

AN ACT

To amend sections 5123.61, 5126.28, 5126.30, 5126.31, and 5126.33 and to enact sections 5123.50 to 5123.54 of the Revised Code to establish a registry of persons found by the Department of Mental Retardation and Developmental Disabilities to have abused or neglected an individual with mental retardation or a developmental disability, to prohibit employment of such persons in certain positions, to limit the types of abuse and neglect reports that are referred to law enforcement agencies, and to authorize the Director of Mental Retardation and Developmental Disabilities to adopt rules regarding mandatory reporting of certain incidents.

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

SECTION 1. That sections 5123.61, 5126.28, 5126.30, 5126.31, and 5126.33 be amended and sections 5123.50, 5123.51, 5123.52, 5123.53, and 5123.54 of the Revised Code be enacted to read as follows:

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

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

(1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;

(2) Sexual abuse;

(3) Verbal abuse.

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

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

(1) An employee of the department of mental retardation and developmental disabilities;

(2) An employee of a county board of mental retardation and developmental disabilities;

(3) An "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.

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

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

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

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

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

Sec. 5123.51. (A) In addition to any other action required by sections 5123.61 and 5126.31 of the Revised Code, the department of mental retardation and developmental disabilities shall review each report the department receives of abuse or neglect of an individual with mental retardation or a developmental disability or misappropriation of an individual's property that includes an allegation that an MR/DD employee committed or was responsible for the abuse, neglect, or misappropriation. The department shall review a report it receives from a public children services agency only after the agency completes its investigation pursuant to section 2151.421 of the Revised Code.

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

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

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

(C)(1) THE DEPARTMENT SHALL APPOINT AN INDEPENDENT

HEARING OFFICER TO CONDUCT ANY HEARING CONDUCTED PURSUANT TO DIVISION (B)(2) OF THIS SECTION, except that, if the hearing is regarding an employee of the department who is represented by a union, the department and a representative of the union shall jointly select the hearing officer.

(2) No hearing shall be conducted under division (B)(2) of this section until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded.

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

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

(i) misappropriated the property of an individual with mental retardation or a developmental disability;

(ii) Knowingly abused or neglected such an individual;

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

(iv) Negligently abused or neglected such an individual, with resulting serious physical harm.

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

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

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

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

shall notify the appropriate agency, board, department, or other entity responsible for regulating the employee's professional practice.

(4) The director shall not include in the registry an individual who has been found not guilty by a court or jury of an offense arising from the same facts.

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

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

Sec. 5123.52. (A) The department of mental retardation and developmental disabilities shall establish a registry of MR/DD employees consisting of the names of MR/DD employees included in the registry pursuant to section 5123.51 of the Revised Code.

(B) Before a person or government entity hires, contracts with, or employs an individual as an MR/DD employee, the person or government entity shall inquire whether the individual is included in the registry.

(C) When it receives an inquiry regarding whether an individual is included in the registry, the department shall inform the person making the inquiry whether the individual is included in the registry.

(D)(1) Except as otherwise provided in a collective bargaining agreement entered into under Chapter 4117. of the Revised Code that is in effect on the effective date of this section, no person or government entity shall hire, contract with, or employ as an MR/DD employee an individual who is included in the registry. Notwithstanding sections 4117.08 and 4117.10 of the Revised Code, no agreement entered into under Chapter 4117. of the Revised Code after the effective date of this section may contain any provision that in any way limits the effect or operation of this

section.

(2) Neither the department nor any county board of mental retardation and developmental disabilities may enter into a new contract or renew a contract with a person or government entity that fails to comply with division (D)(1) of this section until the department or board is satisfied that the person or government entity will comply.

(3) A person or government entity that fails to hire or retain as an MR/DD employee a person because the person is included in the registry shall not be liable in damages in a civil action brought by the employee or applicant for employment. Termination of employment pursuant to division (D)(1) of this section constitutes a discharge for just cause for the purposes of section 4141.29 of the Revised Code.

(E) Information contained in the registry is a public record for the purposes of section 149.43 of the Revised Code and is subject to inspection and copying under section 1347.08 of the Revised Code.

Sec. 5123.53. An individual who is included in the registry may petition the director of mental retardation and developmental disabilities for removal from the registry. If the director determines that good cause exists, the director shall remove the individual from the registry and may properly reply to an inquiry that the individual is not included in the registry. GOOD CAUSE INCLUDES MEETING REHABILITATION STANDARDS ESTABLISHED IN RULES ADOPTED UNDER SECTION 5123.54 OF THE REVISED CODE.

