (5) Residential services and supported living;
- (6) Transportation services;
- (7) Other services determined necessary and appropriate for ~~mentally retarded or developmentally disabled~~ persons with mental retardation or a developmental disability according to their individual habilitation or service plans;
- (8) Family support services provided under section 5126.11 of the Revised Code.

(D) Prior to establishing any waiting list under this section, a county board shall develop and implement a policy for waiting lists that complies with rules that the department of mental retardation and developmental disabilities shall adopt in accordance with Chapter 119. of the Revised Code. The department's rules shall include procedures to be followed to ensure that the due process rights of individuals placed on waiting lists are not violated.

Prior to placing an individual on a waiting list, the county board shall assess the service needs of the individual in accordance with all applicable state and federal laws. The county board shall place the individual on the appropriate waiting list and may place the individual on more than one waiting list.

At least annually, the county board shall reassess the service needs of each individual on a waiting list. If it determines that an individual no longer needs a program or service, the county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists.

When a program or service for which there is a waiting list becomes available, the county board shall reassess the service needs of the individual next scheduled on the waiting list to receive that program or service. If the reassessment demonstrates that the individual continues to need the program

or service, the board shall offer the program or service to the individual. If it determines that an individual no longer needs a program or service, the county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists.

(E) A child subject to a determination made pursuant to section 121.38 of the Revised Code who requires the home and community-based services provided through the medical assistance waiver programs operated under sections 5111.87 and 5111.88 of the Revised Code shall receive services through the waiver programs adopted under Chapters 5111., 5123., and 5126. of the Revised Code. For all other services, a child subject to a determination made pursuant to section 121.38 of the Revised Code shall be treated as an emergency by the county boards and shall not be subject to a waiting list.

(F) Not later than the fifteenth day of March of each even-numbered year, each county board shall prepare and submit to the director of mental retardation and developmental disabilities its recommendations for the funding of services for individuals with mental retardation and developmental disabilities and its proposals for reducing the waiting lists for services.

(G) The following shall take precedence over the applicable provisions of this section:

(1) Medicaid rules and regulations;

(2) Any specific requirements that may be contained within a medicaid state plan amendment or waiver program that a county board has authority to administer or with respect to which it has authority to provide services, programs, or supports.

Sec. 5126.044. (A) As used in this section, "eligible person" has the same meaning as in section 5126.03 of the Revised Code.

(B) Except as provided in division (D) of this section, no person shall disclose the identity of an individual who requests programs or services under this chapter or release a record or report regarding an eligible person that is maintained by a county board of mental retardation and developmental disabilities or an entity under contract with a county board unless one of the following circumstances exists:

(1) The individual, eligible person, or the individual's guardian, or, if the individual is a minor, the individual's parent or guardian, makes a written

request to the county board or entity for or approves in writing disclosure of the individual's identity or release of the record or report regarding the eligible person.

(2) Disclosure of the identity of an individual is needed for approval of a direct services contract under section 5126.032 or 5126.033 of the Revised Code. The county board shall release only the individual's name and the general nature of the services to be provided.

(3) Disclosure of the identity of the individual is needed to ascertain that the county board's waiting lists for programs or services are being maintained in accordance with section 5126.042 of the Revised Code and the rules adopted under that section. The county board shall release only the individual's name, the general nature of the programs or services to be provided the individual, the individual's rank on each waiting list that includes the individual, and any circumstances under which the individual was given priority when placed on a waiting list.

(C) A board or entity that discloses an individual's identity or releases a record or report regarding an eligible person shall maintain a record of when and to whom the disclosure or release was made.

(D)(1) At the request of an eligible person or the person's guardian or, if the eligible person is a minor, the person's parent or guardian, a county board or entity under contract with a county board shall provide the person who made the request access to records and reports regarding the eligible person. On written request, the county board or entity shall provide copies of the records and reports to the eligible person, guardian, or parent. The county board or entity may charge a reasonable fee to cover the costs of copying. The county board or entity may waive the fee in cases of hardship.

(2) A county board shall provide access to any waiting list or record or report regarding an eligible person maintained by the board to any state agency responsible for monitoring and reviewing programs and services provided or arranged by the county board, any state agency involved in the coordination of services for an eligible person, and any agency under contract with the department of mental retardation and developmental disabilities for the provision of protective service pursuant to section 5123.56 of the Revised Code.

