

# As Reported by the Senate Judiciary--Civil Justice Committee

125th General Assembly

Regular Session

2003-2004

Sub. H. B. No. 51

Representatives Hughes, Willamowski, Oelslager, Harwood, Book, Brown,  
Carmichael, C. Evans, Fessler, Flowers, Gilb, Hartnett, Latta, Martin,  
McGregor, T. Patton, Perry, Reidelbach, Schmidt, Schneider, Skindell,  
S. Smith, D. Stewart, Yates

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## A BILL

To amend sections 109.572, 313.12, 2106.01, 2106.02, 1  
2107.19, 2108.50, 2109.301, 2109.32, 2113.53, 2  
2117.06, 2117.07, 2117.11, 2117.12, 2151.421, 3  
2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 4  
5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 5  
5126.33 and to enact sections 2101.163, 2108.521, 6  
2152.821, 2903.341, 2930.061, 2945.482, 2945.491, 7  
5123.541, 5123.542, 5123.614, 5126.058, 5126.331, 8  
5126.332, and 5126.333 of the Revised Code 9  
relative to the election by a surviving spouse, 10  
notice of admission of a will to probate, accounts 11  
of administrators and executors, distribution of 12  
estate assets, presentation of creditors' claims 13  
to distributees, dispute resolution procedures in 14  
probate court, time for presenting claims against 15  
an estate, to implement the recommendations of the 16  
MR/DD Victims of Crime Task Force, to make related 17  
changes in the law, and to amend the version of 18  
section 5123.50 of the Revised Code that is 19  
scheduled to take effect December 31, 2003, to 20  
continue the provisions of this act on and after 21

that effective date. 22

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 109.572, 313.12, 2106.01, 2106.02, 23  
2107.19, 2108.50, 2109.301, 2109.32, 2113.53, 2117.06, 2117.07, 24  
2117.11, 2117.12, 2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 25  
5123.50, 5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 26  
be amended and sections 2101.163, 2108.521, 2152.821, 2903.341, 27  
2930.061, 2945.482, 2945.491, 5123.541, 5123.542, 5123.614, 28  
5126.058, 5126.331, 5126.332, and 5126.333 of the Revised Code be 29  
enacted to read as follows: 30

**Sec. 109.572.** (A)(1) Upon receipt of a request pursuant to 31  
section 2151.86, 3301.32, 3301.541, 3319.39, 5104.012, 5104.013, 32  
or 5153.111 of the Revised Code, a completed form prescribed 33  
pursuant to division (C)(1) of this section, and a set of 34  
fingerprint impressions obtained in the manner described in 35  
division (C)(2) of this section, the superintendent of the bureau 36  
of criminal identification and investigation shall conduct a 37  
criminal records check in the manner described in division (B) of 38  
this section to determine whether any information exists that 39  
indicates that the person who is the subject of the request 40  
previously has been convicted of or pleaded guilty to any of the 41  
following: 42

(a) A violation of section 2903.01, 2903.02, 2903.03, 43  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 44  
2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 45  
2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 46  
2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 47  
2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 48  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 49

2925.06, or 3716.11 of the Revised Code, felonious sexual  
penetration in violation of former section 2907.12 of the Revised  
Code, a violation of section 2905.04 of the Revised Code as it  
existed prior to July 1, 1996, a violation of section 2919.23 of  
the Revised Code that would have been a violation of section  
2905.04 of the Revised Code as it existed prior to July 1, 1996,  
had the violation been committed prior to that date, or a  
violation of section 2925.11 of the Revised Code that is not a  
minor drug possession offense;

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

(2) On receipt of a request pursuant to section 5123.081 of  
the Revised Code with respect to an applicant for employment in  
any position with the department of mental retardation and  
developmental disabilities, pursuant to section 5126.28 of the  
Revised Code with respect to an applicant for employment in any  
position with a county board of mental retardation and  
developmental disabilities, or pursuant to section 5126.281 of the  
Revised Code with respect to an applicant for employment in a  
direct services position with an entity contracting with a county  
board for employment, a completed form prescribed pursuant to  
division (C)(1) of this section, and a set of fingerprint  
impressions obtained in the manner described in division (C)(2) of  
this section, the superintendent of the bureau of criminal  
identification and investigation shall conduct a criminal records  
check. The superintendent shall conduct the criminal records check  
in the manner described in division (B) of this section to  
determine whether any information exists that indicates that the  
person who is the subject of the request has been convicted of or  
pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 82  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 83  
2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 84  
2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 85  
2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 86  
2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 87  
2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 88  
2925.03, or 3716.11 of the Revised Code; 89

(b) An existing or former municipal ordinance or law of this 90  
state, any other state, or the United States that is substantially 91  
equivalent to any of the offenses listed in division (A)(2)(a) of 92  
this section. 93

(3) On receipt of a request pursuant to section 173.41, 94  
3712.09, 3721.121, or 3722.151 of the Revised Code, a completed 95  
form prescribed pursuant to division (C)(1) of this section, and a 96  
set of fingerprint impressions obtained in the manner described in 97  
division (C)(2) of this section, the superintendent of the bureau 98  
of criminal identification and investigation shall conduct a 99  
criminal records check with respect to any person who has applied 100  
for employment in a position that involves providing direct care 101  
to an older adult. The superintendent shall conduct the criminal 102  
records check in the manner described in division (B) of this 103  
section to determine whether any information exists that indicates 104  
that the person who is the subject of the request previously has 105  
been convicted of or pleaded guilty to any of the following: 106

(a) A violation of section 2903.01, 2903.02, 2903.03, 107  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 108  
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 109  
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 110  
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 111  
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 112  
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 113

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; 114  
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(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. 116  
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(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: 119  
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(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; 133  
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(b) An existing or former law of this state, any other state,  
or the United States that is substantially equivalent to any of 143  
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the offenses listed in division (A)(4)(a) of this section. 145

(5) On receipt of a request pursuant to section 3701.881 of 146  
the Revised Code with respect to an applicant for employment with 147  
a home health agency in a position that involves providing direct 148  
care to an older adult, a completed form prescribed pursuant to 149  
division (C)(1) of this section, and a set of fingerprint 150  
impressions obtained in the manner described in division (C)(2) of 151  
this section, the superintendent of the bureau of criminal 152  
identification and investigation shall conduct a criminal records 153  
check. The superintendent shall conduct the criminal records check 154  
in the manner described in division (B) of this section to 155  
determine whether any information exists that indicates that the 156  
person who is the subject of the request previously has been 157  
convicted of or pleaded guilty to any of the following: 158

(a) A violation of section 2903.01, 2903.02, 2903.03, 159  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 160  
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 161  
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 162  
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 163  
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 164  
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 165  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 166  
2925.22, 2925.23, or 3716.11 of the Revised Code; 167

(b) An existing or former law of this state, any other state, 168  
or the United States that is substantially equivalent to any of 169  
the offenses listed in division (A)(5)(a) of this section. 170

(6) When conducting a criminal records check upon a request 171  
pursuant to section 3319.39 of the Revised Code for an applicant 172  
who is a teacher, in addition to the determination made under 173  
division (A)(1) of this section, the superintendent shall 174  
determine whether any information exists that indicates that the 175

person who is the subject of the request previously has been 176  
convicted of or pleaded guilty to any offense specified in section 177  
3319.31 of the Revised Code. 178

(7) When conducting a criminal records check on a request 179  
pursuant to section 2151.86 of the Revised Code for a person who 180  
is a prospective foster caregiver or who is eighteen years old or 181  
older and resides in the home of a prospective foster caregiver, 182  
the superintendent, in addition to the determination made under 183  
division (A)(1) of this section, shall determine whether any 184  
information exists that indicates that the person has been 185  
convicted of or pleaded guilty to a violation of: 186

(a) Section 2909.02 or 2909.03 of the Revised Code; 187

(b) An existing or former law of this state, any other state, 188  
or the United States that is substantially equivalent to section 189  
2909.02 or 2909.03 of the Revised Code. 190

(8) Not later than thirty days after the date the 191  
superintendent receives the request, completed form, and 192  
fingerprint impressions, the superintendent shall send the person, 193  
board, or entity that made the request any information, other than 194  
information the dissemination of which is prohibited by federal 195  
law, the superintendent determines exists with respect to the 196  
person who is the subject of the request that indicates that the 197  
person previously has been convicted of or pleaded guilty to any 198  
offense listed or described in division (A)(1), (2), (3), (4), 199  
(5), (6), or (7) of this section, as appropriate. The 200  
superintendent shall send the person, board, or entity that made 201  
the request a copy of the list of offenses specified in division 202  
(A)(1), (2), (3), (4), (5), (6), or (7) of this section, as 203  
appropriate. If the request was made under section 3701.881 of the 204  
Revised Code with regard to an applicant who may be both 205  
responsible for the care, custody, or control of a child and 206

involved in providing direct care to an older adult, the 207  
superintendent shall provide a list of the offenses specified in 208  
divisions (A)(4) and (5) of this section. 209

(B) The superintendent shall conduct any criminal records 210  
check requested under section 173.41, 2151.86, 3301.32, 3301.541, 211  
3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 212  
5104.013, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised 213  
Code as follows: 214

(1) The superintendent shall review or cause to be reviewed 215  
any relevant information gathered and compiled by the bureau under 216  
division (A) of section 109.57 of the Revised Code that relates to 217  
the person who is the subject of the request, including any 218  
relevant information contained in records that have been sealed 219  
under section 2953.32 of the Revised Code; 220

(2) If the request received by the superintendent asks for 221  
information from the federal bureau of investigation, the 222  
superintendent shall request from the federal bureau of 223  
investigation any information it has with respect to the person 224  
who is the subject of the request and shall review or cause to be 225  
reviewed any information the superintendent receives from that 226  
bureau. 227

(C)(1) The superintendent shall prescribe a form to obtain 228  
the information necessary to conduct a criminal records check from 229  
any person for whom a criminal records check is required by 230  
section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 231  
3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5123.081, 232  
5126.28, 5126.281, or 5153.111 of the Revised Code. The form that 233  
the superintendent prescribes pursuant to this division may be in 234  
a tangible format, in an electronic format, or in both tangible 235  
and electronic formats. 236

(2) The superintendent shall prescribe standard impression 237

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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.

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(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.

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(4) The superintendent of the bureau of criminal identification and investigation may prescribe methods of

forwarding fingerprint impressions and information necessary to 270  
conduct a criminal records check, which methods shall include, but 271  
not be limited to, an electronic method. 272

(D) A determination whether any information exists that 273  
indicates that a person previously has been convicted of or 274  
pleaded guilty to any offense listed or described in division 275  
(A)(1)(a) or (b), (A)(2)(a) or (b), (A)(3)(a) or (b), (A)(4)(a) or 276  
(b), (A)(5)(a) or (b), (A)(6), or (A)(7)(a) or (b) of this section 277  
that is made by the superintendent with respect to information 278  
considered in a criminal records check in accordance with this 279  
section is valid for the person who is the subject of the criminal 280  
records check for a period of one year from the date upon which 281  
the superintendent makes the determination. During the period in 282  
which the determination in regard to a person is valid, if another 283  
request under this section is made for a criminal records check 284  
for that person, the superintendent shall provide the information 285  
that is the basis for the superintendent's initial determination 286  
at a lower fee than the fee prescribed for the initial criminal 287  
records check. 288

(E) As used in this section: 289

(1) "Criminal records check" means any criminal records check 290  
conducted by the superintendent of the bureau of criminal 291  
identification and investigation in accordance with division (B) 292  
of this section. 293

(2) "Minor drug possession offense" has the same meaning as 294  
in section 2925.01 of the Revised Code. 295

(3) "Older adult" means a person age sixty or older. 296

**Sec. 313.12.** (A) When any person dies as a result of criminal 297  
or other violent means, by casualty, by suicide, or in any 298  
suspicious or unusual manner, ~~or~~ when any person, including a 299

child under two years of age, dies suddenly when in apparent good 300  
health, or when any mentally retarded person or developmentally 301  
disabled person dies regardless of the circumstances, the 302  
physician called in attendance, or any member of an ambulance 303  
service, emergency squad, or law enforcement agency who obtains 304  
knowledge thereof arising from ~~his~~ the person's duties, shall 305  
immediately notify the office of the coroner of the known facts 306  
concerning the time, place, manner, and circumstances of the 307  
death, and any other information ~~which~~ that is required pursuant 308  
to sections 313.01 to 313.22 of the Revised Code. In such cases, 309  
if a request is made for cremation, the funeral director called in 310  
attendance shall immediately notify the coroner. 311

(B) As used in this section, "mentally retarded person" and 312  
"developmentally disabled person" have the same meanings as in 313  
section 5123.01 of the Revised Code. 314

**Sec. 2101.163.** (A) A probate judge may establish by rule 315  
procedures for the resolution of disputes between parties to any 316  
civil action or proceeding that is within the jurisdiction of the 317  
probate court. Any procedures so adopted shall include, but are 318  
not limited to, mediation. If the probate judge establishes any 319  
procedures under this division, the probate judge may charge, in 320  
addition to the fees and costs authorized under section 2101.16 of 321  
the Revised Code, a reasonable fee, not to exceed fifteen dollars, 322  
that is to be collected on the filing of each action or proceeding 323  
and that is to be used to implement the procedures. 324

(B) The probate court shall pay to the county treasurer of 325  
the county in which the court is located all fees collected under 326  
division (A) of this section. The treasurer shall place the funds 327  
from the fees in a separate fund to be disbursed upon an order of 328  
the probate judge. 329

(C) If the probate judge determines that the amount of the moneys in the fund described in division (B) of this section is more than the amount that is sufficient to satisfy the purpose for which the additional fee described in division (A) of this section was imposed, the probate judge may declare a surplus in the fund and expend the surplus moneys for other appropriate judicial expenses of the probate court.

**Sec. 2106.01.** (A) After the initial appointment of an administrator or executor of the estate, the probate court shall issue a citation to the surviving spouse, if any is living at the time of the issuance of the citation, to elect whether to exercise the surviving spouse's rights under Chapter 2106. of the Revised Code, including, after the probate of a will, the right to elect to take under the will or under section 2105.06 of the Revised Code.

A surviving spouse may waive the service of the citation required under this division by filing in the probate court a written waiver of the citation. The waiver shall include an acknowledgment of receipt of the description of the general rights of the surviving spouse required by division (B) of section 2106.02 of the Revised Code.

(B) If the surviving spouse elects to take under section 2105.06 of the Revised Code and if the value of the property that the surviving spouse is entitled to receive is equal to or greater than the value of the decedent's interest in the mansion house as determined under section 2106.10 of the Revised Code, the surviving spouse also is entitled to make an election pursuant to division (A) of section 2106.10 of the Revised Code.