Sec. 5123.54. The director of mental retardation and developmental disabilities shall adopt rules under Chapter 119. of the Revised Code to implement sections 5123.51, 5123.52, and 5123.53 of the Revised Code. The rules shall establish rehabilitation standards for the purposes of section 5123.53 of the Revised Code and specify circumstances, other than meeting the standards, that constitute good cause for the purposes of that section.

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

(1) "~~Mentally retarded or developmentally disabled adult~~" means a person who is eighteen years of age or older and is a mentally retarded or developmentally disabled person.

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

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

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

(B) The department of mental retardation and developmental disabilities

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

(C)(1) Any person listed in division (C)(2) of this section, having reason to believe that a ~~mentally retarded or developmentally disabled adult~~ person with mental retardation or a developmental disability has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that ~~adult~~ person, shall immediately report or cause reports to be made of such information to a law enforcement agency or to the county board of mental retardation and developmental disabilities, except that if the report concerns a resident of a facility operated by the department of mental retardation and developmental disabilities the report shall be made either to a law enforcement agency or to the department.

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

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

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

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

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

(e) A person who, while acting in an official or professional capacity, renders spiritual treatment through prayer in accordance with the tenets of an organized religion.

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

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

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

(2) The ~~mentally retarded or developmentally disabled adult's~~ age and the nature and extent of the adult's injuries or physical neglect, including any evidence of previous injuries or physical neglect of the person with mental retardation or a developmental disability;

(3) Any other information ~~which might be helpful in establishing the cause of the injury, abuse, or physical neglect~~ that would assist in the investigation of the report.

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

(F) Any person having reasonable cause to believe that a ~~mentally retarded or developmentally disabled adult~~ person with mental retardation or a developmental disability has suffered abuse or neglect may report the belief, or cause a report to be made, to a law enforcement agency or the county board of mental retardation and developmental disabilities, or, if the ~~adult~~ person is a resident of a facility operated by the department of mental retardation and developmental disabilities, to a law enforcement agency or to the department.

(G)(1) Upon the receipt of a report concerning the possible ~~nonaccidental infliction of a physical injury upon a mentally retarded or developmentally disabled adult~~ abuse or neglect of a person with mental retardation or a developmental disability, the law enforcement agency shall inform the county board of mental retardation and developmental disabilities or, if the ~~adult~~ person is a resident of a facility operated by the department of mental retardation and developmental disabilities, the director of the

department or the director's designee.

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

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

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

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

(J) A law enforcement agency shall investigate each report of abuse or neglect ~~made it receives~~ under this section. In addition, the department, in cooperation with law enforcement officials, shall investigate each report regarding a resident of a facility operated by the department to determine the circumstances surrounding the injury, the cause of the injury, and the person responsible. The department shall determine, with the registry office which shall be maintained by the department, whether prior reports have been made concerning ~~the mentally retarded or developmentally disabled~~ and adult with mental retardation or a developmental disability or other principals in the case. ~~The~~ If the department finds that the report involves action or inaction that may constitute a crime under federal law or the law of this state, it shall submit a report of its investigation, in writing, to the law enforcement agency. If the person with mental retardation or a developmental disability is an adult, and with the consent of the adult, the department shall provide such protective services as are necessary to protect the adult. The law enforcement agency shall make a written report of its findings to the department.

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

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

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

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

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

Sec. 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.

(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) 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) A violation of an existing or former law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses described in division (E)(1) or (2) 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 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 if while employed by the board the person is ever formally charged for 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 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) 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 entities to which the copies are to be sent. On receiving the request, the county board shall send copies of the reports to the 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 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 superintendent also shall provide the department of mental retardation and developmental disabilities with a copy of each 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 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 an offense listed or described in division (E) of this section but who meets standards in regard to rehabilitation set by the department. The rules may not authorize a county

board or contracting entity to hire an individual who is included in the registry established under section 5123.52 of the Revised Code.

Sec. 5126.30. As used in sections 5126.30 to 5126.33 of the Revised Code:

(A) ~~"Mentally retarded or developmentally disabled adult" and "adult Adult" mean~~ means a person eighteen years of age or older ~~who is developmentally disabled or mentally retarded~~ with mental retardation or a developmental disability.

(B) "Caretaker" means a person who is responsible for the care of an adult by order of a court, including an order of guardianship, or who assumes the responsibility for the care of an adult as a volunteer, as a family member, by contract, or by the acceptance of payment for care.