(3) When an eligible person who requests programs or services under this chapter dies, the county board or entity under contract with the county board, shall, on written request, provide to both of the following persons any reports and records in the board or entity's possession concerning the eligible person:

(a) If the report or records are necessary to administer the estate of the

erson who is the subject of the reports or records, to the executor or administrator of the person's estate;

(b) To the guardian of the person who is the subject of the reports or records or, if the individual had no guardian at the time of death, to a person in the first applicable of the following categories:

- (i) The person's spouse;
- (ii) The person's children;
- (iii) The person's parents;
- (iv) The person's brothers or sisters;
- (v) The person's uncles or aunts;
- (vi) The person's closest relative by blood or adoption;
- (vii) The person's closest relative by marriage.

The county board or entity shall provide the reports and records as required by division (D)(3) of this section not later than thirty days after receipt of the request.

(E) A county board shall notify an eligible person, the person's guardian, or, if the eligible person is a minor, the person's parent or guardian, prior to destroying any record or report regarding the eligible person.

Sec. 5126.081. (A) In addition to the rules adopted under division (A)(2) of section 5126.08 of the Revised Code establishing standards for the administration, provision, arrangement, and operation of programs and services by county boards of mental retardation and developmental disabilities, the department of mental retardation and developmental disabilities shall establish a system of accreditation for county boards of mental retardation and developmental disabilities to ensure that the boards are in compliance with federal and state statutes and rules. The department shall ~~establish uniform standards for the accreditation system in~~ adopt rules that shall be adopted in accordance with Chapter 119. of the Revised Code governing the system of accreditation. The rules shall include appropriate timelines for compliance when a board is found to be not in compliance and appropriate actions to be taken by boards in complying with the accreditation ~~standards~~ requirements.

(B) Prior to accrediting a board, the department shall conduct a comprehensive, on-site review of the board. During the review, the department shall document the board's compliance with the department's accreditation ~~standards~~ requirements. After completing the review, the department shall conduct an exit conference with the president of the board, the superintendent of the board, and any other officials the board asks to have present. The department shall discuss its findings from the review with the board's representatives and provide a written report of its findings not

later than thirty days following the exit conference. If the department finds that the board is in compliance with the ~~standards~~ requirements for accreditation, the department shall issue evidence of accreditation to the board.

Accreditation may be granted for periods of up to five years and may be renewed. Not less than once prior to the date a board's accreditation is scheduled to expire, the department shall conduct a comprehensive, on-site review of the board.

Each board shall conduct an annual audit of itself to evaluate its compliance with the ~~standards~~ requirements for accreditation. The department may conduct an interim review of any new program or service initiated by a board after its last comprehensive review. The department may conduct other reviews and investigations as necessary to enforce this section.

(C) If the department determines through its review of a board that the board is not in compliance with the ~~standards~~ requirements for accreditation, the department shall, except as provided in division (F) of this section, grant the board an opportunity to correct the matters in which it is not in compliance. The department shall grant the board an appropriate length of time to comply with the ~~standards~~ requirements prior to taking any action to deny accreditation to the board. To avoid denial of accreditation, the board superintendent shall prepare a plan of correction to remediate the matters specified in the department's written report as not being in compliance with the ~~standards~~ requirements for accreditation. The superintendent shall submit the plan to the board for review, and the board shall review the plan. If the board believes that the plan is sufficient to correct the matters, the board shall approve the plan by resolution and submit the plan to the department for its review. The department shall review the plan of correction. If the department approves the plan, the board shall commence action to implement the plan. The department shall, as necessary, conduct follow-up reviews of the board to determine whether it has met the ~~standards~~ requirements for accreditation. If the plan of correction submitted by a board is disapproved, the department shall inform the board of the reasons for disapproval and may grant the board an opportunity to submit a revised plan of correction.

A board may request technical assistance from the department, other boards, or professional organizations in preparing plans of correction and in implementing plans of correction.

(D) If, after being given the opportunity to implement a plan of correction, a board continues to fail to meet the ~~standards~~ requirements for

accreditation, the department shall issue an order denying accreditation to the board. The department may deny accreditation to the board for all or part of the programs or services offered by the board.