(C) If the surviving spouse elects to take under section 2105.06 of the Revised Code, the surviving spouse shall take not to exceed one-half of the net estate, unless two or more of the

decedent's children or their lineal descendants survive, in which 361  
case the surviving spouse shall take not to exceed one-third of 362  
the net estate. 363

For purposes of this division, the net estate shall be 364  
determined before payment of federal estate tax, estate taxes 365  
under Chapter 5731. of the Revised Code, or any other tax that is 366  
subject to apportionment under section 2113.86 or 2113.861 of the 367  
Revised Code. 368

(D) Unless the will expressly provides that in case of an 369  
election under division (A) of this section there shall be no 370  
acceleration of remainder or other interests bequeathed or devised 371  
by the will, the balance of the net estate shall be disposed of as 372  
though the surviving spouse had predeceased the testator. If there 373  
is a disposition by a will to an inter vivos trust that was 374  
created by the testator, if under the terms of the trust the 375  
surviving spouse is entitled to any interest in the trust or is 376  
granted any power or nomination with respect to the trust, and if 377  
the surviving spouse makes an election to take under section 378  
2105.06 of the Revised Code, then, unless the trust instrument 379  
provides otherwise, the surviving spouse is deemed for purposes of 380  
the trust to have predeceased the testator, and there shall be an 381  
acceleration of remainder or other interests in all property 382  
bequeathed or devised to the trust by the will, in all property 383  
held by the trustee at the time of the death of the decedent, and 384  
in all property that comes into the hands of the trustee by reason 385  
of the death of the decedent. 386

(E) The election of a surviving spouse to take under a will 387  
or under section 2105.06 of the Revised Code may be made at any 388  
time after the death of the decedent, but the surviving spouse 389  
shall not make the election later than five months from the date 390  
of the initial appointment of an administrator or executor of the 391  
estate. On a motion filed before the expiration of the five-month 392

period, and for good cause shown, the court may allow further time 393  
for the making of the election. If no action is taken by the 394  
surviving spouse before the expiration of the five-month period, 395  
it is conclusively presumed that the surviving spouse elects to 396  
take under the will. The election shall be entered on the journal 397  
of the court. 398

When proceedings for advice or to contest the validity of a 399  
will are begun within the time allowed by this division for making 400  
the election, the election may be made within three months after 401  
the final disposition of the proceedings, if the will is not set 402  
aside. 403

(F) When a surviving spouse succeeds to the entire estate of 404  
the testator, having been named the sole devisee and legatee, it 405  
shall be presumed that the spouse elects to take under the will of 406  
the testator, unless the surviving spouse manifests a contrary 407  
intention. 408

**Sec. 2106.02.** (A) The citation to make the election referred 409  
to in section 2106.01 of the Revised Code shall be ~~sent to~~ served 410  
on the surviving spouse ~~by certified mail~~ pursuant to Civil Rule 411  
73. Notice that the citation has been issued by the court shall be 412  
given to the administrator or executor of the estate of the 413  
deceased spouse. 414

(B) The citation shall be accompanied by a general 415  
description of the effect of the election to take under the will 416  
or under section 2105.06 of the Revised Code and the general 417  
rights of the surviving spouse under Chapter 2106. of the Revised 418  
Code. The description shall include a specific reference to the 419  
procedures available to the surviving spouse under section 2106.03 420  
of the Revised Code and to the presumption that arises if the 421  
surviving spouse does not make the election in accordance with 422  
division (E) of section 2106.01 of the Revised Code. The 423

description of the general rights of the surviving spouse under 424  
Chapter 2106. of the Revised Code shall include a specific 425  
reference to the presumption that arises if the surviving spouse 426  
does not ~~make~~ exercise the election rights under Chapter 2106. of 427  
the Revised Code within the time period specified by section 428  
2106.25 of the Revised Code. The description of the effect of the 429  
election and of the general rights of the surviving spouse need 430  
not relate to the nature of any particular estate. 431

(C) A surviving spouse electing to take under the will may 432  
manifest the election in writing within the times described in 433  
division (E) of section 2106.01 of the Revised Code. 434

**Sec. 2107.19.** (A)(1) Subject to divisions (A)(2) and (B) of 435  
this section, when a will has been admitted to probate, the 436  
fiduciary for the estate or another person specified in division 437  
(A)(4) of this section shall, within two weeks of the admission of 438  
the will to probate, give a notice as described in this division 439  
and in the manner provided by Civil Rule 73(E) to the surviving 440  
spouse of the testator, to all persons who would be entitled to 441  
inherit from the testator under Chapter 2105. of the Revised Code 442  
if the testator had died intestate, and to all legatees and 443  
devisees named in the will. The notice shall mention the probate 444  
of the will and, if a particular person being given the notice is 445  
a legatee or devisee named in the will, shall state that the 446  
person is named in the will as beneficiary. A copy of the will 447  
admitted to probate is not required to be given with the notice. 448

(2) A person entitled to be given the notice described in 449  
division (A)(1) of this section may waive that right by filing a 450  
written waiver of the right to receive the notice in the probate 451  
court. The person may file the waiver of the right to receive the 452  
notice at any time prior to or after the will has been admitted to 453  
probate. 454

(3) The fact that the notice described in division (A)(1) of this section has been given, subject to division (B) of this section, to all persons described in division (A)(1) of this section who have not waived their right to receive the notice, and, if applicable, the fact that certain persons described in that division have waived their right to receive the notice in accordance with division (A)(2) of this section, shall be evidenced by a certificate that shall be filed in the probate court in accordance with division (A)(4) of this section.

(4) The notice of the admission of the will to probate required by division (A)(1) of this section and the certificate of giving notice or waiver of notice required by division (A)(3) of this section shall be given or filed by the fiduciary for the estate or by the applicant for the admission of the will to probate, the applicant for a release from administration, any other interested person, or the attorney for the fiduciary or for any of the preceding persons. The certificate of giving notice shall be filed not later than two months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two months after the admission of the will to probate, unless the court grants an extension of that time. Failure to file the certificate in a timely manner shall subject the fiduciary or applicant to the citation and penalty provisions of section 2109.31 of the Revised Code.

(B) The fiduciary or another person specified in division (A)(4) of this section is not required to give a notice pursuant to division (A)(1) of this section to persons who have been notified of the application for probate of the will or of a contest as to jurisdiction or to persons whose names or places of residence are unknown and cannot with reasonable diligence be ascertained, and a person authorized by division (A)(4) of this section to give notice shall file in the probate court a

certificate to that effect. 487

**Sec. 2108.50.** (A) ~~An~~ Subject to section 2108.521 of the 488  
Revised Code, an autopsy or post-mortem examination may be 489  
performed upon the body of a deceased person by a licensed 490  
physician or surgeon if consent has been given in the order named 491  
by one of the following persons of sound mind and eighteen years 492  
of age or older in a written instrument executed by the person or 493  
on the person's behalf at the person's express direction: 494

(1) The deceased person during the deceased person's 495  
lifetime; 496

(2) The decedent's spouse; 497

(3) If there is no surviving spouse, if the address of the 498  
surviving spouse is unknown or outside the United States, if the 499  
surviving spouse is physically or mentally unable or incapable of 500  
giving consent, or if the deceased person was separated and living 501  
apart from such surviving spouse, then a person having the first 502  
named degree of relationship in the following list in which a 503  
relative of the deceased person survives and is physically and 504  
mentally able and capable of giving consent may execute consent: 505

(a) Children; 506

(b) Parents; 507

(c) Brothers or sisters. 508

(4) If there are no surviving persons of any degree of 509  
relationship listed in division (A)(3) of this section, any other 510  
relative or person who assumes custody of the body for burial-; 511

(5) A person authorized by written instrument executed by the 512  
deceased person to make arrangements for burial-; 513

(6) A person who, at the time of death of the deceased 514  
person, was serving as guardian of the person for the deceased 515

person. 516

(B) Consent to an autopsy or post-mortem examination given 517  
under this section may be revoked only by the person executing the 518  
consent and in the same manner as required for execution of 519  
consent under this section. 520

(C) As used in this section, "written instrument" includes a 521  
telegram or cablegram. 522

**Sec. 2108.521.** (A) If a mentally retarded person or a 523  
developmentally disabled person dies, if the department of mental 524  
retardation and developmental disabilities or a county board of 525  
mental retardation and developmental disabilities has a good faith 526  
reason to believe that the deceased person's death occurred under 527  
suspicious circumstances, if the coroner was apprised of the 528  
circumstances of the death, and if the coroner after being so 529  
apprised of the circumstances declines to conduct an autopsy, the 530  
department or the board may file a petition in a court of common 531  
pleas seeking an order authorizing an autopsy or post-mortem 532  
examination under this section. 533

(B) Upon the filing of a petition under division (A) of this 534  
section, the court may conduct, but is not required to conduct, a 535  
hearing on the petition. The court may determine whether to grant 536  
the petition without a hearing. The department or board, and all 537  
other interested parties, may submit information and statements to 538  
the court that are relevant to the petition, and, if the court 539  
conducts a hearing, may present evidence and testimony at the 540  
hearing. The court shall order the requested autopsy or 541  
post-mortem examination if it finds that, under the circumstances, 542  
the department or board has demonstrated a need for the autopsy or 543  
post-mortem examination. The court shall order an autopsy or 544  
post-mortem examination in the circumstances specified in this 545  
division regardless of whether any consent has been given, or has 546

been given and withdrawn, under section 2108.50 of the Revised 547  
Code, and regardless of whether any information was presented to 548  
the coroner pursuant to section 313.131 of the Revised Code or to 549  
the court under this section regarding an autopsy being contrary 550  
to the deceased person's religious beliefs. 551

(C) An autopsy or post-mortem examination ordered under this 552  
section may be performed upon the body of the deceased person by a 553  
licensed physician or surgeon. The court may identify in the order 554  
the person who is to perform the autopsy or post-mortem 555  
examination. If an autopsy or post-mortem examination is ordered 556  
under this section, the department or board that requested the 557  
autopsy or examination shall pay the physician or surgeon who 558  
performs the autopsy or examination for costs and expenses 559  
incurred in performing the autopsy or examination. 560

**Sec. 2109.301.** (A) An administrator or executor shall render 561  
an account at any time other than a time otherwise mentioned in 562  
this section upon an order of the probate court issued for good 563  
cause shown either at its own instance or upon the motion of any 564  
person interested in the estate. Except as otherwise provided in 565  
division (B)(2) of this section, an administrator or executor 566  
shall render a final account within thirty days after completing 567  
the administration of the estate or within any other period of 568  
time that the court may order. 569

Every account shall include an itemized statement of all 570  
receipts of the administrator or executor during the accounting 571  
period and of all disbursements and distributions made by the 572  
executor or administrator during the accounting period. In 573  
addition, the account shall include an itemized statement of all 574  
funds, assets, and investments of the estate known to or in the 575  
possession of the administrator or executor at the end of the 576  
accounting period and shall show any changes in investments since 577

the last previous account. 578

Every account shall be upon the signature of the 579  
administrator or executor. When two or more administrators or 580  
executors render an account, the court may allow the account upon 581  
the signature of one of them. The court may examine the 582  
administrator or executor under oath concerning the account. 583

When an administrator or executor is authorized by law or by 584  
the instrument governing distribution to distribute the assets of 585  
the estate, in whole or in part, the administrator or executor may 586  
do so and include a report of the distribution in the 587  
administrator's or executor's succeeding account. 588

In estates of decedents in which none of the legatees, 589  
devisees, or heirs is under a legal disability, each partial 590  
accounting of an executor or administrator may be waived by the 591  
written consent of all the legatees, devisees, or heirs filed in 592  
lieu of a partial accounting otherwise required. 593

(B)(1) Every administrator and executor, within six months 594  
after appointment, shall render a final and distributive account 595  
of the administrator's or executor's administration of the estate 596  
unless one or more of the following circumstances apply: 597

(a) An Ohio estate tax return must be filed for the estate. 598

(b) A proceeding contesting the validity of the decedent's 599  
will pursuant to section 2107.71 of the Revised Code has been 600  
commenced. 601

(c) The surviving spouse has filed an election to take 602  
against the will. 603

(d) The administrator or executor is a party in a civil 604  
action. 605

(e) The estate is insolvent. 606

(f) For other reasons set forth by the administrator or 607

executor, subject to court approval, it would be detrimental to 608  
the estate and its beneficiaries or heirs to file a final and 609  
distributive account. 610

(2) In estates of decedents in which the sole legatee, 611  
devisee, or heir is also the administrator or executor of the 612  
estate, no partial accountings are required, ~~and the.~~ The 613  
administrator or executor of an estate of that type shall ~~not~~ file 614  
a final account or final and distributive account. ~~In or, in~~ lieu 615  
of filing a final account, the administrator or executor ~~of an~~ 616  
~~estate of that type shall be discharged by filing~~ may file with 617  
the court within thirty days after completing the administration 618  
of the estate a certificate of termination of an estate that 619  
states all of the following: 620

(a) All debts and claims presented to the estate have been 621  
paid in full or settled finally. 622

(b) An estate tax return, if required under the provisions of 623  
the Internal Revenue Code or Chapter 5731. of the Revised Code, 624  
has been filed, and any estate tax has been paid. 625

(c) All attorney's fees have been waived by or paid to 626  
counsel of record of the estate, and all executor or administrator 627  
fees have been waived or paid. 628

(d) The amount of attorney's fees and the amount of 629  
administrator or executor fees that have been paid. 630

(e) All assets remaining after completion of the activities 631  
described in divisions (B)(2)(a) to (d) of this section have been 632  
distributed to the sole legatee, devisee, or heir. 633

(3) In an estate of the type described in division (B)(2) of 634  
this section, a sole legatee, devisee, or heir of a decedent may 635  
be liable to creditors for debts of and claims against the estate 636  
that are presented after the filing of the certificate of 637  
termination described in that division and within the time allowed 638

by section 2117.06 of the Revised Code for presentation of the 639  
creditors' claims. 640

(4) Not later than thirteen months after appointment, every 641  
administrator and executor shall render an account of the 642  
administrator's or executor's administration, unless a certificate 643  
of termination is filed under division (B)(2) of this section. 644  
Except as provided in divisions (B)(1) and (2) of this section, 645  
after the initial account is rendered, every administrator and 646  
executor shall render further accounts at least once each year. 647

**Sec. 2109.32.** (A) Every fiduciary's account required by 648  
section 2109.301, 2109.302, or 2109.303 of the Revised Code shall 649  
be set for hearing before the probate court. The hearing on the 650  
account shall be set not earlier than thirty days after the filing 651  
of the account. 652

At the hearing upon an account required by section 2109.302 653  
or 2109.303 of the Revised Code and, if ordered by the court, upon 654  
an account required by section 2109.301 of the Revised Code, the 655  
court shall inquire into, consider, and determine all matters 656  
relative to the account and the manner in which the fiduciary has 657  
executed the fiduciary's trust, including the investment of trust 658  
funds, and may order the account approved and settled or make any 659  
other order as the court considers proper. If, at the hearing upon 660  
an account, the court finds that the fiduciary has fully and 661  
lawfully administered the estate or trust and has distributed the 662  
assets of the estate or trust in accordance with the law or the 663  
instrument governing distribution, as shown in the account, the 664  
court shall order the account approved and settled and may order 665  
the fiduciary discharged. Upon approval of a final and 666  
distributive account required by division (B)(1) of section 667  
2109.301 of the Revised Code, the court may order the surety bond 668  
for the fiduciary terminated. Unless otherwise ordered by the 669

court, the fiduciary shall be discharged without further order 670  
twelve months following the approval of the final and distributive 671  
account. 672

(B)(1) An administrator or executor filing an account 673  
pursuant to section 2109.301 of the Revised Code shall provide at 674  
the time of filing the account a copy of the account to each heir 675  
of an intestate estate or to each beneficiary of a testate estate. 676  
An administrator or executor is not required to provide a copy of 677  
the account to any of the following: 678

(a) An heir or a beneficiary whose residence is unknown; 679

(b) A beneficiary of a specific bequest or devise who has 680  
received his or her distribution and for which a receipt has been 681  
filed or exhibited with the court. 682

(2) An administrator or executor filing an account pursuant 683  
to section 2109.301 of the Revised Code shall file with the 684  
probate court a certificate of service of account prior to or 685  
simultaneously with the filing of the account. 686

(3) The probate court shall not approve the final account of 687  
any executor or administrator until the following events have 688  
occurred: 689

(a) Three months have passed since the death of the decedent. 690

(b) The surviving spouse has filed an election to take under 691  
or against the will, or the time for making the election has 692  
expired. 693

~~(3)~~(4) If an administrator or executor learns of the 694  
existence of newly discovered assets after the filing of the final 695  
account or otherwise comes into possession of assets belonging to 696  
the estate after the filing of the final account, the executor or 697  
administrator shall file a supplemental final account with respect 698  
to the disposition of the assets and shall provide a copy of the 699

supplemental final account to each heir of an intestate estate or 700  
to each beneficiary of a testate estate, as provided in division 701  
(B)(1) of this section and subject to the exceptions specified in 702  
divisions (B)(1)(a) and (b) of this section. 703

(C) The rights of any person with a pecuniary interest in the 704  
estate are not barred by approval of an account pursuant to 705  
divisions (A) and (B) of this section. These rights may be barred 706  
following a hearing on the account pursuant to section 2109.33 of 707  
the Revised Code. 708

**Sec. 2113.53.** (A) At any time after the appointment of an 709  
executor or administrator, the executor or administrator may 710  
distribute to the beneficiaries entitled to assets of the estate 711  
under the will, if there is no action pending to set aside the 712  
will, or to the heirs entitled to assets of the estate by law, in 713  
cash or in kind, any part or all of the assets of the estate. Each 714  
beneficiary or heir is liable to return the assets, or the 715  
proceeds from the assets, to the estate if they are necessary to 716  
satisfy the share of a surviving spouse who elects to take against 717  
the will pursuant to section 2106.01 of the Revised Code, ~~if they~~ 718  
~~are necessary to satisfy any claims against the estate as provided~~ 719  
~~in this section,~~ or if the will is set aside. 720

(B) After distribution pursuant to division (A) of this 721  
section, a distributee shall be personally liable to a claimant 722  
who presents a valid claim within the time set forth in division 723  
(B) of section 2117.06 of the Revised Code, subject to the 724  
limitations described in this division. 725

If presentation of a claim is made pursuant to division 726  
(A)(2) of section 2117.06 of the Revised Code, only those 727  
distributees who have received timely presentation of the claim 728  
pursuant to division (B) of that section have any liability for 729  
the claim, subject to the limitations described in this division. 730

The personal liability of any distributee shall not exceed 731  
the lesser of the following: 732

(1) The amount the distributee has received reduced by the 733  
amount, if any, previously returned or otherwise used for the 734  
payment of the spouse's share or claims finally allowed; 735

(2) The distributee's proportionate share of the spouse's 736  
share or of claims finally allowed. Any distributee's 737  
proportionate share of the spouse's share or of claims finally 738  
allowed shall be determined by the following fraction: 739

(a) The numerator shall be the total amount received by the 740  
distributee, reduced by all amounts, if any, previously returned 741  
or otherwise used for the payment of the spouse's share or claims 742  
finally allowed. 743

(b) The denominator shall be the total amount received by all 744  
distributees reduced by all amounts, if any, previously returned 745  
or otherwise used for the payment of the spouse's share or claims 746  
finally allowed. 747