(C) "Abuse" ~~means any of the following:~~

~~(1) An act, or a failure to act, that results or could result in emotional or physical injury to an adult, unless the act is done in self-defense or by accident;~~

~~(2) An act that constitutes "sexual activity" as defined in section 2907.01 has the same meaning as in section 5123.50 of the Revised Code and would constitute an offense under Chapter 2907. of the Revised Code;~~

~~(3) Insulting or coarse language or gestures directed toward an adult that subject him to humiliation or degradation;~~

~~(4) An act that deprives an adult of real or personal property by fraudulent or illegal means, except that it includes a misappropriation, as defined in that section.~~

(D) "Neglect" ~~means the failure of an adult or a caretaker to provide goods and services necessary for the adult to avoid physical harm~~ has the same meaning as in section 5123.50 of the Revised Code.

(E) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday, except when that day is a holiday as defined in section 1.14 of the Revised Code.

(F) "Incapacitated" means lacking understanding or capacity, with or without the assistance of a caretaker, to make and carry out decisions regarding food, clothing, shelter, health care, or other necessities, but does not include mere refusal to consent to the provision of services.

Sec. 5126.31. (A) A county board of mental retardation and developmental disabilities shall review reports of abuse and neglect made under section 5123.61 of the Revised Code and reports referred to it under section 5101.611 of the Revised Code to determine whether the person who is the subject of the report is ~~a mentally retarded or developmentally disabled~~ an adult with mental retardation or a developmental disability in

need of services to deal with the abuse or neglect. The board shall give notice of each report to the registry office of the department of mental retardation and developmental disabilities established pursuant to section 5123.61 of the Revised Code on the first working day after receipt of the report. If the report alleges that there is a substantial risk to the adult of immediate physical harm or death, the board shall initiate review within twenty-four hours of its receipt of the report. If the board determines that the person is sixty years of age or older but is does not ~~mentally retarded or developmentally disabled~~ have mental retardation or a developmental disability, it shall refer the case to the county department of job and family services. If the board determines that the person is ~~a mentally retarded or developmentally disabled~~ an adult with mental retardation or a developmental disability, it shall continue its review of the case.

(B) For each review over which the board retains responsibility under division (A) of this section, it shall do all of the following:

(1) Give both written and oral notice of the purpose of the review to the adult and, if any, to the adult's legal counsel or caretaker, in simple and clear language;

(2) Visit the adult, in the adult's residence if possible, and explain the notice given under division (B)(1) of this section;

(3) Request from the registry office any prior reports concerning the adult or other principals in the case;

(4) Consult, if feasible, with the person who made the report under section 5101.61 or 5123.61 of the Revised Code and with any agencies or persons who have information about the alleged abuse or neglect;

(5) Cooperate fully with the law enforcement agency responsible for investigating the report and for filing any resulting criminal charges and, on request, turn over evidence to the agency;

(6) Determine whether the adult needs services, and prepare a written report stating reasons for the determination. No adult shall be determined to be abused, neglected, or in need of services for the sole reason that, in lieu of medical treatment, the adult relies on or is being furnished spiritual treatment through prayer alone in accordance with the tenets and practices of a church or religious denomination of which the adult is a member or adherent.

(C) The board shall arrange for the provision of services for the prevention, correction or discontinuance of abuse or neglect or of a condition resulting from abuse or neglect for any adult who has been determined to need the services and consents to receive them. These services may include, but are not limited to, case management, fiscal

management, medical, mental health, home health care, homemaker, legal, and residential services and the provision of temporary accommodations and necessities such as food and clothing. The services do not include acting as a guardian, trustee, or protector as defined in section 5123.55 of the Revised Code. If the provision of residential services would require expenditures by the department of mental retardation and developmental disabilities, the board shall obtain the approval of the department prior to arranging the residential services.

To arrange services, the board shall:

(1) Develop an individualized service plan identifying the types of services required for the adult, the goals for the services, and the persons or agencies that will provide them;

(2) In accordance with rules established by the director of mental retardation and developmental disabilities, obtain the consent of the adult or the adult's guardian to the provision of any of these services and obtain the signature of the adult or guardian on the individual service plan. An adult who has been found incompetent under Chapter 2111. of the Revised Code may consent to services. If the board is unable to obtain consent, it may seek, if the adult is incapacitated, a court order pursuant to section 5126.33 of the Revised Code authorizing the board to arrange these services.

(D) The board shall ensure that the adult receives the services arranged by the board from the provider and shall have the services terminated if the adult withdraws consent.