The department shall simultaneously notify all of the following officials in the county: the members of the board of county commissioners, the probate judge, the county auditor, and the president and superintendent of the county board of mental retardation and developmental disabilities. The notice shall identify the programs and services that have been denied accreditation, the ~~matters in~~ requirements for accreditation with which the board is not in compliance ~~with the standards for accreditation~~, and the responsibilities of the county officials to contract under division (E)(1) of this section to have the board's programs and services administered by another party or become subject to administrative receivership under division (E)(2) of this section.

~~A board that has been denied accreditation is not eligible to receive, for the programs and services that are the subject of the denied accreditation, any state or federal funds in an amount that exceeds the amount the board received for the programs and services immediately prior to the date on which the department determined that the board does not meet the standards for accreditation.~~

(E)(1) When a board is denied accreditation, the department shall first give the board the option of contracting to have the board's programs and services that were denied accreditation administered by an accredited county board of mental retardation and developmental disabilities or another qualified entity subject to the approval of the department. The board may contract with more than one board that has been accredited. When a board enters into a contract, the board shall, by resolution, give the contractor full administrative authority over the programs and services that ~~were denied accreditation~~ the contractor will administer.

(2) If a board fails to exercise its option of entering into a contract under division (E)(1) of this section sooner than thirty days after the department denies accreditation, the department shall appoint an administrative receiver of the board's programs and services that were denied accreditation. The department may appoint employees of the department, management personnel from county boards of mental retardation and developmental disabilities, or individuals from other entities as necessary to meet its needs for appointing an administrative receiver, except that individuals from other entities may be appointed only when qualified department employees or board management personnel are unavailable. The department may not appoint an individual who is employed by or affiliated with an entity that is

under contract with the board. The administrative receiver shall assume full administrative responsibility for the board's programs and services that were denied accreditation.

(3) The board or entity that contracts with a board under division (E)(1) of this section, or the administrative receiver appointed under division (E)(2) of this section, shall develop and implement a plan of correction to remediate the matters that caused the department to deny accreditation. The contractor or administrative receiver shall submit the plan to the department, and the department shall review the plan. If the plan is approved by the department, the contractor or administrative receiver shall commence action to implement the plan. The contractor or administrative receiver shall report to the department any findings it can make pertaining to issues or circumstances that are beyond the control of the board and result in the unlikelihood that compliance with the ~~standards~~ requirements for accreditation can be achieved unless the issues or circumstances are remediated.

(4) For purposes of divisions (E)(1) and (2) of this section, the department shall require the board that has been denied accreditation to transfer control of state and federal funds it is eligible to receive for the board's programs and services that have been denied accreditation in an amount necessary for the contractor or administrative receiver to fulfill its duties in administering the programs and services for the board. The transfer of control of funds does not cause any programs and services of the board that are accredited to lose their accreditation. If the board refuses to transfer control of funds, the department may withhold state and federal funds from the board in an amount necessary for the contractor or administrative receiver to fulfill its duties. The amount transferred or withheld from a board shall include reimbursements for the personnel of the contractor or administrative receiver, including amounts for time worked, travel, and related expenses.

A contractor or administrative receiver that has assumed the administration of a board's programs and services has the right to authorize the payment of bills in the same manner that a board may authorize payment of bills under this chapter and section 319.16 of the Revised Code.

(F) When the department's review of a board reveals serious health and safety issues within the programs and services offered by the board, the department shall order the board to correct the violations immediately or appoint an administrative receiver.

(G) At any time a board can demonstrate that it is capable of assuming its duties in compliance with the department's ~~standards~~ requirements for

accreditation, the department shall reverse its order denying accreditation and issue evidence of accreditation to the board.

A board may appeal the department's denial of accreditation or refusal to reverse a denial of accreditation only by filing a complaint under section 5123.043 of the Revised Code. If in its appeal the board can demonstrate that it is capable of assuming its duties in compliance with the department's ~~standards~~ requirements for accreditation, the department shall reverse its order denying accreditation and shall issue evidence of accreditation to the board.

(H) All notices issued to a board by the department under this section shall be delivered to the board's president and superintendent.

(I) A board's president may designate another member of the board as the individual to be responsible for fulfilling all or part of the president's responsibilities established under this section.