(C) If there is a surviving spouse and if the executor or 748  
administrator distributes any part of the assets of the estate 749  
before the expiration of the times described in division (E) of 750  
section 2106.01 of the Revised Code for the making of an election 751  
by a surviving spouse, the executor or administrator shall be 752  
personally liable to any surviving spouse who subsequently elects 753  
to take against the will. If the executor or administrator 754  
distributes any part of the assets of the estate within three 755  
months after the death of the decedent, the executor or 756  
administrator shall be personally liable only to those claimants 757  
who present their claims within that three-month period. If the 758  
executor or administrator distributes any part of the assets of 759  
the estate more than three months but less than one year after the 760  
death of the decedent, the executor or administrator shall be 761

personally liable only to those claimants who present their claims 762  
before the time of distribution and within the time set forth in 763  
division (B) of section 2117.06 of the Revised Code. 764

The executor or administrator shall be liable only to the 765  
extent that the sum of the remaining assets of the estate and the 766  
assets returned by the beneficiaries or heirs is insufficient to 767  
satisfy the share of the surviving spouse and to satisfy the 768  
claims against the estate. The executor or administrator shall not 769  
be liable in any case for an amount greater than the value of the 770  
estate that existed at the time that the distribution of assets 771  
was made and that was subject to the spouse's share or to the 772  
claims. 773

(D) The executor or administrator may provide for the payment 774  
of rejected claims or claims in suit by setting aside a sufficient 775  
amount of the assets of the estate for paying the claims. The 776  
assets shall be set aside for the payment of the claims in a 777  
manner approved by the probate court. Each claimant for whom 778  
assets are to be set aside shall be given notice, in the manner as 779  
the court shall order, of the hearing upon the application to set 780  
aside assets and shall have the right to be fully heard as to the 781  
nature and amount of the assets to be set aside for payment of the 782  
claim and as to all other conditions in connection with the claim. 783  
In any case in which the executor or administrator may set aside 784  
assets as provided in this section, the court, upon its own motion 785  
or upon application of the executor or administrator, as a 786  
condition precedent to any distribution, may require any 787  
beneficiary or heir to give a bond to the state with surety 788  
approved and in an amount fixed by the court, conditioned to 789  
secure the return of the assets to be distributed, or the proceeds 790  
from the assets or as much of the assets as may be necessary to 791  
satisfy the claims that may be recovered against the estate, and 792  
to indemnify the executor or administrator against loss and damage 793

on account of such distribution. The bond may be in addition to 794  
the assets to be set aside or partially or wholly in lieu of the 795  
assets, as the court shall determine. 796

**Sec. 2117.06.** (A) All creditors having claims against an 797  
estate, including claims arising out of contract, out of tort, on 798  
cognovit notes, or on judgments, whether due or not due, secured 799  
or unsecured, liquidated or unliquidated, shall present their 800  
claims in one of the following manners: 801

(1) After the appointment of an executor or administrator and 802  
prior to the filing of a final account or a certificate of 803  
termination, in one of the following manners: 804

(a) To the executor or administrator in a writing; 805

~~(2)~~(b) To the executor or administrator in a writing, and to 806  
the probate court by filing a copy of the writing with it; 807

~~(3)~~(c) In a writing that is sent by ordinary mail addressed 808  
to the decedent and that is actually received by the executor or 809  
administrator within the appropriate time specified in division 810  
(B) of this section. For purposes of this division, if an executor 811  
or administrator is not a natural person, the writing shall be 812  
considered as being actually received by the executor or 813  
administrator only if the person charged with the primary 814  
responsibility of administering the estate of the decedent 815  
actually receives the writing within the appropriate time 816  
specified in division (B) of this section. 817

(2) If the final account or certificate of termination has 818  
been filed, in a writing to those distributees of the decedent's 819  
estate who may share liability for the payment of the claim. 820

(B) All claims shall be presented within ~~one year~~ six months 821  
after the death of the decedent, whether or not the estate is 822  
released from administration or an executor or administrator is 823

appointed during that ~~one-year~~ six-month period. Every claim 824  
presented shall set forth the claimant's address. 825

(C) A claim that is not presented within ~~one-year~~ six months 826  
after the death of the decedent shall be forever barred as to all 827  
parties, including, but not limited to, devisees, legatees, and 828  
distributees. No payment shall be made on the claim and no action 829  
shall be maintained on the claim, except as otherwise provided in 830  
sections 2117.37 to 2117.42 of the Revised Code with reference to 831  
contingent claims. 832

(D) In the absence of any prior demand for allowance, the 833  
executor or administrator shall allow or reject all claims, except 834  
tax assessment claims, within thirty days after their 835  
presentation, provided that failure of the executor or 836  
administrator to allow or reject within that time shall not 837  
prevent the executor or administrator from doing so after that 838  
time and shall not prejudice the rights of any claimant. Upon the 839  
allowance of a claim, the executor or the administrator, on demand 840  
of the creditor, shall furnish the creditor with a written 841  
statement or memorandum of the fact and date of the allowance. 842

(E) If the executor or administrator has actual knowledge of 843  
a pending action commenced against the decedent prior to the 844  
decedent's death in a court of record in this state, the executor 845  
or administrator shall file a notice of the appointment of the 846  
executor or administrator in the pending action within ten days 847  
after acquiring that knowledge. If the administrator or executor 848  
is not a natural person, actual knowledge of a pending suit 849  
against the decedent shall be limited to the actual knowledge of 850  
the person charged with the primary responsibility of 851  
administering the estate of the decedent. Failure to file the 852  
notice within the ten-day period does not extend the claim period 853  
established by this section. 854

(F) This section applies to any person who is required to 855

give written notice to the executor or administrator of a motion 856  
or application to revive an action pending against the decedent at 857  
the date of the death of the decedent. 858

(G) Nothing in this section or in section 2117.07 of the 859  
Revised Code shall be construed to reduce the time mentioned in 860  
section 2125.02, 2305.09, 2305.10, 2305.11, 2305.113, or 2305.12 861  
of the Revised Code, provided that no portion of any recovery on a 862  
claim brought pursuant to any of those sections shall come from 863  
the assets of an estate unless the claim has been presented 864  
against the estate in accordance with Chapter 2117. of the Revised 865  
Code. 866

(H) Any person whose claim has been presented and has not 867  
been rejected after presentment is a creditor as that term is used 868  
in Chapters 2113. to 2125. of the Revised Code. Claims that are 869  
contingent need not be presented except as provided in sections 870  
2117.37 to 2117.42 of the Revised Code, but, whether presented 871  
pursuant to those sections or this section, contingent claims may 872  
be presented in any of the manners described in division (A) of 873  
this section. 874

(I) If a creditor presents a claim against an estate in 875  
accordance with division (A)~~(2)~~(1)(b) of this section, the probate 876  
court shall not close the administration of the estate until that 877  
claim is allowed or rejected. 878

(J) The probate court shall not require an executor or 879  
administrator to make and return into the court a schedule of 880  
claims against the estate. 881

(K) If the executor or administrator makes a distribution of 882  
the assets of the estate pursuant to section 2113.53 of the 883  
Revised Code and prior to the expiration of the time for the 884  
filing presentation of claims as set forth in this section, the 885  
executor or administrator shall provide notice on the account 886

delivered to each distributee that the distributee may be liable 887  
to the estate if a claim is presented prior to the filing of the 888  
final account and may be liable to the claimant if the claim is 889  
presented after the filing of the final account up to the value of 890  
the distribution and may be required to return all or any part of 891  
the value of the distribution if a valid claim is subsequently 892  
made against the estate within the time permitted under this 893  
section. 894

**Sec. 2117.07.** An executor or administrator may accelerate the 895  
bar against claims against the estate established by section 896  
2117.06 of the Revised Code by giving written notice to a 897  
potential claimant that identifies the decedent by name, states 898  
the date of the death of the decedent, identifies the executor or 899  
administrator by name and mailing address, and informs the 900  
potential claimant that any claims ~~he~~ the claimant may have 901  
against the estate are required to be presented to the executor or 902  
administrator in a writing within the earlier of thirty days after 903  
receipt of the notice by the potential claimant or ~~one year~~ six 904  
months after the date of the death of the decedent. A claim of 905  
that potential claimant that is not presented in the manner 906  
provided by section 2117.06 of the Revised Code within the earlier 907  
of thirty days after receipt of the notice by the potential 908  
claimant or ~~one year~~ six months after the date of the death of the 909  
decedent is barred by section 2117.06 of the Revised Code in the 910  
same manner as if it was not presented within ~~one year~~ six months 911  
after the date of the death of the decedent. 912

**Sec. 2117.11.** An executor or administrator, or a distributee 913  
who receives the presentation of a claim as provided in division 914  
(A)(2) of section 2117.06 of the Revised Code, shall reject a 915  
creditor's claim against the estate ~~he represents~~ by giving the 916  
claimant written notice of the disallowance ~~thereof~~ of the claim. 917

~~Such~~ The notice shall be given to the claimant ~~personally or by~~ 918  
~~registered mail with return receipt requested, addressed to the~~ 919  
~~claimant at the address given on the claim pursuant to Civil Rule~~ 920  
73. Notice by mail shall be effective on delivery of the mail at 921  
the address given. A claim may be rejected in whole or in part. A 922  
claim ~~which~~ that has been allowed may be rejected at any time 923  
~~thereafter~~ after allowance of the claim. 924

A claim is rejected if the executor or administrator, or a 925  
distributee who receives the presentation of a claim as provided 926  
in division (A)(2) of section 2117.06 of the Revised Code, on 927  
demand in writing by the claimant for an allowance ~~thereof of the~~ 928  
claim within five days, which demand may be made at presentation 929  
or at any time ~~thereafter~~ after presentation, fails to give to the 930  
claimant, within ~~such~~ that five-day period, a written statement of 931  
the allowance of ~~such~~ the claim. ~~Such~~ The rejection shall become 932  
effective at the expiration of ~~such~~ that period. 933

**Sec. 2117.12.** When a claim against an estate has been 934  
rejected in whole or in part but not referred to referees, or when 935  
a claim has been allowed in whole or in part and thereafter 936  
rejected, the claimant must commence an action on the claim, or 937  
that part ~~thereof~~ of the claim that was rejected, within two 938  
months after ~~such~~ the rejection if the debt or that part ~~thereof~~ 939  
of the debt that was rejected is then due, or within two months 940  
after ~~the same~~ that debt or part of the debt that was rejected 941  
becomes due, or be forever barred from maintaining an action 942  
~~thereon~~ on the claim or part of the claim that was rejected. If 943  
the executor or administrator dies, resigns, or is removed within 944  
~~such two months~~ that two-month period and before action is 945  
commenced ~~thereon~~ on the claim or part of the claim that was 946  
rejected, the action may be commenced within two months after the 947  
appointment of a successor. 948

For the purposes of this section, the action of a claimant is 949  
commenced when the ~~petition~~ complaint and praecipe for service of 950  
summons on the executor or administrator, or on the distributee 951  
who received the presentation of the claim as provided in division 952  
(A)(2) of section 2117.06 of the Revised Code, have been filed. 953

**Sec. 2151.421.** (A)(1)(a) No person described in division 954  
(A)(1)(b) of this section who is acting in an official or 955  
professional capacity and knows or suspects that a child under 956  
eighteen years of age or a mentally retarded, developmentally 957  
disabled, or physically impaired child under twenty-one years of 958  
age has suffered or faces a threat of suffering any physical or 959  
mental wound, injury, disability, or condition of a nature that 960  
reasonably indicates abuse or neglect of the child, shall fail to 961  
immediately report that knowledge or suspicion to the entity or 962  
persons specified in this division. Except as provided in section 963  
5120.173 of the Revised Code, the person making the report shall 964  
make it to the public children services agency or a municipal or 965  
county peace officer in the county in which the child resides or 966  
in which the abuse or neglect is occurring or has occurred. In the 967  
circumstances described in section 5120.173 of the Revised Code, 968  
the person making the report shall make it to the entity specified 969  
in that section. 970

(b) Division (A)(1)(a) of this section applies to any person 971  
who is an attorney; physician, including a hospital intern or 972  
resident; dentist; podiatrist; practitioner of a limited branch of 973  
medicine as specified in section 4731.15 of the Revised Code; 974  
registered nurse; licensed practical nurse; visiting nurse; other 975  
health care professional; licensed psychologist; licensed school 976  
psychologist; independent marriage and family therapist or 977  
marriage and family therapist; speech pathologist or audiologist; 978  
coroner; administrator or employee of a child day-care center; 979

administrator or employee of a residential camp or child day camp; 980  
administrator or employee of a certified child care agency or 981  
other public or private children services agency; school teacher; 982  
school employee; school authority; person engaged in social work 983  
or the practice of professional counseling; agent of a county 984  
humane society; ~~or~~ a person rendering spiritual treatment through 985  
prayer in accordance with the tenets of a well-recognized 986  
religion; superintendent, board member, or employee of a county 987  
board of mental retardation; investigative agent contracted with 988  
by a county board of mental retardation; or employee of the 989  
department of mental retardation and developmental disabilities. 990

(2) An attorney or a physician is not required to make a 991  
report pursuant to division (A)(1) of this section concerning any 992  
communication the attorney or physician receives from a client or 993  
patient in an attorney-client or physician-patient relationship, 994  
if, in accordance with division (A) or (B) of section 2317.02 of 995  
the Revised Code, the attorney or physician could not testify with 996  
respect to that communication in a civil or criminal proceeding, 997  
except that the client or patient is deemed to have waived any 998  
testimonial privilege under division (A) or (B) of section 2317.02 999  
of the Revised Code with respect to that communication and the 1000  
attorney or physician shall make a report pursuant to division 1001  
(A)(1) of this section with respect to that communication, if all 1002  
of the following apply: 1003

(a) The client or patient, at the time of the communication, 1004  
is either a child under eighteen years of age or a mentally 1005  
retarded, developmentally disabled, or physically impaired person 1006  
under twenty-one years of age. 1007

(b) The attorney or physician knows or suspects, as a result 1008  
of the communication or any observations made during that 1009  
communication, that the client or patient has suffered or faces a 1010  
threat of suffering any physical or mental wound, injury, 1011

disability, or condition of a nature that reasonably indicates 1012  
abuse or neglect of the client or patient. 1013

(c) The attorney-client or physician-patient relationship 1014  
does not arise out of the client's or patient's attempt to have an 1015  
abortion without the notification of her parents, guardian, or 1016  
custodian in accordance with section 2151.85 of the Revised Code. 1017

(B) Anyone, who knows or suspects that a child under eighteen 1018  
years of age or a mentally retarded, developmentally disabled, or 1019  
physically impaired person under twenty-one years of age has 1020  
suffered or faces a threat of suffering any physical or mental 1021  
wound, injury, disability, or other condition of a nature that 1022  
reasonably indicates abuse or neglect of the child may report or 1023  
cause reports to be made of that knowledge or suspicion to the 1024  
entity or persons specified in this division. Except as provided 1025  
in section 5120.173 of the Revised Code, a person making a report 1026  
or causing a report to be made under this division shall make it 1027  
or cause it to be made to the public children services agency or 1028  
to a municipal or county peace officer. In the circumstances 1029  
described in section 5120.173 of the Revised Code, a person making 1030  
a report or causing a report to be made under this division shall 1031  
make it or cause it to be made to the entity specified in that 1032  
section. 1033

(C) Any report made pursuant to division (A) or (B) of this 1034  
section shall be made forthwith either by telephone or in person 1035  
and shall be followed by a written report, if requested by the 1036  
receiving agency or officer. The written report shall contain: 1037

(1) The names and addresses of the child and the child's 1038  
parents or the person or persons having custody of the child, if 1039  
known; 1040

(2) The child's age and the nature and extent of the child's 1041  
known or suspected injuries, abuse, or neglect or of the known or 1042

suspected threat of injury, abuse, or neglect, including any 1043  
evidence of previous injuries, abuse, or neglect; 1044

(3) Any other information that might be helpful in 1045  
establishing the cause of the known or suspected injury, abuse, or 1046  
neglect or of the known or suspected threat of injury, abuse, or 1047  
neglect. 1048

Any person, who is required by division (A) of this section 1049  
to report known or suspected child abuse or child neglect, may 1050  
take or cause to be taken color photographs of areas of trauma 1051  
visible on a child and, if medically indicated, cause to be 1052  
performed radiological examinations of the child. 1053

(D)(1) When a municipal or county peace officer receives a 1054  
report concerning the possible abuse or neglect of a child or the 1055  
possible threat of abuse or neglect of a child, upon receipt of 1056  
the report, the municipal or county peace officer who receives the 1057  
report shall refer the report to the appropriate public children 1058  
services agency. 1059

(2) When a public children services agency receives a report 1060  
pursuant to this division or division (A) or (B) of this section, 1061  
upon receipt of the report, the public children services agency 1062  
shall comply with section 2151.422 of the Revised Code. 1063

(E) No township, municipal, or county peace officer shall 1064  
remove a child about whom a report is made pursuant to this 1065  
section from the child's parents, stepparents, or guardian or any 1066  
other persons having custody of the child without consultation 1067  
with the public children services agency, unless, in the judgment 1068  
of the officer, and, if the report was made by physician, the 1069  
physician, immediate removal is considered essential to protect 1070  
the child from further abuse or neglect. The agency that must be 1071  
consulted shall be the agency conducting the investigation of the 1072  
report as determined pursuant to section 2151.422 of the Revised 1073