(E) On completion of a review, the board shall submit a written report to ~~the law enforcement agency responsible for investigating the report and to the registry office established under section 5123.61 of the Revised Code. If the report includes a finding that a person with mental retardation or a developmental disability is a victim of action or inaction that may constitute a crime under federal law or the law of this state, the board shall submit the report to the law enforcement agency responsible for investigating the report.~~ Reports prepared under this section are not public records as defined in section 149.43 of the Revised Code.

(F) The board shall provide comprehensive formal training for employees and other persons authorized to implement the requirements of this section.

Sec. 5126.33. (A) A county board of mental retardation and developmental disabilities may file a complaint with the probate court of the county in which ~~a mentally retarded or developmentally disabled~~ an adult with mental retardation or a developmental disability resides for an order authorizing the board to arrange services described in division (C) of section

5126.31 of the Revised Code for that adult if the board has been unable to secure consent. The complaint shall include:

- (1) The name, age, and address of the adult;
- (2) Facts describing the nature of the abuse or neglect and supporting the board's belief that services are needed;
- (3) The types of services proposed by the board, as set forth in the individualized service plan prepared pursuant to section 5126.31 of the Revised Code and filed with the complaint;
- (4) Facts showing the board's attempts to obtain the consent of the adult or ~~his~~ the adult's guardian to the services.

(B)(~~4~~) The board shall give the adult notice of the filing of the complaint and in simple and clear language shall inform ~~him~~ the adult of ~~his~~ the adult's rights in the hearing under division (C) of this section and explain the consequences of a court order. This notice shall be personally served upon the adult and also shall be given to the adult's caretaker, ~~his~~ the adult's legal counsel, if any, and the legal rights service. The notice shall be given at least twenty-four hours prior to the hearing, although the court may waive this requirement upon a showing that there is a substantial risk that the adult will suffer immediate physical harm in the twenty-four hour period and that the board has made reasonable attempts to give the notice required by this division.

(C) Upon the filing of a complaint for an order under this section, the court shall hold a hearing at least twenty-four hours and no later than seventy-two hours after the notice under division (B)(~~4~~) of this section has been given unless the court has waived the notice. The adult shall have the right to be present at the hearing, present evidence, and examine and cross-examine witnesses. The adult shall be represented by counsel unless the court finds that the adult has made a voluntary, informed, and knowing waiver of the right to counsel. If the adult is indigent, the court shall appoint counsel to represent ~~him~~ the adult. The board shall be represented by the county prosecutor or an attorney designated by the board.

(D)(1) The court shall issue an order authorizing the board to arrange the services if it finds, on the basis of clear and convincing evidence, all of the following:

- (a) The adult has been abused or neglected;
- (b) The adult is incapacitated;
- (c) There is a substantial risk to the adult of immediate physical harm or death;
- (d) The adult is in need of the services;
- (e) No person authorized by law or court order to give consent for the

adult is available or willing to consent to the services.

(2) In formulating the order, the court shall consider the individual service plan and shall specifically designate the services that are necessary to deal with the abuse or neglect or condition resulting from abuse or neglect and that are available locally, and authorize the board to arrange for these services only. The court shall limit the provision of these services to a period not exceeding fourteen days, renewable for an additional fourteen-day period on a showing by the board that continuation of the order is necessary.

(E) If the court finds that all other options for meeting the adult's needs have been exhausted, it may order that the adult be removed from ~~his~~ the adult's place of residence and placed in another residential setting. Before issuing that order, the court shall consider the adult's choice of residence and shall determine that the new residential setting is the least restrictive alternative available for meeting ~~his~~ the adult's needs and is a place where the adult can obtain the necessary requirements for daily living in safety. The court shall not order an adult to a hospital or public hospital as defined in section 5122.01 or a state institution as defined in section 5123.01 of the Revised Code.

(F) The court shall not authorize a change in an adult's placement ordered under division (E) of this section unless it finds compelling reasons to justify a change. The parties to whom notice was given in division (B) of this section shall be given notice of a proposed change at least five working days prior to the change.

(G) The adult, the board, or any other person who received notice of the petition may file a motion for modification of the court order at any time.

(H) The county board shall pay court costs incurred in proceedings brought pursuant to this section. The adult shall not be required to pay for court-ordered services.

SECTION 2. That existing sections 5123.61, 5126.28, 5126.30, 5126.31, and 5126.33 of the Revised Code are hereby repealed.

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 _____