Sec. 5126.082. (A) In addition to the rules adopted under division (A)(2) of section 5126.08 of the Revised Code establishing standards to be followed by county boards of mental retardation and developmental disabilities in administering, providing, arranging, and operating programs and services and in addition to the board accreditation system established under section 5126.081 of the Revised Code, the director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for promoting and advancing the quality of life of individuals with mental retardation and developmental disabilities receiving any of the following:

(1) Early childhood services pursuant to section 5126.05 of the Revised Code for children under age three;

(2) Adult services pursuant to section 5126.05 and division (B) of section 5126.051 of the Revised Code for individuals age sixteen or older;

(3) Family support services pursuant to section 5126.11 of the Revised Code.

(B) The rules adopted under this section shall specify the actions county boards of mental retardation and developmental disabilities and the agencies with which they contract should take to do the following:

(1) Offer individuals with mental retardation and developmental disabilities, and their families when appropriate, choices in programs and services that are centered on the needs and desires of those individuals;

(2) Maintain infants with their families whenever possible by collaborating with other agencies that provide services to infants and their families and taking other appropriate actions;

(3) Provide families that have children with mental retardation and

developmental disabilities under age eighteen residing in their homes the resources necessary to allow the children to remain in their homes;

(4) Create and implement community employment services based on the needs and desires of adults with mental retardation and developmental disabilities;

(5) Create, in collaboration with other agencies, transportation systems that provide safe and accessible transportation within the county to individuals with disabilities;

(6) Provide services that allow individuals with disabilities to be integrated into the community by engaging in educational, vocational, and recreational activities with individuals who ~~are~~ do not ~~handicapped~~ have disabilities;

(7) Provide age-appropriate retirement services for individuals age sixty-five and older with mental retardation and developmental disabilities;

(8) Establish residential services and supported living for individuals with mental retardation and developmental disabilities in accordance with their needs.

(C) To assist in funding programs and services that meet the standards established under this section, each county board of mental retardation and developmental disabilities shall make a good faith effort to acquire available federal funds, including reimbursements under Title XIX of the "Social Security Act," ~~49~~ 79 Stat. ~~620 (1935)~~ 286 (1965), 42 U.S.C.A. ~~304~~ 1396, as amended.

(D) Each county board of mental retardation and developmental disabilities shall work toward full compliance with the standards established under this section, based on its available resources. Funds received under this chapter shall be used to comply with the standards. Annually, each board shall ~~submit a report to the department of mental retardation and developmental disabilities regarding~~ conduct a self audit to evaluate the board's progress in complying fully with the standards.

(E) The department shall complete a program quality review of each county board of mental retardation and developmental disabilities to determine the extent to which the board has complied with the standards. The review shall be conducted in conjunction with the comprehensive accreditation review of the board that is conducted under section 5126.081 of the Revised Code.

Notwithstanding any provision of this chapter or Chapter 5123. of the Revised Code requiring the department to distribute funds to county boards of mental retardation and developmental disabilities, the department may withhold funds from a board if it finds that the board is not in substantial

compliance with the standards established under this section.

(F) When the standards for accreditation from the commission on accreditation of rehabilitation facilities, or another accrediting agency, meet or exceed the standards established under this section, the director may accept accreditation from the commission or other agency as evidence that the board is in compliance with all or part of the standards established under this section. Programs and services accredited by the commission or agency are exempt from the program quality reviews required by division (E) of this section.

Sec. 5126.12. (A) As used in this section:

(1) "Approved school age unit" means a class or unit operated by a county board of mental retardation and developmental disabilities and approved by the state board of education under division (D) of section 3317.05 of the Revised Code.

(2) "Approved preschool unit" means a class or unit operated by a county board of mental retardation and developmental disabilities and approved by the state board of education under division (B) of section 3317.05 of the Revised Code.

(3) "Active treatment" means a continuous treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services, that is directed toward the acquisition of behaviors necessary for an individual with mental retardation or other developmental disability to function with as much self-determination and independence as possible and toward the prevention of deceleration, regression, or loss of current optimal functional status.

(4) "Eligible for active treatment" means that an individual with mental retardation or other developmental disability resides in an intermediate care facility for the mentally retarded certified under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended; resides in a state institution operated by the department of mental retardation and developmental disabilities; or is enrolled in a home and community-based services waiver program administered by the department of mental retardation and developmental disabilities as part of the medical assistance program established under section 5111.01 of the Revised Code.