Code. 1074

(F)(1) Except as provided in section 2151.422 of the Revised 1075  
Code, the public children services agency shall investigate, 1076  
within twenty-four hours, each report of known or suspected child 1077  
abuse or child neglect and of a known or suspected threat of child 1078  
abuse or child neglect that is referred to it under this section 1079  
to determine the circumstances surrounding the injuries, abuse, or 1080  
neglect or the threat of injury, abuse, or neglect, the cause of 1081  
the injuries, abuse, neglect, or threat, and the person or persons 1082  
responsible. The investigation shall be made in cooperation with 1083  
the law enforcement agency and in accordance with the memorandum 1084  
of understanding prepared under division (J) of this section. A 1085  
failure to make the investigation in accordance with the 1086  
memorandum is not grounds for, and shall not result in, the 1087  
dismissal of any charges or complaint arising from the report or 1088  
the suppression of any evidence obtained as a result of the report 1089  
and does not give, and shall not be construed as giving, any 1090  
rights or any grounds for appeal or post-conviction relief to any 1091  
person. The public children services agency shall report each case 1092  
to a central registry which the department of job and family 1093  
services shall maintain in order to determine whether prior 1094  
reports have been made in other counties concerning the child or 1095  
other principals in the case. The public children services agency 1096  
shall submit a report of its investigation, in writing, to the law 1097  
enforcement agency. 1098

(2) The public children services agency shall make any 1099  
recommendations to the county prosecuting attorney or city 1100  
director of law that it considers necessary to protect any 1101  
children that are brought to its attention. 1102

(G)(1)(a) Except as provided in division (H)(3) of this 1103  
section, anyone or any hospital, institution, school, health 1104  
department, or agency participating in the making of reports under 1105

division (A) of this section, anyone or any hospital, institution, 1106  
school, health department, or agency participating in good faith 1107  
in the making of reports under division (B) of this section, and 1108  
anyone participating in good faith in a judicial proceeding 1109  
resulting from the reports, shall be immune from any civil or 1110  
criminal liability for injury, death, or loss to person or 1111  
property that otherwise might be incurred or imposed as a result 1112  
of the making of the reports or the participation in the judicial 1113  
proceeding. 1114

(b) Notwithstanding section 4731.22 of the Revised Code, the 1115  
physician-patient privilege shall not be a ground for excluding 1116  
evidence regarding a child's injuries, abuse, or neglect, or the 1117  
cause of the injuries, abuse, or neglect in any judicial 1118  
proceeding resulting from a report submitted pursuant to this 1119  
section. 1120

(2) In any civil or criminal action or proceeding in which it 1121  
is alleged and proved that participation in the making of a report 1122  
under this section was not in good faith or participation in a 1123  
judicial proceeding resulting from a report made under this 1124  
section was not in good faith, the court shall award the 1125  
prevailing party reasonable attorney's fees and costs and, if a 1126  
civil action or proceeding is voluntarily dismissed, may award 1127  
reasonable attorney's fees and costs to the party against whom the 1128  
civil action or proceeding is brought. 1129

(H)(1) Except as provided in divisions (H)(4), (M), and (N) 1130  
of this section, a report made under this section is confidential. 1131  
The information provided in a report made pursuant to this section 1132  
and the name of the person who made the report shall not be 1133  
released for use, and shall not be used, as evidence in any civil 1134  
action or proceeding brought against the person who made the 1135  
report. In a criminal proceeding, the report is admissible in 1136  
evidence in accordance with the Rules of Evidence and is subject 1137

to discovery in accordance with the Rules of Criminal Procedure. 1138

(2) No person shall permit or encourage the unauthorized 1139  
dissemination of the contents of any report made under this 1140  
section. 1141

(3) A person who knowingly makes or causes another person to 1142  
make a false report under division (B) of this section that 1143  
alleges that any person has committed an act or omission that 1144  
resulted in a child being an abused child or a neglected child is 1145  
guilty of a violation of section 2921.14 of the Revised Code. 1146

(4) If a report is made pursuant to division (A) or (B) of 1147  
this section and the child who is the subject of the report dies 1148  
for any reason at any time after the report is made, but before 1149  
the child attains eighteen years of age, the public children 1150  
services agency or municipal or county peace officer to which the 1151  
report was made or referred, on the request of the child fatality 1152  
review board, shall submit a summary sheet of information 1153  
providing a summary of the report to the review board of the 1154  
county in which the deceased child resided at the time of death. 1155  
On the request of the review board, the agency or peace officer 1156  
may, at its discretion, make the report available to the review 1157  
board. 1158

(5) A public children services agency shall advise a person 1159  
alleged to have inflicted abuse or neglect on a child who is the 1160  
subject of a report made pursuant to this section in writing of 1161  
the disposition of the investigation. The agency shall not provide 1162  
to the person any information that identifies the person who made 1163  
the report, statements of witnesses, or police or other 1164  
investigative reports. 1165

(I) Any report that is required by this section, other than a 1166  
report that is made to the state highway patrol as described in 1167  
section 5120.173 of the Revised Code, shall result in protective 1168

services and emergency supportive services being made available by 1169  
the public children services agency on behalf of the children 1170  
about whom the report is made, in an effort to prevent further 1171  
neglect or abuse, to enhance their welfare, and, whenever 1172  
possible, to preserve the family unit intact. The agency required 1173  
to provide the services shall be the agency conducting the 1174  
investigation of the report pursuant to section 2151.422 of the 1175  
Revised Code. 1176

(J)(1) Each public children services agency shall prepare a 1177  
memorandum of understanding that is signed by all of the 1178  
following: 1179

(a) If there is only one juvenile judge in the county, the 1180  
juvenile judge of the county or the juvenile judge's 1181  
representative; 1182

(b) If there is more than one juvenile judge in the county, a 1183  
juvenile judge or the juvenile judges' representative selected by 1184  
the juvenile judges or, if they are unable to do so for any 1185  
reason, the juvenile judge who is senior in point of service or 1186  
the senior juvenile judge's representative; 1187

(c) The county peace officer; 1188

(d) All chief municipal peace officers within the county; 1189

(e) Other law enforcement officers handling child abuse and 1190  
neglect cases in the county; 1191

(f) The prosecuting attorney of the county; 1192

(g) If the public children services agency is not the county 1193  
department of job and family services, the county department of 1194  
job and family services; 1195

(h) The county humane society. 1196

(2) A memorandum of understanding shall set forth the normal 1197  
operating procedure to be employed by all concerned officials in 1198

the execution of their respective responsibilities under this 1199  
section and division (C) of section 2919.21, division (B)(1) of 1200  
section 2919.22, division (B) of section 2919.23, and section 1201  
2919.24 of the Revised Code and shall have as two of its primary 1202  
goals the elimination of all unnecessary interviews of children 1203  
who are the subject of reports made pursuant to division (A) or 1204  
(B) of this section and, when feasible, providing for only one 1205  
interview of a child who is the subject of any report made 1206  
pursuant to division (A) or (B) of this section. A failure to 1207  
follow the procedure set forth in the memorandum by the concerned 1208  
officials is not grounds for, and shall not result in, the 1209  
dismissal of any charges or complaint arising from any reported 1210  
case of abuse or neglect or the suppression of any evidence 1211  
obtained as a result of any reported child abuse or child neglect 1212  
and does not give, and shall not be construed as giving, any 1213  
rights or any grounds for appeal or post-conviction relief to any 1214  
person. 1215

(3) A memorandum of understanding shall include all of the 1216  
following: 1217

(a) The roles and responsibilities for handling emergency and 1218  
nonemergency cases of abuse and neglect; 1219

(b) Standards and procedures to be used in handling and 1220  
coordinating investigations of reported cases of child abuse and 1221  
reported cases of child neglect, methods to be used in 1222  
interviewing the child who is the subject of the report and who 1223  
allegedly was abused or neglected, and standards and procedures 1224  
addressing the categories of persons who may interview the child 1225  
who is the subject of the report and who allegedly was abused or 1226  
neglected. 1227

(K)(1) Except as provided in division (K)(4) of this section, 1228  
a person who is required to make a report pursuant to division (A) 1229  
of this section may make a reasonable number of requests of the 1230

public children services agency that receives or is referred the	1231
report to be provided with the following information:	1232
(a) Whether the agency has initiated an investigation of the	1233
report;	1234
(b) Whether the agency is continuing to investigate the	1235
report;	1236
(c) Whether the agency is otherwise involved with the child	1237
who is the subject of the report;	1238
(d) The general status of the health and safety of the child	1239
who is the subject of the report;	1240
(e) Whether the report has resulted in the filing of a	1241
complaint in juvenile court or of criminal charges in another	1242
court.	1243
(2) A person may request the information specified in	1244
division (K)(1) of this section only if, at the time the report is	1245
made, the person's name, address, and telephone number are	1246
provided to the person who receives the report.	1247
When a municipal or county peace officer or employee of a	1248
public children services agency receives a report pursuant to	1249
division (A) or (B) of this section the recipient of the report	1250
shall inform the person of the right to request the information	1251
described in division (K)(1) of this section. The recipient of the	1252
report shall include in the initial child abuse or child neglect	1253
report that the person making the report was so informed and, if	1254
provided at the time of the making of the report, shall include	1255
the person's name, address, and telephone number in the report.	1256
Each request is subject to verification of the identity of	1257
the person making the report. If that person's identity is	1258
verified, the agency shall provide the person with the information	1259
described in division (K)(1) of this section a reasonable number	1260

of times, except that the agency shall not disclose any 1261  
confidential information regarding the child who is the subject of 1262  
the report other than the information described in those 1263  
divisions. 1264

(3) A request made pursuant to division (K)(1) of this 1265  
section is not a substitute for any report required to be made 1266  
pursuant to division (A) of this section. 1267

(4) If an agency other than the agency that received or was 1268  
referred the report is conducting the investigation of the report 1269  
pursuant to section 2151.422 of the Revised Code, the agency 1270  
conducting the investigation shall comply with the requirements of 1271  
division (K) of this section. 1272

(L) The director of job and family services shall adopt rules 1273  
in accordance with Chapter 119. of the Revised Code to implement 1274  
this section. The department of job and family services may enter 1275  
into a plan of cooperation with any other governmental entity to 1276  
aid in ensuring that children are protected from abuse and 1277  
neglect. The department shall make recommendations to the attorney 1278  
general that the department determines are necessary to protect 1279  
children from child abuse and child neglect. 1280

(M) No later than the end of the day following the day on 1281  
which a public children services agency receives a report of 1282  
alleged child abuse or child neglect, or a report of an alleged 1283  
threat of child abuse or child neglect, that allegedly occurred in 1284  
or involved an out-of-home care entity, the agency shall provide 1285  
written notice of the allegations contained in and the person 1286  
named as the alleged perpetrator in the report to the 1287  
administrator, director, or other chief administrative officer of 1288  
the out-of-home care entity that is the subject of the report 1289  
unless the administrator, director, or other chief administrative 1290  
officer is named as an alleged perpetrator in the report. If the 1291  
administrator, director, or other chief administrative officer of 1292

an out-of-home care entity is named as an alleged perpetrator in a 1293  
report of alleged child abuse or child neglect, or a report of an 1294  
alleged threat of child abuse or child neglect, that allegedly 1295  
occurred in or involved the out-of-home care entity, the agency 1296  
shall provide the written notice to the owner or governing board 1297  
of the out-of-home care entity that is the subject of the report. 1298  
The agency shall not provide witness statements or police or other 1299  
investigative reports. 1300

(N) No later than three days after the day on which a public 1301  
children services agency that conducted the investigation as 1302  
determined pursuant to section 2151.422 of the Revised Code makes 1303  
a disposition of an investigation involving a report of alleged 1304  
child abuse or child neglect, or a report of an alleged threat of 1305  
child abuse or child neglect, that allegedly occurred in or 1306  
involved an out-of-home care entity, the agency shall send written 1307  
notice of the disposition of the investigation to the 1308  
administrator, director, or other chief administrative officer and 1309  
the owner or governing board of the out-of-home care entity. The 1310  
agency shall not provide witness statements or police or other 1311  
investigative reports. 1312

Sec. 2152.821. (A) As used in this section: 1313

(1) "Mentally retarded person" and "developmentally disabled 1314  
person" have the same meanings as in section 5123.01 of the 1315  
Revised Code. 1316

(2) "Mentally retarded or developmentally disabled victim" 1317  
includes any of the following persons: 1318

(a) A mentally retarded person or developmentally disabled 1319  
person who was a victim of a violation identified in division 1320

(B)(1) of this section or an act that would be an offense of 1321  
violence if committed by an adult; 1322

(b) A mentally retarded person or developmentally disabled person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult. 1323  
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(B)(1) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a mentally retarded person or developmentally disabled person, the juvenile judge, upon motion of the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall 1328  
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have the right, as at an adjudication hearing, to full examination 1355  
and cross-examination of the mentally retarded or developmentally 1356  
disabled victim whose deposition is to be taken. 1357

If a deposition taken under this division is intended to be 1358  
offered as evidence in the proceeding, it shall be filed in the 1359  
juvenile court in which the action is pending and is admissible in 1360  
the manner described in division (C) of this section. If a 1361  
deposition of a mentally retarded or developmentally disabled 1362  
victim taken under this division is admitted as evidence at the 1363  
proceeding under division (C) of this section, the mentally 1364  
retarded or developmentally disabled victim shall not be required 1365  
to testify in person at the proceeding. 1366

At any time before the conclusion of the proceeding, the 1367  
attorney for the child charged with the violation or act may file 1368  
a motion with the judge requesting that another deposition of the 1369  
mentally retarded or developmentally disabled victim be taken 1370  
because new evidence material to the defense of the child charged 1371  
has been discovered that the attorney for the child charged could 1372  
not with reasonable diligence have discovered prior to the taking 1373  
of the admitted deposition. Any motion requesting another 1374  
deposition shall be accompanied by supporting affidavits. Upon the 1375  
filing of the motion and affidavits, the court may order that 1376  
additional testimony of the mentally retarded or developmentally 1377  
disabled victim relative to the new evidence be taken by another 1378  
deposition. If the court orders the taking of another deposition 1379  
under this provision, the deposition shall be taken in accordance 1380  
with this division. If the admitted deposition was a videotaped 1381  
deposition taken in accordance with division (B)(2) of this 1382  
section, the new deposition also shall be videotaped in accordance 1383  
with that division. In other cases, the new deposition may be 1384  
videotaped in accordance with that division. 1385

(2) If the prosecution requests that a deposition to be taken 1386

under division (B)(1) of this section be videotaped, the juvenile 1387  
judge shall order that the deposition be videotaped in accordance 1388  
with this division. If a juvenile judge issues an order to video 1389  
tape the deposition, the judge shall exclude from the room in 1390  
which the deposition is to be taken every person except the 1391  
mentally retarded or developmentally disabled victim giving the 1392  
testimony, the judge, one or more interpreters if needed, the 1393  
attorneys for the prosecution and the child who is charged with 1394  
the violation or act, any person needed to operate the equipment 1395  
to be used, one person chosen by the mentally retarded or 1396  
developmentally disabled victim giving the deposition, and any 1397  
person whose presence the judge determines would contribute to the 1398  
welfare and well-being of the mentally retarded or developmentally 1399  
disabled victim giving the deposition. The person chosen by the 1400  
mentally retarded or developmentally disabled victim shall not be 1401  
a witness in the proceeding and, both before and during the 1402  
deposition, shall not discuss the testimony of the victim with any 1403  
other witness in the proceeding. To the extent feasible, any 1404  
person operating the recording equipment shall be restricted to a 1405  
room adjacent to the room in which the deposition is being taken, 1406  
or to a location in the room in which the deposition is being 1407  
taken that is behind a screen or mirror so that the person 1408  
operating the recording equipment can see and hear, but cannot be 1409  
seen or heard by, the mentally retarded or developmentally 1410  
disabled victim giving the deposition during the deposition. 1411

The child who is charged with the violation or act shall be 1412  
permitted to observe and hear the testimony of the mentally 1413  
retarded or developmentally disabled victim giving the deposition 1414  
on a monitor, shall be provided with an electronic means of 1415  
immediate communication with the attorney of the child who is 1416  
charged with the violation or act during the testimony, and shall 1417  
be restricted to a location from which the child who is charged 1418

with the violation or act cannot be seen or heard by the mentally 1419  
retarded or developmentally disabled victim giving the deposition, 1420  
except on a monitor provided for that purpose. The mentally 1421  
retarded or developmentally disabled victim giving the deposition 1422  
shall be provided with a monitor on which the mentally retarded or 1423  
developmentally disabled victim can observe, while giving 1424  
testimony, the child who is charged with the violation or act. The 1425  
judge, at the judge's discretion, may preside at the deposition by 1426  
electronic means from outside the room in which the deposition is 1427  
to be taken; if the judge presides by electronic means, the judge 1428  
shall be provided with monitors on which the judge can see each 1429  
person in the room in which the deposition is to be taken and with 1430  
an electronic means of communication with each person in that 1431  
room, and each person in the room shall be provided with a monitor 1432  
on which that person can see the judge and with an electronic 1433  
means of communication with the judge. A deposition that is 1434  
videotaped under this division shall be taken and filed in the 1435  
manner described in division (B)(1) of this section and is 1436  
admissible in the manner described in this division and division 1437  
(C) of this section. If a deposition that is videotaped under this 1438  
division is admitted as evidence at the proceeding, the mentally 1439  
retarded or developmentally disabled victim shall not be required 1440  
to testify in person at the proceeding. No deposition videotaped 1441  
under this division shall be admitted as evidence at any 1442  
proceeding unless division (C) of this section is satisfied 1443  
relative to the deposition and all of the following apply relative 1444  
to the recording: 1445

(a) The recording is both aural and visual and is recorded on 1446  
film or videotape, or by other electronic means. 1447

(b) The recording is authenticated under the Rules of 1448  
Evidence and the Rules of Criminal Procedure as a fair and 1449  
accurate representation of what occurred, and the recording is not 1450

altered other than at the direction and under the supervision of 1451  
the judge in the proceeding. 1452

(c) Each voice on the recording that is material to the 1453  
testimony on the recording or the making of the recording, as 1454  
determined by the judge, is identified. 1455

(d) Both the prosecution and the child who is charged with 1456  
the violation or act are afforded an opportunity to view the 1457  
recording before it is shown in the proceeding. 1458

(C)(1) At any proceeding in relation to which a deposition 1459  
was taken under division (B) of this section, the deposition or a 1460  
part of it is admissible in evidence upon motion of the 1461  
prosecution if the testimony in the deposition or the part to be 1462  
admitted is not excluded by the hearsay rule and if the deposition 1463  
or the part to be admitted otherwise is admissible under the Rules 1464  
of Evidence. For purposes of this division, testimony is not 1465  
excluded by the hearsay rule if the testimony is not hearsay under 1466  
Evidence Rule 801; the testimony is within an exception to the 1467  
hearsay rule set forth in Evidence Rule 803; the mentally retarded 1468  
or developmentally disabled victim who gave the testimony is 1469  
unavailable as a witness, as defined in Evidence Rule 804, and the 1470  
testimony is admissible under that rule; or both of the following 1471  
apply: 1472

(a) The child who is charged with the violation or act had an 1473  
opportunity and similar motive at the time of the taking of the 1474  
deposition to develop the testimony by direct, cross, or redirect 1475  
examination. 1476

(b) The judge determines that there is reasonable cause to 1477  
believe that, if the mentally retarded or developmentally disabled 1478  
victim who gave the testimony in the deposition were to testify in 1479  
person at the proceeding, the mentally retarded or developmentally 1480  
disabled victim would experience serious emotional trauma as a 1481

result of the mentally retarded or developmentally disabled 1482  
victim's participation at the proceeding. 1483

(2) Objections to receiving in evidence a deposition or a 1484  
part of it under division (C) of this section shall be made as 1485  
provided in civil actions. 1486

(3) The provisions of divisions (B) and (C) of this section 1487  
are in addition to any other provisions of the Revised Code, the 1488  
Rules of Juvenile Procedure, the Rules of Criminal Procedure, or 1489  
the Rules of Evidence that pertain to the taking or admission of 1490  
depositions in a juvenile court proceeding and do not limit the 1491  
admissibility under any of those other provisions of any 1492  
deposition taken under division (B) of this section or otherwise 1493  
taken. 1494

(D) In any proceeding in juvenile court involving a 1495  
complaint, indictment, or information in which a child is charged 1496  
with a violation listed in division (B)(1) of this section or an 1497  
act that would be an offense of violence if committed by an adult 1498  
and in which an alleged victim of the violation or offense was a 1499  
mentally retarded or developmentally disabled person, the 1500  
prosecution may file a motion with the juvenile judge requesting 1501  
the judge to order the testimony of the mentally retarded or 1502  
developmentally disabled victim to be taken in a room other than 1503  
the room in which the proceeding is being conducted and be 1504  
televised, by closed circuit equipment, into the room in which the 1505  
proceeding is being conducted to be viewed by the child who is 1506  
charged with the violation or act and any other persons who are 1507  
not permitted in the room in which the testimony is to be taken 1508  
but who would have been present during the testimony of the 1509  
mentally retarded or developmentally disabled victim had it been 1510  
given in the room in which the proceeding is being conducted. 1511  
Except for good cause shown, the prosecution shall file a motion 1512  
under this division at least seven days before the date of the 1513

proceeding. The juvenile judge may issue the order upon the motion 1514  
of the prosecution filed under this division, if the judge 1515  
determines that the mentally retarded or developmentally disabled 1516  
victim is unavailable to testify in the room in which the 1517  
proceeding is being conducted in the physical presence of the 1518  
child charged with the violation or act for one or more of the 1519  
reasons set forth in division (F) of this section. If a juvenile 1520  
judge issues an order of that nature, the judge shall exclude from 1521  
the room in which the testimony is to be taken every person except 1522  
a person described in division (B)(2) of this section. The judge, 1523  
at the judge's discretion, may preside during the giving of the 1524  
testimony by electronic means from outside the room in which it is 1525  
being given, subject to the limitations set forth in division 1526  
(B)(2) of this section. To the extent feasible, any person 1527  
operating the televising equipment shall be hidden from the sight 1528  
and hearing of the mentally retarded or developmentally disabled 1529  
victim giving the testimony, in a manner similar to that described 1530  
in division (B)(2) of this section. The child who is charged with 1531  
the violation or act shall be permitted to observe and hear the 1532  
testimony of the mentally retarded or developmentally disabled 1533  
victim giving the testimony on a monitor, shall be provided with 1534  
an electronic means of immediate communication with the attorney 1535  
of the child who is charged with the violation or act during the 1536  
testimony, and shall be restricted to a location from which the 1537  
child who is charged with the violation or act cannot be seen or 1538  
heard by the mentally retarded or developmentally disabled victim 1539  
giving the testimony, except on a monitor provided for that 1540  
purpose. The mentally retarded or developmentally disabled victim 1541  
giving the testimony shall be provided with a monitor on which the 1542  
mentally retarded or developmentally disabled victim can observe, 1543  
while giving testimony, the child who is charged with the 1544  
violation or act. 1545

(E) In any proceeding in juvenile court involving a 1546  
complaint, indictment, or information in which a child is charged 1547  
with a violation listed in division (B)(1) of this section or an 1548  
act that would be an offense of violence if committed by an adult 1549  
and in which an alleged victim of the violation or offense was a 1550  
mentally retarded or developmentally disabled person, the 1551  
prosecution may file a motion with the juvenile judge requesting 1552  
the judge to order the testimony of the mentally retarded or 1553  
developmentally disabled victim to be taken outside of the room in 1554  
which the proceeding is being conducted and be recorded for 1555  
showing in the room in which the proceeding is being conducted 1556  
before the judge, the child who is charged with the violation or 1557  
act, and any other persons who would have been present during the 1558  
testimony of the mentally retarded or developmentally disabled 1559  
victim had it been given in the room in which the proceeding is 1560  
being conducted. Except for good cause shown, the prosecution 1561  
shall file a motion under this division at least seven days before 1562  
the date of the proceeding. The juvenile judge may issue the order 1563  
upon the motion of the prosecution filed under this division, if 1564  
the judge determines that the mentally retarded or developmentally 1565  
disabled victim is unavailable to testify in the room in which the 1566  
proceeding is being conducted in the physical presence of the 1567  
child charged with the violation or act, due to one or more of the 1568  
reasons set forth in division (F) of this section. If a juvenile 1569  
judge issues an order of that nature, the judge shall exclude from 1570  
the room in which the testimony is to be taken every person except 1571  
a person described in division (B)(2) of this section. To the 1572  
extent feasible, any person operating the recording equipment 1573  
shall be hidden from the sight and hearing of the mentally 1574  
retarded or developmentally disabled victim giving the testimony, 1575  
in a manner similar to that described in division (B)(2) of this 1576  
section. The child who is charged with the violation or act shall 1577  
be permitted to observe and hear the testimony of the mentally 1578

retarded or developmentally disabled victim giving the testimony 1579  
on a monitor, shall be provided with an electronic means of 1580  
immediate communication with the attorney of the child who is 1581  
charged with the violation or act during the testimony, and shall 1582  
be restricted to a location from which the child who is charged 1583  
with the violation or act cannot be seen or heard by the mentally 1584  
retarded or developmentally disabled victim giving the testimony, 1585  
except on a monitor provided for that purpose. The mentally 1586  
retarded or developmentally disabled victim giving the testimony 1587  
shall be provided with a monitor on which the mentally retarded or 1588  
developmentally disabled victim can observe, while giving 1589  
testimony, the child who is charged with the violation or act. No 1590  
order for the taking of testimony by recording shall be issued 1591  
under this division unless the provisions set forth in divisions 1592  
(B)(2)(a), (b), (c), and (d) of this section apply to the 1593  
recording of the testimony. 1594

(F) For purposes of divisions (D) and (E) of this section, a 1595  
juvenile judge may order the testimony of a mentally retarded or 1596  
developmentally disabled victim to be taken outside of the room in 1597  
which a proceeding is being conducted if the judge determines that 1598  
the mentally retarded or developmentally disabled victim is 1599  
unavailable to testify in the room in the physical presence of the 1600  
child charged with the violation or act due to one or more of the 1601  
following circumstances: 1602

(1) The persistent refusal of the mentally retarded or 1603  
developmentally disabled victim to testify despite judicial 1604  
requests to do so; 1605

(2) The inability of the mentally retarded or developmentally 1606  
disabled victim to communicate about the alleged violation or 1607  
offense because of extreme fear, failure of memory, or another 1608  
similar reason; 1609

(3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying. 1610  
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(G)(1) If a juvenile judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (B)(2) of this section or a proceeding under division (D) or (E) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code. 1613  
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(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding. 1629  
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**Sec. 2311.14.** (A)(1) Whenever because of a hearing, speech, or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such person. Before appointing any interpreter under this division for a party or witness who is 1636  
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a mentally retarded person or developmentally disabled person, the 1641  
court shall evaluate the qualifications of the interpreter and 1642  
shall make a determination as to the ability of the interpreter to 1643  
effectively interpret on behalf of the party or witness that the 1644  
interpreter will assist, and the court may appoint the interpreter 1645  
only if the court is satisfied that the interpreter is able to 1646  
effectively interpret on behalf of that party or witness. 1647

(2) This section is not limited to a person who speaks a 1648  
language other than English. It also applies to the language and 1649  
descriptions of any mentally retarded person or developmentally 1650  
disabled person who cannot be reasonably understood, or who cannot 1651  
understand questioning, without the aid of an interpreter. The 1652  
interpreter may aid the parties in formulating methods of 1653  
questioning the person with mental retardation or a developmental 1654  
disability and in interpreting the answers of the person. 1655

(B) Before entering upon ~~his~~ official duties, the interpreter 1656  
shall take an oath that ~~he~~ the interpreter will make a true 1657  
interpretation of the proceedings to the party or witness, and 1658  
that ~~he~~ the interpreter will truly repeat the statements made by 1659  
such party or witness to the court, to the best of ~~his~~ the 1660  
interpreter's ability. If the interpreter is appointed to assist a 1661  
mentally retarded person or developmentally disabled person as 1662  
described in division (A)(2) of this section, the oath also shall 1663  
include an oath that the interpreter will not prompt, lead, 1664  
suggest, or otherwise improperly influence the testimony of the 1665  
witness or party. 1666

(C) The court shall determine a reasonable fee for all such 1667  
interpreter service which shall be paid out of the same funds as 1668  
witness fees. 1669

(D) As used in this section, "mentally retarded person" and 1670  
"developmentally disabled person" have the same meanings as in 1671

section 5123.01 of the Revised Code.

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

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

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

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

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

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(C) No person who owns, operates, or administers a care

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facility or who is an agent of a care facility shall condone, or 1702  
knowingly permit, any conduct by an MR/DD caretaker who is 1703  
employed by or under the control of the owner, operator, 1704  
administrator, or agent that is in violation of division (B) of 1705  
this section and that involves a mentally retarded person or a 1706  
developmentally disabled person who is under the care of the 1707  
owner, operator, administrator, or agent. A person who relies upon 1708  
treatment by spiritual means through prayer alone, in accordance 1709  
with the tenets of a recognized religious denomination, shall not 1710  
be considered endangered under this division for that reason 1711  
alone. 1712

(D)(1) It is an affirmative defense to a charge of a 1713  
violation of division (B) or (C) of this section that the actor's 1714  
conduct was committed in good faith solely because the actor was 1715  
ordered to commit the conduct by a person to whom one of the 1716  
following applies: 1717

(a) The person has supervisory authority over the actor. 1718

(b) The person has authority over the actor's conduct 1719  
pursuant to a contract for the provision of services. 1720

(2) It is an affirmative defense to a charge of a violation 1721  
of division (C) of this section that the person who owns, 1722  
operates, or administers a care facility or who is an agent of a 1723  
care facility and who is charged with the violation is following 1724  
the individual service plan for the involved mentally retarded 1725  
person or a developmentally disabled person or that the admission, 1726  
discharge, and transfer rule set forth in the Administrative Code 1727  
is being followed. 1728

(3) It is an affirmative defense to a charge of a violation 1729  
of division (C) of this section that the actor did not have 1730  
readily available a means to prevent either the harm to the person 1731  
with mental retardation or a developmental disability or the death 1732

of such a person and the actor took reasonable steps to summon 1733  
aid. 1734

(E)(1) Except as provided in division (E)(2) or (E)(3) of 1735  
this section, whoever violates division (B) or (C) of this section 1736  
is guilty of patient endangerment, a misdemeanor of the first 1737  
degree. 1738

(2) If the offender previously has been convicted of, or 1739  
pleaded guilty to, a violation of this section, patient 1740  
endangerment is a felony of the fourth degree. 1741

(3) If the violation results in serious physical harm to the 1742  
person with mental retardation or a developmental disability, 1743  
patient endangerment is a felony of the third degree. 1744

**Sec. 2930.03.** (A) A person or entity required or authorized 1745  
under this chapter to give notice to a victim shall give the 1746  
notice to the victim by any means reasonably calculated to provide 1747  
prompt actual notice. Except when a provision requires that notice 1748  
is to be given in a specific manner, a notice may be oral or 1749  
written. 1750

(B) Except for receipt of the initial information and notice 1751  
required to be given to a victim under divisions (A) and (B) of 1752  
section 2930.04, section 2930.05, and divisions (A) and (B) of 1753  
section 2930.06 of the Revised Code, a victim who wishes to 1754  
receive any notice authorized by this chapter shall make a request 1755  
for the notice to the prosecutor or the custodial agency that is 1756  
to provide the notice, as specified in this chapter. If the victim 1757  
does not make a request as described in this division, the 1758  
prosecutor or custodial agency is not required to provide any 1759  
notice described in this chapter other than the initial 1760  
information and notice required to be given to a victim under 1761  
divisions (A) and (B) of section 2930.04, section 2930.05, and 1762

divisions (A) and (B) of section 2930.06 of the Revised Code. 1763

(C) A person or agency that is required to furnish notice 1764  
under this chapter shall give the notice to the victim at the 1765  
address or telephone number provided to the person or agency by 1766  
the victim. A victim who requests to receive notice under this 1767  
chapter as described in division (B) of this section shall inform 1768  
the person or agency of the name, address, or telephone number of 1769  
the victim and of any change to that information. 1770

(D) A person or agency that has furnished information to a 1771  
victim in accordance with any requirement or authorization under 1772  
this chapter shall notify the victim promptly of any significant 1773  
changes to that information. 1774

(E) Divisions (A) to (D) of this section do not apply 1775  
regarding a notice that a prosecutor is required to provide under 1776  
section 2930.061 of the Revised Code. A prosecutor required to 1777  
provide notice under that section shall provide the notice as 1778  
specified in that section. 1779

Sec. 2930.061. (A) If a person is charged in a complaint, 1780  
indictment, or information with any crime or specified delinquent 1781  
act or with any other violation of law, and if the case involves a 1782  
victim that the prosecutor in the case knows is a mentally 1783  
retarded person or a developmentally disabled person, in addition 1784  
to any other notices required under this chapter or under any 1785  
other provision of law, the prosecutor in the case shall send 1786  
written notice of the charges to the department of mental 1787  
retardation and developmental disabilities. The written notice 1788  
shall specifically identify the person so charged. 1789

(B) As used in this section, "mentally retarded person" and 1790  
"developmentally disabled person" have the same meanings as in 1791  
section 5123.01 of the Revised Code. 1792