(5) "Community alternative funding system" means the program under which habilitation services are reimbursed under the medical assistance program pursuant to section 5111.041 of the Revised Code and rules adopted under that section.

(6) "Community employment program" means community employment

services provided outside of a sheltered workshop setting under which the person earns competitive wages for the performance of work.

(7) "Traditional adult services" means vocational and nonvocational activities conducted within a sheltered workshop or adult activity center or supportive home services.

(B) Each county board of mental retardation and developmental disabilities shall certify to the director of mental retardation and developmental disabilities all of the following:

(1) On or before the fifteenth day of October, the average daily membership for the first full week of programs and services during October receiving:

(a) Early childhood services provided pursuant to section 5126.05 of the Revised Code for children who are less than three years of age on the thirtieth day of September of the academic year;

(b) Special education for handicapped children in approved school age units;

(c) Adult services for persons sixteen years of age and older operated pursuant to section 5126.05 and division (B) of section 5126.051 of the Revised Code. Separate counts shall be made for the following:

(i) Persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment under the community alternative funding system;

(ii) Persons enrolled in traditional adult services who are eligible for and enrolled in active treatment under the community alternative funding system;

(iii) Persons enrolled in traditional adult services but who are not eligible for active treatment under the community alternative funding system;

(iv) Persons participating in community employment services. To be counted as participating in community employment services, a person must have spent an average of no less than ~~twenty ten~~ ten hours per week in ~~such that~~ such employment during the preceding six months.

(d) Other programs in the county for individuals with mental retardation and developmental disabilities that have been approved for payment of subsidy by the department of mental retardation and developmental disabilities.

The membership in each such program and service in the county shall be reported on forms prescribed by the department of mental retardation and developmental disabilities.

The department of mental retardation and developmental disabilities

shall adopt rules defining full-time equivalent enrollees and for determining the average daily membership therefrom, except that certification of average daily membership in approved school age units shall be in accordance with rules adopted by the state board of education. The average daily membership figure shall be determined by dividing the amount representing the sum of the number of enrollees in each program or service in the week for which the certification is made by the number of days the program or service was offered in that week. No enrollee may be counted in average daily membership for more than one program or service.

(2) By the fifteenth day of December, the number of children enrolled in approved preschool units on the first day of December;

(3) ~~By On or before the fifteenth thirtieth day of February March,~~ an itemized report of all income and operating expenditures for the immediately preceding calendar year which have been approved for reimbursement by the director, in the format specified by the department of mental retardation and developmental disabilities;

(4) By the fifteenth day of February, a report of the total annual cost per enrollee for operation of programs and services in the preceding calendar year. The report shall include a grand total of all programs operated, the cost of the individual programs, and the sources of funds applied to each program.

(5) That each required certification and report is in accordance with rules established by the department of mental retardation and developmental disabilities and the state board of education for the operation and subsidization of the programs and services.

(C) To compute payments under this section to the board for the fiscal year, the department of mental retardation and developmental disabilities shall use the certification of average daily membership required by division (B)(1) of this section exclusive of the average daily membership in any approved school age unit and the number in any approved preschool unit.

(D) The department shall pay each county board for each fiscal year an amount equal to nine hundred fifty dollars times the certified number of persons who on the first day of December of the academic year are under three years of age and are not in an approved preschool unit. For persons who are at least age sixteen and are not in an approved school age unit, the department shall pay each county board for each fiscal year the following amounts:

(1) One thousand dollars times the certified average daily membership of persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment under the community alternative funding

em;

(2) One thousand two hundred dollars times the certified average daily membership of persons enrolled in traditional adult services who are eligible for and enrolled in active treatment under the community alternative funding system;

(3) No less than one thousand five hundred dollars times the certified average daily membership of persons enrolled in traditional adult services but who are not eligible for active treatment under the community alternative funding system;

(4) No less than one thousand five hundred dollars times the certified average daily membership of persons participating in community employment services.

(E) The department shall distribute this subsidy to county boards in semiannual installments of equal amounts. The installments shall be made not later than the thirty-first day of August and the thirty-first day of January.