<u>Sec. 2945.482. (A) As used in this section:</u>	1793
<u>(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.</u>	1794 1795 1796
<u>(2) "Mentally retarded or developmentally disabled victim" includes a mentally retarded or developmentally disabled person who was a victim of a violation identified in division (B)(1) of this section or an offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an offense of violence.</u>	1797 1798 1799 1800 1801 1802 1803
<u>(B)(1) In any proceeding in the prosecution of a charge of a violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions</u>	1804 1805 1806 1807 1808 1809 1810 1811 1812 1813 1814 1815 1816 1817 1818 1819 1820 1821 1822 1823

shall be taken in the manner provided in civil cases, except that 1824  
the judge shall preside at the taking of the deposition and shall 1825  
rule at the time on any objections of the prosecution or the 1826  
attorney for the defense. The prosecution and the attorney for the 1827  
defense shall have the right, as at trial, to full examination and 1828  
cross-examination of the mentally retarded or developmentally 1829  
disabled victim whose deposition is to be taken. If a deposition 1830  
taken under this division is intended to be offered as evidence in 1831  
the proceeding, it shall be filed in the court in which the action 1832  
is pending and is admissible in the manner described in division 1833  
(C) of this section. 1834

If a deposition of a mentally retarded or developmentally 1835  
disabled victim taken under this division is admitted as evidence 1836  
at the proceeding under division (C) of this section, the mentally 1837  
retarded or developmentally disabled victim shall not be required 1838  
to testify in person at the proceeding. 1839

At any time before the conclusion of the proceeding, the 1840  
attorney for the defense may file a motion with the judge 1841  
requesting that another deposition of the mentally retarded or 1842  
developmentally disabled victim be taken because new evidence 1843  
material to the defense has been discovered that the attorney for 1844  
the defense could not with reasonable diligence have discovered 1845  
prior to the taking of the admitted deposition. If the court 1846  
orders the taking of another deposition under this provision, the 1847  
deposition shall be taken in accordance with this division. If the 1848  
admitted deposition was a videotaped deposition taken in 1849  
accordance with division (B)(2) of this section, the new 1850  
deposition shall be videotaped in accordance with that division. 1851  
In other cases, the new deposition may be videotaped in accordance 1852  
with that division. 1853

(2) If the prosecution requests that a deposition to be taken 1854  
under division (B)(2) of this section be videotaped, the judge 1855

shall order that the deposition be videotaped in accordance with 1856  
this division. If a judge issues an order that the deposition be 1857  
videotaped, the judge shall exclude from the room in which the 1858  
deposition is to be taken every person except the mentally 1859  
retarded or developmentally disabled victim giving the testimony, 1860  
the judge, one or more interpreters if needed, the attorneys for 1861  
the prosecution and the defense, any person needed to operate the 1862  
equipment to be used, one person chosen by the mentally retarded 1863  
or developmentally disabled victim giving the deposition, and any 1864  
person whose presence the judge determines would contribute to the 1865  
welfare and well-being of the mentally retarded or developmentally 1866  
disabled victim giving the deposition. The person chosen by the 1867  
mentally retarded or developmentally disabled victim shall not be 1868  
a witness in the proceeding and, both before and during the 1869  
deposition, shall not discuss the testimony of the mentally 1870  
retarded or developmentally disabled victim with any other witness 1871  
in the proceeding. To the extent feasible, any person operating 1872  
the recording equipment shall be restricted to a room adjacent to 1873  
the room in which the deposition is being taken, or to a location 1874  
in the room in which the deposition is being taken that is behind 1875  
a screen or mirror, so that the person operating the recording 1876  
equipment can see and hear, but cannot be seen or heard by, the 1877  
mentally retarded or developmentally disabled victim giving the 1878  
deposition during the deposition. 1879

The defendant shall be permitted to observe and hear the 1880  
testimony of the mentally retarded or developmentally disabled 1881  
victim giving the deposition on a monitor, shall be provided with 1882  
an electronic means of immediate communication with the 1883  
defendant's attorney during the testimony, and shall be restricted 1884  
to a location from which the defendant cannot be seen or heard by 1885  
the mentally retarded or developmentally disabled victim giving 1886  
the deposition, except on a monitor provided for that purpose. The 1887

mentally retarded or developmentally disabled victim giving the 1888  
deposition shall be provided with a monitor on which the victim 1889  
can observe, during the testimony, the defendant. The judge, at 1890  
the judge's discretion, may preside at the deposition by 1891  
electronic means from outside the room in which the deposition is 1892  
to be taken. If the judge presides by electronic means, the judge 1893  
shall be provided with monitors on which the judge can see each 1894  
person in the room in which the deposition is to be taken and with 1895  
an electronic means of communication with each person, and each 1896  
person in the room shall be provided with a monitor on which that 1897  
person can see the judge and with an electronic means of 1898  
communication with the judge. A deposition that is videotaped 1899  
under this division shall be taken and filed in the manner 1900  
described in division (B)(1) of this section and is admissible in 1901  
the manner described in this division and division (C) of this 1902  
section, and, if a deposition that is videotaped under this 1903  
division is admitted as evidence at the proceeding, the mentally 1904  
retarded or developmentally disabled victim shall not be required 1905  
to testify in person at the proceeding. No deposition videotaped 1906  
under this division shall be admitted as evidence at any 1907  
proceeding unless division (C) of this section is satisfied 1908  
relative to the deposition and all of the following apply relative 1909  
to the recording: 1910

(a) The recording is both aural and visual and is recorded on 1911  
film or videotape, or by other electronic means. 1912

(b) The recording is authenticated under the Rules of 1913  
Evidence and the Rules of Criminal Procedure as a fair and 1914  
accurate representation of what occurred, and the recording is not 1915  
altered other than at the direction and under the supervision of 1916  
the judge in the proceeding. 1917

(c) Each voice on the recording that is material to the 1918  
testimony on the recording or the making of the recording, as 1919

determined by the judge, is identified. 1920

(d) Both the prosecution and the defendant are afforded an opportunity to view the recording before it is shown in the proceeding. 1921  
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(C)(1) At any proceeding in a prosecution in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply: 1924  
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(a) The defendant had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination. 1938  
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(b) The judge determines that there is reasonable cause to believe that, if the mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled victim's participation at the proceeding. 1941  
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(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions. 1948  
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(3) The provisions of divisions (B) and (C) of this section 1951  
are in addition to any other provisions of the Revised Code, the 1952  
Rules of Criminal Procedure, or the Rules of Evidence that pertain 1953  
to the taking or admission of depositions in a criminal proceeding 1954  
and do not limit the admissibility under any of those other 1955  
provisions of any deposition taken under division (B) of this 1956  
section or otherwise taken. 1957

(D) In any proceeding in the prosecution of any charge of a 1958  
violation listed in division (B)(1) of this section or an offense 1959  
of violence and in which an alleged victim of the violation or 1960  
offense was a mentally retarded or developmentally disabled 1961  
person, the prosecution may file a motion with the judge 1962  
requesting the judge to order the testimony of the mentally 1963  
retarded or developmentally disabled victim to be taken in a room 1964  
other than the room in which the proceeding is being conducted and 1965  
be televised, by closed circuit equipment, into the room in which 1966  
the proceeding is being conducted to be viewed by the jury, if 1967  
applicable, the defendant, and any other persons who are not 1968  
permitted in the room in which the testimony is to be taken but 1969  
who would have been present during the testimony of the mentally 1970  
retarded or developmentally disabled victim had it been given in 1971  
the room in which the proceeding is being conducted. Except for 1972  
good cause shown, the prosecution shall file a motion under this 1973  
division at least seven days before the date of the proceeding. 1974  
The judge may issue the order upon the motion of the prosecution 1975  
filed under this section, if the judge determines that the 1976  
mentally retarded or developmentally disabled victim is 1977  
unavailable to testify in the room in which the proceeding is 1978  
being conducted in the physical presence of the defendant for one 1979  
or more of the reasons set forth in division (F) of this section. 1980  
If a judge issues an order of that nature, the judge shall exclude 1981  
from the room in which the testimony is to be taken every person 1982

except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The defendant shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, during the testimony, the defendant.

(E) In any proceeding in the prosecution of any charge of a violation listed in division (B)(1) of this section or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled victim, the prosecution may file a motion with the judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present

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

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

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

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

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

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

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of

this section, or the taking of testimony outside of the room in 2078  
which a proceeding is being conducted under division (D) or (E) of 2079  
this section shall enter the determination and findings on the 2080  
record in the proceeding. 2081

**Sec. 2945.491.** (A) As used in this section: 2082

(1) "Mentally retarded person" and "developmentally disabled 2083  
person" have the same meanings as in section 5123.01 of the 2084  
Revised Code. 2085

(2) "Mentally retarded or developmentally disabled victim" 2086  
includes a mentally retarded or developmentally disabled person 2087  
who was a victim of a felony violation identified in division 2088  
(B)(1) of this section or a felony offense of violence or against 2089  
whom was directed any conduct that constitutes, or that is an 2090  
element of, a felony violation identified in division (B)(1) of 2091  
this section or a felony offense of violence. 2092

(B)(1) At a trial on a charge of a felony violation of 2093  
section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2094  
2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2095  
2907.323 of the Revised Code or an offense of violence and in 2096  
which an alleged victim of the violation or offense was a mentally 2097  
retarded or developmentally disabled person, the court, upon 2098  
motion of the prosecutor in the case, may admit videotaped 2099  
preliminary hearing testimony of the mentally retarded or 2100  
developmentally disabled victim as evidence at the trial, in lieu 2101  
of the mentally retarded or developmentally disabled victim 2102  
appearing as a witness and testifying at trial, if all of the 2103  
following apply: 2104

(a) The videotape of the testimony was made at the 2105  
preliminary hearing at which probable cause of the violation 2106  
charged was found. 2107

(b) The videotape of the testimony was made in accordance with division (C) of section 2937.11 of the Revised Code. 2108  
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(c) The testimony in the videotape is not excluded by the hearsay rule and otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801, the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803, the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule, or both of the following apply: 2110  
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(i) The accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the mentally retarded or developmentally disabled victim by direct, cross, or redirect examination. 2120  
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(ii) The court determines that there is reasonable cause to believe that if the mentally retarded or developmentally disabled victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the victim's participation at the trial. 2124  
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(2) If a mentally retarded or developmentally disabled victim of an alleged felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an alleged felony offense of violence testifies at the preliminary hearing in the case, if the testimony of the mentally retarded or developmentally disabled victim at the preliminary hearing was videotaped pursuant to division (C) of section 2937.11 of the Revised Code, and if the defendant in the case files a written 2130  
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objection to the use, pursuant to division (B)(1) of this section, 2139  
of the videotaped testimony at the trial, the court, immediately 2140  
after the filing of the objection, shall hold a hearing to 2141  
determine whether the videotaped testimony of the mentally 2142  
retarded or developmentally disabled victim should be admissible 2143  
at trial under division (B)(1) of this section and, if it is 2144  
admissible, whether the mentally retarded or developmentally 2145  
disabled victim should be required to provide limited additional 2146  
testimony of the type described in this division. At the hearing 2147  
held pursuant to this division, the defendant and the prosecutor 2148  
in the case may present any evidence that is relevant to the 2149  
issues to be determined at the hearing, but the mentally retarded 2150  
or developmentally disabled victim shall not be required to 2151  
testify at the hearing. 2152

After the hearing, the court shall not require the mentally 2153  
retarded or developmentally disabled victim to testify at the 2154  
trial, unless it determines that both of the following apply: 2155

(a) That the testimony of the mentally retarded or 2156  
developmentally disabled victim at trial is necessary for one or 2157  
more of the following reasons: 2158

(i) Evidence that was not available at the time of the 2159  
testimony of the mentally retarded or developmentally disabled 2160  
victim at the preliminary hearing has been discovered. 2161

(ii) The circumstances surrounding the case have changed 2162  
sufficiently to necessitate that the mentally retarded or 2163  
developmentally disabled victim testify at the trial. 2164

(b) That the testimony of the mentally retarded or 2165  
developmentally disabled victim at the trial is necessary to 2166  
protect the right of the defendant to a fair trial. 2167

The court shall enter its finding and the reasons for it in 2168  
the journal. If the court requires the mentally retarded or 2169

developmentally disabled victim to testify at the trial, the 2170  
testimony of the victim shall be limited to the new evidence and 2171  
changed circumstances, and the mentally retarded or 2172  
developmentally disabled victim shall not otherwise be required to 2173  
testify at the trial. The required testimony of the mentally 2174  
retarded or developmentally disabled victim may be given in person 2175  
or, upon motion of the prosecution, may be taken by deposition in 2176  
accordance with division (B) of section 2945.482 of the Revised 2177  
Code provided the deposition is admitted as evidence under 2178  
division (C) of that section, may be taken outside of the 2179  
courtroom and televised into the courtroom in accordance with 2180  
division (D) of that section, or may be taken outside of the 2181  
courtroom and recorded for showing in the courtroom in accordance 2182  
with division (E) of that section. 2183

(3) If videotaped testimony of a mentally retarded or 2184  
developmentally disabled victim is admitted at trial in accordance 2185  
with division (B)(1) of this section, the mentally retarded or 2186  
developmentally disabled victim shall not be compelled in any way 2187  
to appear as a witness at the trial, except as provided in 2188  
division (B)(2) of this section. 2189

(C) An order issued pursuant to division (B) of this section 2190  
shall specifically identify the mentally retarded or 2191  
developmentally disabled victim concerning whose testimony it 2192  
pertains. The order shall apply only during the testimony of the 2193  
mentally retarded or developmentally disabled victim it 2194  
specifically identifies. 2195

**Sec. 5120.173.** Any person who is required to report suspected 2196  
abuse or neglect of a child under eighteen years of age pursuant 2197  
to division (A) of section 2151.421 of the Revised Code, ~~and~~ any 2198  
person who is permitted to report or cause a report to be made of 2199  
suspected abuse or neglect of a child under eighteen years of age 2200

pursuant to division (B) of that section, any person who is 2201  
required to report suspected abuse or neglect of a person with 2202  
mental retardation or a developmental disability pursuant to 2203  
division (C) of section 5123.61 of the Revised Code, and any 2204  
person who is permitted to report suspected abuse or neglect of a 2205  
person with mental retardation or a developmental disability 2206  
pursuant to division (F) of that section and who makes or causes 2207  
the report to be made, shall direct that report to the state 2208  
highway patrol if the child or the person with mental retardation 2209  
or a developmental disability is an inmate in the custody of a 2210  
state correctional institution. If the state highway patrol 2211  
determines after receipt of the report that it is probable that 2212  
abuse or neglect of the inmate occurred, the patrol shall report 2213  
its findings to the department of rehabilitation and correction, 2214  
to the court that sentenced the inmate for the offense for which 2215  
the inmate is in the custody of the department, and to the 2216  
chairman and vice-chairman of the correctional institution 2217  
inspection committee established by section 103.71 of the Revised 2218  
Code. 2219

**Sec. 5123.081.** (A) As used in this section: 2220

(1) "Applicant" means a person who is under final 2221  
consideration for appointment to or employment with the department 2222  
of mental retardation and developmental disabilities, including, 2223  
but not limited to, a person who is being transferred to the 2224  
department and an employee who is being recalled or reemployed 2225  
after a layoff. 2226

(2) "Criminal records check" has the same meaning as in 2227  
section 109.572 of the Revised Code. 2228

(3) "Minor drug possession offense" has the same meaning as 2229  
in section 2925.01 of the Revised Code. 2230

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

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

(C) The director shall provide to each applicant a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, provide to each applicant a standard impression sheet to obtain fingerprint impressions prescribed

pursuant to division (C)(2) of section 109.572 of the Revised Code, obtain the completed form and impression sheet from each applicant, and forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation at the time the criminal records check is requested.

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

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

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

guilty to any of the following:	2295
(1) A violation of section 2903.01, 2903.02, 2903.03,	2296
<u>2903.341</u> , 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21,	2297
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04,	2298
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22,	2299
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323,	2300
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24,	2301
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04,	2302
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of	2303
section 2905.04 of the Revised Code as it existed prior to July 1,	2304
1996, a violation of section 2919.23 of the Revised Code that	2305
would have been a violation of section 2905.04 of the Revised Code	2306
as it existed prior to July 1, 1996, had the violation occurred	2307
prior to that date, a violation of section 2925.11 of the Revised	2308
Code that is not a minor drug possession offense, or felonious	2309
sexual penetration in violation of former section 2907.12 of the	2310
Revised Code;	2311
(2) A felony contained in the Revised Code that is not listed	2312
in this division, if the felony bears a direct and substantial	2313
relationship to the duties and responsibilities of the position	2314
being filled;	2315
(3) Any offense contained in the Revised Code constituting a	2316
misdemeanor of the first degree on the first offense and a felony	2317
on a subsequent offense, if the offense bears a direct and	2318
substantial relationship to the position being filled and the	2319
nature of the services being provided by the department;	2320
(4) A violation of an existing or former municipal ordinance	2321
or law of this state, any other state, or the United States, if	2322
the offense is substantially equivalent to any of the offenses	2323
listed or described in division (E)(1), (2), or (3) of this	2324
section.	2325

(F) Prior to employing an applicant, the director shall 2326  
require the applicant to submit a statement with the applicant's 2327  
signature attesting that the applicant has not been convicted of 2328  
or pleaded guilty to any of the offenses listed or described in 2329  
division (E) of this section. The director also shall require the 2330  
applicant to sign an agreement under which the applicant agrees to 2331  
notify the director within fourteen calendar days if, while 2332  
employed with the department, the applicant is ever formally 2333  
charged with, convicted of, or pleads guilty to any of the 2334  
offenses listed or described in division (E) of this section. The 2335  
agreement shall inform the applicant that failure to report formal 2336  
charges, a conviction, or a guilty plea may result in being 2337  
dismissed from employment. 2338

(G) The director shall pay to the bureau of criminal 2339  
identification and investigation the fee prescribed pursuant to 2340  
division (C)(3) of section 109.572 of the Revised Code for each 2341  
criminal records check requested and conducted pursuant to this 2342  
section. 2343

(H)(1) Any report obtained pursuant to this section is not a 2344  
public record for purposes of section 149.43 of the Revised Code 2345  
and shall not be made available to any person, other than the 2346  
applicant who is the subject of the records check or criminal 2347  
records check or the applicant's representative, the department or 2348  
its representative, a county board of mental retardation and 2349  
developmental disabilities, and any court, hearing officer, or 2350  
other necessary individual involved in a case dealing with the 2351  
denial of employment to the applicant or the denial, suspension, 2352  
or revocation of a certificate or evidence of registration under 2353  
section 5123.082 of the Revised Code. 2354

(2) An individual for whom the director has obtained reports 2355  
under this section may submit a written request to the director to 2356  
have copies of the reports sent to any state agency, entity of 2357

local government, or private entity. The individual shall specify 2358  
in the request the agencies or entities to which the copies are to 2359  
be sent. On receiving the request, the director shall send copies 2360  
of the reports to the agencies or entities specified. 2361

The director may request that a state agency, entity of local 2362  
government, or private entity send copies to the director of any 2363  
report regarding a records check or criminal records check that 2364  
the agency or entity possesses, if the director obtains the 2365  
written consent of the individual who is the subject of the 2366  
report. 2367

(I) The director shall request the registrar of motor 2368  
vehicles to supply the director with a certified abstract 2369  
regarding the record of convictions for violations of motor 2370  
vehicle laws of each applicant who will be required by the 2371  
applicant's employment to transport individuals with mental 2372  
retardation or a developmental disability or to operate the 2373  
department's vehicles for any other purpose. For each abstract 2374  
provided under this section, the director shall pay the amount 2375  
specified in section 4509.05 of the Revised Code. 2376

(J) The director shall provide each applicant with a copy of 2377  
any report or abstract obtained about the applicant under this 2378  
section. 2379

(K)(1) The director shall inform each person, at the time of 2380  
the person's initial application for employment, that the person 2381  
is required to provide a set of impressions of the person's 2382  
fingerprints and that a criminal records check is required to be 2383  
conducted and satisfactorily completed in accordance with section 2384  
109.572 of the Revised Code if the person comes under final 2385  
consideration for employment as a precondition to employment in a 2386  
position. 2387

(2) The director may employ an applicant pending receipt of 2388

reports requested under this section. The director shall terminate 2389  
employment of any such applicant if it is determined from the 2390  
reports that the applicant failed to inform the director that the 2391  
applicant had been convicted of or pleaded guilty to any of the 2392  
offenses listed or described in division (E) of this section. 2393

(L) The director may charge an applicant a fee for costs the 2394  
director incurs in obtaining reports, abstracts, or fingerprint 2395  
impressions under this section. A fee charged under this division 2396  
shall not exceed the amount of the fees the director pays under 2397  
divisions (G) and (I) of this section. If a fee is charged under 2398  
this division, the director shall notify the applicant of the 2399  
amount of the fee at the time of the applicant's initial 2400  
application for employment and that, unless the fee is paid, the 2401  
director will not consider the applicant for employment. 2402

(M) The director shall adopt rules in accordance with Chapter 2403  
119. of the Revised Code to implement this section, including 2404  
rules specifying circumstances under which the director may employ 2405  
a person who has been convicted of or pleaded guilty to an offense 2406  
listed or described in division (E) of this section but who meets 2407  
standards in regard to rehabilitation set by the director. 2408

**Sec. 5123.50.** As used in this section and sections 5123.51 2409  
~~and~~, 5123.52, and 5123.541 of the Revised Code: 2410

(A) "Abuse" means all of the following: 2411

(1) The use of physical force that can reasonably be expected 2412  
to result in physical harm or serious physical harm; 2413

(2) Sexual abuse; 2414

(3) Verbal abuse. 2415

(B) "Misappropriation" means depriving, defrauding, or 2416  
otherwise obtaining the real or personal property of an individual 2417  
by any means prohibited by the Revised Code, including violations 2418

of Chapter 2911. or 2913. of the Revised Code.	2419
(C) "MR/DD employee" means all of the following:	2420
(1) An employee of the department of mental retardation and developmental disabilities;	2421 2422
(2) An employee of a county board of mental retardation and developmental disabilities;	2423 2424
(3) An "ICF/MR worker," as defined in section 5123.193 of the Revised Code;	2425 2426
(4) An individual who is employed in a position that includes providing specialized services to an individual with mental retardation or a <u>another</u> developmental disability.	2427 2428 2429
(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.	2430 2431 2432 2433
(E) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.	2434 2435
(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, <del>as those terms are defined in section 2907.01 of the Revised Code.</del>	2436 2437 2438
(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.	2439 2440 2441 2442 2443 2444 2445
(H) "Verbal abuse" means purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual.	2446 2447
(I) <u>"Sexual conduct," "sexual contact," and "spouse" have the</u>	2448

same meanings as in section 2907.01 of the Revised Code.

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**Sec. 5123.51.** (A) In addition to any other action required by sections 5123.61 and 5126.31 of the Revised Code, the department of mental retardation and developmental disabilities shall review each report the department receives of abuse or neglect of an individual with mental retardation or a developmental disability or misappropriation of an individual's property that includes an allegation that an MR/DD employee committed or was responsible for the abuse, neglect, or misappropriation. The department shall review a report it receives from a public children services agency only after the agency completes its investigation pursuant to section 2151.421 of the Revised Code. On receipt of a notice under section 2930.061 or 5123.541 of the Revised Code, the department shall review the notice.

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

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(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;

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(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.

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(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.

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(2) ~~No~~ (a) Except as provided in division (C)(2)(b) of this

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section, no hearing shall be conducted under division (B)(2) of 2479  
this section until any criminal proceeding or collective 2480  
bargaining arbitration concerning the same allegation has 2481  
concluded. 2482

(b) The department may conduct a hearing pursuant to division 2483  
(B)(2) of this section before a criminal proceeding concerning the 2484  
same allegation is concluded if both of the following are the 2485  
case: 2486

(i) The department notifies the prosecutor responsible for 2487  
the criminal proceeding that the department proposes to conduct a 2488  
hearing. 2489

(ii) The prosecutor consents to the hearing. 2490

(3) In conducting a hearing pursuant to division (B)(2) of 2491  
this section, the hearing officer shall do ~~both~~ all of the 2492  
following: 2493

(a) Determine whether there is clear and convincing evidence 2494  
that the MR/DD employee has done any of the following: 2495

(i) Misappropriated ~~the~~ property of ~~an individual~~ one or more 2496  
individuals with mental retardation or a developmental disability 2497  
that has a value, either separately or taken together, of one 2498  
hundred dollars or more; 2499

(ii) Misappropriated property of an individual with mental 2500  
retardation or a developmental disability that is designed to be 2501  
used as a check, draft, negotiable instrument, credit card, charge 2502  
card, or device for initiating an electronic fund transfer at a 2503  
point of sale terminal, automated teller machine, or cash 2504  
dispensing machine; 2505

~~(ii)~~(iii) Knowingly abused ~~or neglected~~ such an individual; 2506

~~(iii)~~(iv) Recklessly abused or neglected such an individual, 2507  
with resulting physical harm; 2508

~~(iv)~~(v) Negligently abused or neglected such an individual, 2509  
with resulting serious physical harm; 2510

(vi) Recklessly neglected such an individual, creating a 2511  
substantial risk of serious physical harm; 2512

(vii) Engaged in sexual conduct or had sexual contact with an 2513  
individual with mental retardation or another developmental 2514  
disability who was not the MR/DD employee's spouse and for whom 2515  
the MR/DD employee was employed or under a contract to provide 2516  
care; 2517

(viii) Unreasonably failed to make a report pursuant to 2518  
division (C) of section 5123.61 of the Revised Code when the 2519  
employee knew or should have known that the failure would result 2520  
in a substantial risk of harm to an individual with mental 2521  
retardation or a developmental disability. 2522

(b) Give weight to the decision in any collective bargaining 2523  
arbitration regarding the same allegation; 2524

(c) Give weight to any relevant facts presented at the 2525  
hearing. 2526

(D)(1) Unless the director of mental retardation and 2527  
developmental disabilities determines that there are extenuating 2528  
circumstances and except as provided in ~~divisions (D)(4) and~~ 2529  
division (E) of this section, the director shall include in the 2530  
registry established under section 5123.52 of the Revised Code the 2531  
name of an MR/DD employee if the director, after considering all 2532  
of the factors listed in division (C)(3) of this section, finds 2533  
that there is clear and convincing evidence that ~~the~~ an MR/DD 2534  
employee has done one or more of the things described in division 2535  
(C)(3)(a) of this section the director shall include the name of 2536  
the employee in the registry established under section 5123.52 of 2537  
the Revised Code. 2538

(2) Extenuating circumstances the director must consider 2539  
include the use of physical force by an MR/DD employee that was 2540  
necessary as self-defense. 2541

(3) If the director includes an MR/DD employee in the 2542  
registry established under section 5123.52 of the Revised Code, 2543  
the director shall notify the employee, the person or government 2544  
entity that employs or contracts with the employee, the individual 2545  
with mental retardation or a developmental disability who was the 2546  
subject of the report and that individual's legal guardian, if 2547  
any, the attorney general, and the prosecuting attorney or other 2548  
law enforcement agency. If the MR/DD employee holds a license, 2549  
certificate, registration, or other authorization to engage in a 2550  
profession issued pursuant to Title XLVII of the Revised Code, the 2551  
director shall notify the appropriate agency, board, department, 2552  
or other entity responsible for regulating the employee's 2553  
professional practice. 2554

(4) ~~The director shall not include in the registry an~~ 2555  
~~individual who has been found not guilty by a court or jury of an~~ 2556  
~~offense arising from the same facts~~ If an individual whose name 2557  
appears on the registry is involved in a court proceeding or 2558  
arbitration arising from the same facts as the allegation 2559  
resulting in the individual's placement on the registry, the 2560  
disposition of the proceeding or arbitration shall be noted in the 2561  
registry next to the individual's name. 2562

(E) In the case of an allegation concerning an employee of 2563  
the department, after the hearing conducted pursuant to division 2564  
(B)(2) of this section, the director of health or that director's 2565  
designee shall review the decision of the hearing officer to 2566  
determine whether the standard described in division (C)~~(2)~~(3) of 2567  
this section has been met. If the director or designee determines 2568  
that the standard has been met and that no extenuating 2569  
circumstances exist, the director or designee shall notify the 2570

director of mental retardation and developmental disabilities that 2571  
the MR/DD employee is to be included in the registry established 2572  
under section 5123.52 of the Revised Code. If the director of 2573  
mental retardation and developmental disabilities receives such 2574  
notification, the director shall include the MR/DD employee in the 2575  
registry, ~~unless division (D)(4) of this section applies,~~ and 2576  
shall provide the notification described in division (D)(3) of 2577  
this section. 2578

(F) If the department is required by Chapter 119. of the 2579  
Revised Code to give notice of an opportunity for a hearing and 2580  
the MR/DD employee subject to the notice does not timely request a 2581  
hearing in accordance with section 119.07 of the Revised Code, the 2582  
department is not required to hold a hearing. 2583

(G) Files and records of investigations conducted pursuant to 2584  
this section are not public records as defined in section 149.43 2585  
of the Revised Code, but, on request, the department shall provide 2586  
copies of those files and records to the attorney general, a 2587  
prosecuting attorney, or a law enforcement agency. 2588

**Sec. 5123.541. (A) No MR/DD employee shall engage in any 2589  
sexual conduct or have any sexual contact with an individual with 2590  
mental retardation or another developmental disability for whom 2591  
the MR/DD employee is employed or under a contract to provide care 2592  
unless the individual is the MR/DD employee's spouse.** 2593

(B) Any MR/DD employee who violates division (A) of this 2594  
section shall be eligible to be included in the registry regarding 2595  
misappropriation, abuse, neglect, or other specified misconduct by 2596  
MR/DD employees established under section 5123.52 of the Revised 2597  
Code, in addition to any other sanction or penalty authorized or 2598  
required by law. 2599

(C)(1) Any person listed in division (C)(2) of section 2600  
5123.61 of the Revised Code who has reason to believe that an 2601

MR/DD employee has violated division (A) of this section shall 2602  
immediately report that belief to the department of mental 2603  
retardation and developmental disabilities. 2604

(2) Any person who has reason to believe that an MR/DD 2605  
employee has violated division (A) of this section may report that 2606  
belief to the department of mental retardation and developmental 2607  
disabilities. 2608

**Sec. 5123.542.** (A) Each of the following shall annually 2609  
provide a written notice to each of its MR/DD employees explaining 2610  
the conduct for which an MR/DD employee may be included in the 2611  
registry established under section 5123.52 of the Revised Code: 2612

(1) The department of mental retardation and developmental 2613  
disabilities; 2614

(2) Each county board of mental retardation and developmental 2615  
disabilities; 2616

(3) Each contracting entity, as defined in section 5126.281 2617  
of the Revised Code; 2618

(4) Each owner, operator, or administrator of a residential 2619  
facility, as defined in section 5123.19 of the Revised Code; 2620

(5) Each owner, operator, or administrator of a program 2621  
certified by the department to provide supported living. 2622

(B) The notice described in division (A) of this section 2623  
shall be in a form and provided in a manner prescribed by the 2624  
department of mental retardation and developmental disabilities. 2625  
The form shall be the same for all persons and entities required 2626  
to provide notice under division (A) of this section. 2627

(C) The fact that an MR/DD employee does not receive the 2628  
notice required by this section does not exempt the employee from 2629  
inclusion in the registry established under section 5123.52 of the 2630

Revised Code. 2631

**Sec. 5123.61.** (A) As used in this section: 2632

(1) "Law enforcement agency" means the state highway patrol, 2633  
the police department of a municipal corporation, or a county 2634  
sheriff. 2635

(2) "Abuse" has the same meaning as in section 5123.50 of the 2636  
Revised Code, except that it includes a misappropriation, as 2637  
defined in that section. 2638

(3) "Neglect" has the same meaning as in section 5123.50 of 2639  
the Revised Code. 2640

(B) The department of mental retardation and developmental 2641  
disabilities shall establish a registry office for the purpose of 2642  
maintaining reports of abuse, neglect, and other major unusual 2643  
incidents made to the department under this section and reports 2644  
received from county boards of mental retardation and 2645  
developmental disabilities under section 5126.31 of the Revised 2646  
Code. The department shall establish committees to review reports 2647  
of abuse, neglect, and other major unusual incidents. 2648

(C)(1) Any person listed in division (C)(2) of this section, 2649  
having reason to believe that a person with mental retardation or 2650  
a developmental disability has suffered or faces a substantial 2651  
risk of suffering any wound, injury, disability, or condition of 2652  
such a nature as to reasonably indicate abuse or neglect of that 2653  
person, shall immediately report or cause reports to be made of 2654  
such information to the entity specified in this division. Except 2655  
as provided in section 5120.173 of the Revised Code or as 2656  
otherwise provided in this division, the person making the report 2657  
shall make it to a law enforcement agency or to the county board 2658  
of mental retardation and developmental disabilities, ~~except that~~ 2659  
~~if.~~ If the report concerns a resident of a facility operated by 2660

the department of mental retardation and developmental 2661  
disabilities the report shall be made either to a law enforcement 2662  
agency or to the department. If the report concerns any act or 2663  
omission of an employee of a county board of mental retardation 2664  
and developmental disabilities, the report immediately shall be 2665  
made to the department and to the county board. 2666

(2) All of the following persons are required to make a 2667  
report under division (C)(1) of this section: 2668

(a) Any physician, including a hospital intern or resident, 2669  
any dentist, podiatrist, chiropractor, practitioner of a limited 2670  
branch of medicine as specified in section 4731.15 of the Revised 2671  
Code, hospital administrator or employee of a hospital, nurse 2672  
licensed under Chapter 4723. of the Revised Code, employee of an 2673  
ambulatory health facility as defined in section 5101.61 of the 2674  
Revised Code, employee of a home health agency, employee of an 2675  
adult care facility licensed under Chapter 3722. of the Revised 2676  
Code, or employee of a community mental health facility; 2677

(b) Any school teacher or school authority, social worker, 2678  
psychologist, attorney, peace officer, coroner, ~~clergyman~~, or 2679  
residents' rights advocate as defined in section 3721.10 of the 2680  
Revised Code; 2681