(F) The director of mental retardation and developmental disabilities shall make efforts to obtain increases in the subsidies for early childhood services and adult services so that the amount of the subsidies is equal to at least fifty per cent of the statewide average cost of those services minus any applicable federal reimbursements for those services. The director shall advise the director of budget and management of the need for any such increases when submitting the biennial appropriations request for the department.

(G) In determining the reimbursement of a county board for the provision of case management and family support services and other services required or approved by the director for which children three through twenty-one years of age are eligible, the department shall include the average daily membership in approved school age or preschool units. The department, in accordance with this section and upon receipt and approval of the certification required by this section and any other information it requires to enable it to determine a board's payments, shall pay the agency providing the specialized training the amounts payable under this section.

Sec. 5126.13. (A) A county board of mental retardation and developmental disabilities may enter into an agreement with one or more other county boards of mental retardation and developmental disabilities to establish a regional council in accordance with Chapter 167. of the Revised Code. The agreement shall specify the duties and functions to be performed by the council, which may include any duty or function a county board is

required or authorized to perform under this chapter. If directed to do so by a resolution adopted by a county board that is a member of a regional council, the department of mental retardation and developmental disabilities shall make any distributions of money for that county for the duties or functions performed by the council pursuant to its agreement that are otherwise required to be made to the county board under this chapter to the fiscal officer of the council designated under section 167.04 of the Revised Code.

A county board may also enter into an agreement with one or more school districts or other political subdivisions to establish a regional council in accordance with Chapter 167. of the Revised Code.

(B) On or before the thirtieth day of March, the fiscal officer of a regional council described in this section shall report to the department of mental retardation and developmental disabilities, in the format specified by the department, all income and operating expenditures of the council for the immediately preceding calendar year.

Sec. 5126.252. Notwithstanding sections 5123.082, 5126.25, and 5126.26 of the Revised Code, the department of mental retardation and developmental disabilities may authorize county boards of mental retardation and developmental disabilities to establish and administer in their counties programs for the certification and registration of persons for employment by the boards. A certificate or evidence of registration issued by a board participating in programs under this section shall have the same force and effect as a certificate or evidence of registration issued by the department under section 5123.082 or 5126.25 of the Revised Code.

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)~~(2)~~(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, 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) ~~or~~, (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 ~~person~~ applicant is ever formally charged ~~for~~ 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)~~(2)~~(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. ~~The~~ At the request of the director of mental retardation and developmental disabilities, the superintendent also shall provide the ~~department of mental retardation and developmental disabilities~~ director with a copy of ~~each~~ 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 ~~for that~~ 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.

Sec. 5126.281. (A) As used in this section, "~~contracting~~":

(1) "Contracting entity" means an entity under contract with a county board of mental retardation and developmental disabilities for the provision of ~~direct~~ specialized services to individuals with mental retardation or a developmental disability.

(2) "Direct services position" means an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals with mental retardation or a developmental disability.

(3) "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. If there is a question as to whether a contracting entity is providing specialized services, the contracting entity may request that the director of mental retardation and developmental disabilities make a determination. The director's determination is final.

(B) ~~Each (1) Except as provided in division (B)(2) of this section, each contracting entity shall conduct background investigations in the same manner county boards conduct investigations under section 5126.28 of the Revised Code of all persons under final consideration for employment with the contracting entity in a direct services position that involves providing services directly to individuals with mental retardation or a developmental disability, except that a contracting entity is not required to request a criminal records check for a direct services employee of the entity who is being considered for a different direct services position or is returning after a leave of absence or seasonal break in employment, as long as the contracting entity has no reason to believe that the employee has committed any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code~~ On request, the county board shall assist a contracting entity in obtaining reports from the bureau of criminal identification and investigation or any other state or federal agency and in obtaining abstracts from the registrar of motor vehicles.

(2) A contracting entity is not required to request a criminal records check for either of the following:

(a) An employee of the entity who is in a direct services position and being considered for a different direct services position or is returning after a leave of absence or seasonal break in employment, as long as the

contracting entity has no reason to believe that the employee has committed any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code:

(b) A person who will provide only respite care under a family support services program established under section 5126.11 of the Revised Code, if the person is selected by a family member of the individual with mental retardation or a developmental disability who is to receive the respite care.

(C) No contracting entity shall place a person in a direct services position ~~that involves providing services directly to individuals with mental retardation or a developmental disability~~ if the person has been convicted of or pleaded guilty to any offense listed or described in division (E) of section 5126.28 of the Revised Code, unless the person meets the standards for rehabilitation established by rules adopted under section 5126.28 of the Revised Code.

(D) A contracting entity may place a person in a direct services position ~~that involves providing services directly to an individual with mental retardation or a developmental disability~~ pending receipt of information concerning the person's background investigation from the bureau of criminal identification and investigation, the registrar of motor vehicles, or any other state or federal agency if the person submits to the contracting entity a statement with the person's signature that the person has not been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code. No contracting entity shall fail to terminate the placement of such person if the contracting entity is informed that the person has been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code.

(E) Prior to employing a person in a direct services position, the contracting entity shall require the person 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 section 5126.28 of the Revised Code. The contracting entity also shall require the person to sign an agreement to notify the contracting entity within fourteen calendar days if, while employed by the entity, the person is ever formally charged ~~for~~ with, convicted of, or pleads guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code. The agreement shall inform the person that failure to report formal charges, a conviction, or a guilty plea may result in being dismissed from employment.

(F) A county board may take appropriate action against a contracting

entity that violates this section, including terminating the contracting entity's contract with the board.

Sec. 5126.311. Notwithstanding the requirement of section 5126.31 of the Revised Code that a county board of mental retardation and developmental disabilities review reports of abuse and neglect, if the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities determines that it would be inappropriate for the county board to investigate a report of abuse or neglect made under section 5123.61 of the Revised Code, at the request of the department or county board, one of the following government entities may review the report instead of the county board:

(A) Another county board of mental retardation and developmental disabilities;

(B) The department;

(C) A regional council of government established pursuant to Chapter 167. of the Revised Code;

(D) Any other government entity authorized to investigate reports of abuse and neglect.

Sec. 5126.312. The department of mental retardation and developmental disabilities shall adopt rules establishing minimum standards for the training provided by county boards of mental retardation and developmental disabilities pursuant to division (F) of section 5126.31 of the Revised Code. The training provided by the county boards shall meet the minimum standards prescribed by the rules.

Sec. 5126.357. (A) As used in this section:

(1) "In-home care" means the supportive services provided within the home of an individual who receives funding for the services as a county board client, including any client who receives residential services funded through the medical assistance program's home and community-based services waivers administered by the department of mental retardation and developmental disabilities, family support services provided under section 5126.11 of the Revised Code, or supported living provided in accordance with sections 5126.41 to 5126.47 of the Revised Code. "In-home care" includes care that is provided outside a client's home in places incidental to the home, and while traveling to places incidental to the home, except that "in-home care" does not include care provided in the facilities of a county board of mental retardation and developmental disabilities or care provided in schools.

(2) "Parent" means either parent of a child, including an adoptive parent but not a foster parent.

(3) "Unlicensed in-home care worker" means an individual who provides in-home care but is not a health care professional. A county board worker may be an unlicensed in-home care worker.

(4) "Family member" means a parent, sibling, spouse, son, daughter, grandparent, aunt, uncle, cousin, or guardian of the individual with mental retardation or a developmental disability if the individual with mental retardation or developmental disabilities lives with the person and is dependent on the person to the extent that, if the supports were withdrawn, another living arrangement would have to be found.

(B) Except as provided in division (D) of this section, ~~the parent or guardian~~ a family member of an individual with mental retardation or a developmental disability ~~who is not more than twenty-one years of age or the guardian of an individual with mental retardation or a developmental disability who is age twenty-one or older~~ may authorize an unlicensed in-home care worker to give or apply prescribed medication or perform other health care tasks as part of the in-home care provided to the individual, if the ~~parent or guardian~~ family member is the primary supervisor of the care and the unlicensed in-home care worker has been selected by the ~~parent or guardian~~ family member and is under the direct supervision of the ~~parent or guardian~~ family member. Sections 4723.62 and 5126.351 to 5126.356 of the Revised Code do not apply to the in-home care authorized by a ~~parent or guardian~~ family member under this section. Instead, a ~~parent or guardian~~ family member shall obtain a prescription, if applicable, and written instructions from a health care professional for the care to be provided to the individual. The ~~parent or guardian~~ family member shall authorize the unlicensed in-home care worker to provide the care by preparing a written document granting the authority. The ~~parent or guardian~~ family member shall provide the unlicensed in-home care worker with appropriate training and written instructions in accordance with the instructions obtained from the health care professional.

(C) A ~~parent or guardian~~ family member who authorizes an unlicensed in-home care worker to give or apply prescribed medication or perform other health care tasks retains full responsibility for the health and safety of the individual receiving the care and for ensuring that the worker provides the care appropriately and safely. No entity that funds or monitors the provision of in-home care may be held liable for the results of the care provided under this section by an unlicensed in-home care worker, including such entities as the county board of mental retardation and developmental disabilities, any other entity that employs an unlicensed in-home care worker, and the department of mental retardation and developmental

disabilities.

An unlicensed in-home care worker who is authorized under this section by a ~~parent or guardian~~ family member to provide care to an individual may not be held liable for any injury caused in providing the care, unless the worker provides the care in a manner that is not in accordance with the training and instructions received or the worker acts in a manner that constitutes wanton or reckless misconduct.

(D) A county board of mental retardation and developmental disabilities may evaluate the authority granted by a ~~parent or guardian~~ family member under this section to an unlicensed in-home care worker at any time it considers necessary and shall evaluate the authority on receipt of a complaint. If the board determines that ~~the parent or guardian~~ a family member has acted in a manner that is inappropriate for the health and safety of the individual receiving the services, the authorization granted by the ~~parent or guardian~~ family member to an unlicensed in-home care worker is void, and the ~~parent or guardian~~ family member may not authorize other unlicensed in-home care workers to provide the care. In making such a determination, the board shall use appropriately licensed health care professionals and shall provide the ~~parent or guardian~~ family member an opportunity to file a complaint under section 5126.06 of the Revised Code.

SECTION 2. That existing sections 109.57, 109.572, 2108.50, 2111.13, 5123.01, 5123.02, 5123.041, 5123.042, 5123.05, 5123.082, 5123.09, 5123.092, 5123.11, 5123.17, 5123.18, 5123.181, 5123.183, 5123.19, 5123.21, 5123.27, 5123.34, 5123.351, 5123.353, 5123.55, 5123.62, 5123.63, 5123.64, 5123.67, 5123.801, 5123.85, 5123.89, 5123.93, 5126.02, 5126.023, 5126.042, 5126.044, 5126.081, 5126.082, 5126.12, 5126.13, 5126.28, 5126.281, and 5126.357 and sections 5123.081, 5123.16, 5123.231, and 5126.252 of the Revised Code are hereby repealed.

SECTION 3. Section 5123.081 of the Revised Code, as repealed and reenacted by this act, applies only to persons who apply for appointment to or employment with the Department of Mental Retardation and Developmental Disabilities on or after the effective date of this act.

SECTION 4. The Joint Council on Mental Retardation and Developmental Disabilities is retained pursuant to division (D) of section 101.84 of the Revised Code and, pursuant to that section, expires on December 31, 2004.

SECTION 5. As used in this section, "contractor" means a person or government agency that has entered into a contract with the Department of Mental Retardation and Developmental Disabilities under section 5123.18 of the Revised Code to provide residential services to individuals with mental retardation or developmental disabilities.

A contractor is not required to repay the Department of Mental Retardation and Developmental Disabilities the amount the contractor received from the Department pursuant to a retroactive rate increase the Department issued in April 1997. If, prior to the effective date of this act, a contractor repaid the Department the amount it received pursuant to that retroactive rate increase, the Department shall return the payment to the contractor. The payment shall be made from the purchase of service fund established under section 5123.051 of the Revised Code. Neither that retroactive rate increase nor a payment the Department returns to a contractor under this section is an amount payable to the state for the purpose of section 131.02 of the Revised Code or subject to a reconciliation under division (O) of section 5123.18 of the Revised Code.

SECTION 6. The repeal and reenactment of section 5126.252 of the Revised Code by this act revives that section, except that this act makes that section permanent, does not limit the programs established under that section to pilot projects, and does not apply to employees of entities contracting with a county board of mental retardation and developmental disabilities.

SECTION 7. Section 109.57 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 3 and Am. Sub. H.B. 282 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such are the resulting versions of those sections in effect prior to the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____