(c) A superintendent, board member, or employee of a county 2682  
board of mental retardation and developmental disabilities; an 2683  
administrator, board member, or employee of a residential facility 2684  
licensed under section 5123.19 of the Revised Code; an 2685  
administrator, board member, or employee of any other public or 2686  
private provider of services to a person with mental retardation 2687  
or a developmental disability, or any MR/DD employee, as defined 2688  
in section 5123.50 of the Revised Code; 2689

(d) A member of a citizen's advisory council established at 2690  
an institution or branch institution of the department of mental 2691

retardation and developmental disabilities under section 5123.092 2692  
of the Revised Code; 2693

(e) A clergyman who is employed in a position that includes 2694  
providing specialized services to an individual with mental 2695  
retardation or another developmental disability, while acting in 2696  
an official or professional capacity in that position, or a person 2697  
who is employed in a position that includes providing specialized 2698  
services to an individual with mental retardation or another 2699  
developmental disability and who, while acting in an official or 2700  
professional capacity, renders spiritual treatment through prayer 2701  
in accordance with the tenets of an organized religion. 2702

(3)(a) The reporting requirements of this division do not 2703  
apply to members of the legal rights service commission or to 2704  
employees of the legal rights service. 2705

(b) An attorney or physician is not required to make a report 2706  
pursuant to division (C)(1) of this section concerning any 2707  
communication the attorney or physician receives from a client or 2708  
patient in an attorney-client or physician-patient relationship, 2709  
if, in accordance with division (A) or (B) of section 2317.02 of 2710  
the Revised Code, the attorney or physician could not testify with 2711  
respect to that communication in a civil or criminal proceeding, 2712  
except that the client or patient is deemed to have waived any 2713  
testimonial privilege under division (A) or (B) of section 2317.02 2714  
of the Revised Code with respect to that communication and the 2715  
attorney or physician shall make a report pursuant to division 2716  
(C)(1) of this section, if both of the following apply: 2717

(i) The client or patient, at the time of the communication, 2718  
is a person with mental retardation or a developmental disability. 2719

(ii) The attorney or physician knows or suspects, as a result 2720  
of the communication or any observations made during that 2721  
communication, that the client or patient has suffered or faces a 2722

<u>substantial risk of suffering any wound, injury, disability, or</u>	2723
<u>condition of a nature that reasonably indicates abuse or neglect</u>	2724
<u>of the client or patient.</u>	2725
<u>(4) Any person who fails to make a report required under</u>	2726
<u>division (C) of this section and who is an MR/DD employee, as</u>	2727
<u>defined in section 5123.50 of the Revised Code, shall be eligible</u>	2728
<u>to be included in the registry regarding misappropriation, abuse,</u>	2729
<u>neglect, or other specified misconduct by MR/DD employees</u>	2730
<u>established under section 5123.52 of the Revised Code.</u>	2731
(D) The reports required under division (C) of this section	2732
shall be made forthwith by telephone or in person and shall be	2733
followed by a written report. The reports shall contain the	2734
following:	2735
(1) The names and addresses of the person with mental	2736
retardation or a developmental disability and the person's	2737
custodian, if known;	2738
(2) The age of the person with mental retardation or a	2739
developmental disability;	2740
(3) Any other information that would assist in the	2741
investigation of the report.	2742
(E) When a physician performing services as a member of the	2743
staff of a hospital or similar institution has reason to believe	2744
that a person with mental retardation or a developmental	2745
disability has suffered injury, abuse, or physical neglect, the	2746
physician shall notify the person in charge of the institution or	2747
that person's designated delegate, who shall make the necessary	2748
reports.	2749
(F) Any person having reasonable cause to believe that a	2750
person with mental retardation or a developmental disability has	2751
suffered <u>or faces a substantial risk of suffering</u> abuse or neglect	2752

may report ~~the belief,~~ or cause a report to be made, of that 2753  
belief to the entity specified in this division. Except as 2754  
provided in section 5120.173 of the Revised Code or as otherwise 2755  
provided in this division, the person making the report shall make 2756  
it to a law enforcement agency or the county board of mental 2757  
retardation and developmental disabilities, ~~or, if.~~ If the person 2758  
is a resident of a facility operated by the department of mental 2759  
retardation and developmental disabilities, the report shall be 2760  
made to a law enforcement agency or to the department. If the 2761  
report concerns any act or omission of an employee of a county 2762  
board of mental retardation and developmental disabilities, the 2763  
report immediately shall be made to the department and to the 2764  
county board. 2765

(G)(1) Upon the receipt of a report concerning the possible 2766  
abuse or neglect of a person with mental retardation or a 2767  
developmental disability, the law enforcement agency shall inform 2768  
the county board of mental retardation and developmental 2769  
disabilities or, if the person is a resident of a facility 2770  
operated by the department of mental retardation and developmental 2771  
disabilities, the director of the department or the director's 2772  
designee. 2773

(2) On receipt of a report under this section that includes 2774  
an allegation of action or inaction that may constitute a crime 2775  
under federal law or the law of this state, the department of 2776  
mental retardation and developmental disabilities shall notify the 2777  
law enforcement agency. 2778

(3) When a county board of mental retardation and 2779  
developmental disabilities receives a report under this section 2780  
that includes an allegation of action or inaction that may 2781  
constitute a crime under federal law or the law of this state, the 2782  
superintendent of the board or an individual the superintendent 2783  
designates under division (H) of this section shall notify the law 2784

enforcement agency. The superintendent or individual shall notify 2785  
the department of mental retardation and developmental 2786  
disabilities when it receives any report under this section. 2787

(4) When a county board of mental retardation and 2788  
developmental disabilities receives a report under this section 2789  
and believes that the degree of risk to the person is such that 2790  
the report is an emergency, the superintendent of the board or an 2791  
employee of the board the superintendent designates shall attempt 2792  
a face-to-face contact with the person with mental retardation or 2793  
a developmental disability who allegedly is the victim within one 2794  
hour of the board's receipt of the report. 2795

(H) The superintendent of the board may designate an 2796  
individual to be responsible for notifying the law enforcement 2797  
agency and the department when the county board receives a report 2798  
under this section. 2799

(I) An adult with mental retardation or a developmental 2800  
disability about whom a report is made may be removed from the 2801  
adult's place of residence only by law enforcement officers who 2802  
consider that the adult's immediate removal is essential to 2803  
protect the adult from further injury or abuse or in accordance 2804  
with the order of a court made pursuant to section 5126.33 of the 2805  
Revised Code. 2806

(J) A law enforcement agency shall investigate each report of 2807  
abuse or neglect it receives under this section. In addition, the 2808  
department, in cooperation with law enforcement officials, shall 2809  
investigate each report regarding a resident of a facility 2810  
operated by the department to determine the circumstances 2811  
surrounding the injury, the cause of the injury, and the person 2812  
responsible. The investigation shall be in accordance with the 2813  
memorandum of understanding prepared under section 5126.058 of the 2814  
Revised Code. The department shall determine, with the registry 2815  
office which shall be maintained by the department, whether prior 2816

reports have been made concerning ~~and~~ an adult with mental 2817  
retardation or a developmental disability or other principals in 2818  
the case. If the department finds that the report involves action 2819  
or inaction that may constitute a crime under federal law or the 2820  
law of this state, it shall submit a report of its investigation, 2821  
in writing, to the law enforcement agency. If the person with 2822  
mental retardation or a developmental disability is an adult, with 2823  
the consent of the adult, the department shall provide such 2824  
protective services as are necessary to protect the adult. The law 2825  
enforcement agency shall make a written report of its findings to 2826  
the department. 2827

If the person is an adult and is not a resident of a facility 2828  
operated by the department, the county board of mental retardation 2829  
and developmental disabilities shall review the report of abuse or 2830  
neglect in accordance with sections 5126.30 to 5126.33 of the 2831  
Revised Code and the law enforcement agency shall make the written 2832  
report of its findings to the county board. 2833

(K) Any person or any hospital, institution, school, health 2834  
department, or agency participating in the making of reports 2835  
pursuant to this section, any person participating as a witness in 2836  
an administrative or judicial proceeding resulting from the 2837  
reports, or any person or governmental entity that discharges 2838  
responsibilities under sections 5126.31 to 5126.33 of the Revised 2839  
Code shall be immune from any civil or criminal liability that 2840  
might otherwise be incurred or imposed as a result of such actions 2841  
except liability for perjury, unless the person or governmental 2842  
entity has acted in bad faith or with malicious purpose. 2843

(L) No employer or any person with the authority to do so 2844  
shall discharge, demote, transfer, prepare a negative work 2845  
performance evaluation, reduce pay or benefits, terminate work 2846  
privileges, or take any other action detrimental to an employee or 2847  
retaliate against an employee as a result of the employee's having 2848

made a report under this section. This division does not preclude 2849  
an employer or person with authority from taking action with 2850  
regard to an employee who has made a report under this section if 2851  
there is another reasonable basis for the action. 2852

(M) Reports made under this section are not public records as 2853  
defined in section 149.43 of the Revised Code. Information 2854  
contained in the reports on request shall be made available to the 2855  
person who is the subject of the report, to the person's legal 2856  
counsel, and to agencies authorized to receive information in the 2857  
report by the department or by a county board of mental 2858  
retardation and developmental disabilities. 2859

(N) Notwithstanding section 4731.22 of the Revised Code, the 2860  
physician-patient privilege shall not be a ground for excluding 2861  
evidence regarding the injuries or physical neglect of a person 2862  
with mental retardation or a developmental disability or the cause 2863  
thereof in any judicial proceeding resulting from a report 2864  
submitted pursuant to this section. 2865

Sec. 5123.614. (A) Subject to division (B) of this section, 2866  
on receipt of a report of a major unusual incident made pursuant 2867  
to section 5123.61 or 5126.31 of the Revised Code or rules adopted 2868  
under section 5123.612 of the Revised Code, the department of 2869  
mental retardation and developmental disabilities may do either of 2870  
the following: 2871

(1) Conduct an independent review or investigation of the 2872  
incident; 2873

(2) Request that an independent review or investigation of 2874  
the incident be conducted by a county board of mental retardation 2875  
and developmental disabilities that is not implicated in the 2876  
report, a regional council of government, or any other entity 2877  
authorized to conduct such investigations. 2878

(B) If a report described in division (A) of this section 2879  
concerning the health or safety of a person with mental 2880  
retardation or a developmental disability involves an allegation 2881  
that an employee of a county board of mental retardation and 2882  
developmental disabilities has created a substantial risk of 2883  
serious physical harm to a person with mental retardation or a 2884  
developmental disability, the department shall do one of the 2885  
following: 2886

(1) Conduct an independent investigation regarding the 2887  
incident; 2888

(2) Request that an independent review or investigation of 2889  
the incident be conducted by a county board of mental retardation 2890  
and developmental disabilities that is not implicated in the 2891  
report, a regional council of government, or any other entity 2892  
authorized to conduct such investigations. 2893

**Sec. 5123.99.** (A) Whoever violates section 5123.20 of the 2894  
Revised Code is guilty of a misdemeanor of the first degree. 2895

(B) Whoever violates division (C), (E), or (G)(3) of section 2896  
5123.61 of the Revised Code ~~shall be fined not more than five~~ 2897  
~~hundred dollars~~ is guilty of a misdemeanor of the fourth degree 2898  
or, if the abuse or neglect constitutes a felony, a misdemeanor of 2899  
the second degree. In addition to any other sanction or penalty 2900  
authorized or required by law, if a person who is convicted of or 2901  
pleads guilty to a violation of division (C), (E), or (G)(3) of 2902  
section 5123.61 of the Revised Code is an MR/DD employee, as 2903  
defined in section 5123.50 of the Revised Code, the offender shall 2904  
be eligible to be included in the registry regarding 2905  
misappropriation, abuse, neglect, or other specified misconduct by 2906  
MR/DD employees established under section 5123.52 of the Revised 2907  
Code. 2908

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

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

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

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

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

(3) The county peace officer;

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

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

(6) The prosecuting attorney of the county;

(7) The public children services agency;

(8) The coroner of the county.

(B) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and sections 313.12, 2151.421, 2903.16, 5126.31, and

5126.33 of the Revised Code and shall have as its primary goal the 2938  
elimination of all unnecessary interviews of persons who are the 2939  
subject of reports made pursuant to this section. A failure to 2940  
follow the procedure set forth in the memorandum by the concerned 2941  
officials is not grounds for, and shall not result in, the 2942  
dismissal of any charge or complaint arising from any reported 2943  
case of abuse, neglect, or exploitation or the suppression of any 2944  
evidence obtained as a result of any reported abuse, neglect, or 2945  
exploitation and does not give any rights or grounds for appeal or 2946  
post-conviction relief to any person. 2947

(C) A memorandum of understanding shall include, but is not 2948  
limited to, all of the following: 2949

(1) The roles and responsibilities for handling emergency and 2950  
nonemergency cases of abuse, neglect, or exploitation; 2951

(2) The roles and responsibilities for handling and 2952  
coordinating investigations of reported cases of abuse, neglect, 2953  
or exploitation and methods to be used in interviewing the person 2954  
who is the subject of the report and who allegedly was abused, 2955  
neglected, or exploited; 2956

(3) The roles and responsibilities for addressing the 2957  
categories of persons who may interview the person who is the 2958  
subject of the report and who allegedly was abused, neglected, or 2959  
exploited; 2960

(4) The roles and responsibilities for providing victim 2961  
services to mentally retarded and developmentally disabled persons 2962  
pursuant to Chapter 2930. of the Revised Code; 2963

(5) The roles and responsibilities for the filing of criminal 2964  
charges against persons alleged to have abused, neglected, or 2965  
exploited mentally retarded or developmentally disabled persons. 2966

(D) A memorandum of understanding may be signed by victim 2967

advocates, municipal court judges, municipal prosecutors, and any 2968  
other person whose participation furthers the goals of a 2969  
memorandum of understanding, as set forth in this section. 2970

**Sec. 5126.28.** (A) As used in this section: 2971

(1) "Applicant" means a person who is under final 2972  
consideration for appointment or employment in a position with a 2973  
county board of mental retardation and developmental disabilities, 2974  
including, but not limited to, a person who is being transferred 2975  
to the county board and an employee who is being recalled or 2976  
reemployed after a layoff. 2977

(2) "Criminal records check" has the same meaning as in 2978  
section 109.572 of the Revised Code. 2979

(3) "Minor drug possession offense" has the same meaning as 2980  
in section 2925.01 of the Revised Code. 2981

(B) The superintendent of a county board of mental 2982  
retardation and developmental disabilities shall request the 2983  
superintendent of the bureau of criminal identification and 2984  
investigation to conduct a criminal records check with respect to 2985  
any applicant who has applied to the board for employment in any 2986  
position, except that a county board superintendent is not 2987  
required to request a criminal records check for an employee of 2988  
the board who is being considered for a different position or is 2989  
returning after a leave of absence or seasonal break in 2990  
employment, as long as the superintendent has no reason to believe 2991  
that the employee has committed any of the offenses listed or 2992  
described in division (E) of this section. 2993

If the applicant does not present proof that the applicant 2994  
has been a resident of this state for the five-year period 2995  
immediately prior to the date upon which the criminal records 2996  
check is requested, the county board superintendent shall request 2997

that the superintendent of the bureau obtain information from the 2998  
federal bureau of investigation as a part of the criminal records 2999  
check for the applicant. If the applicant presents proof that the 3000  
applicant has been a resident of this state for that five-year 3001  
period, the county board superintendent may request that the 3002  
superintendent of the bureau include information from the federal 3003  
bureau of investigation in the criminal records check. For 3004  
purposes of this division, an applicant may provide proof of 3005  
residency in this state by presenting, with a notarized statement 3006  
asserting that the applicant has been a resident of this state for 3007  
that five-year period, a valid driver's license, notification of 3008  
registration as an elector, a copy of an officially filed federal 3009  
or state tax form identifying the applicant's permanent residence, 3010  
or any other document the superintendent considers acceptable. 3011

(C) The county board superintendent shall provide to each 3012  
applicant a copy of the form prescribed pursuant to division 3013  
(C)(1) of section 109.572 of the Revised Code, provide to each 3014  
applicant a standard impression sheet to obtain fingerprint 3015  
impressions prescribed pursuant to division (C)(2) of section 3016  
109.572 of the Revised Code, obtain the completed form and 3017  
impression sheet from each applicant, and forward the completed 3018  
form and impression sheet to the superintendent of the bureau of 3019  
criminal identification and investigation at the time the criminal 3020  
records check is requested. 3021

Any applicant who receives pursuant to this division a copy 3022  
of the form prescribed pursuant to division (C)(1) of section 3023  
109.572 of the Revised Code and a copy of an impression sheet 3024  
prescribed pursuant to division (C)(2) of that section and who is 3025  
requested to complete the form and provide a set of fingerprint 3026  
impressions shall complete the form or provide all the information 3027  
necessary to complete the form and shall provide the impression 3028  
sheet with the impressions of the applicant's fingerprints. If an 3029

applicant, upon request, fails to provide the information 3030  
necessary to complete the form or fails to provide impressions of 3031  
the applicant's fingerprints, the county board superintendent 3032  
shall not employ that applicant. 3033

(D) A county board superintendent may request any other state 3034  
or federal agency to supply the board with a written report 3035  
regarding the criminal record of each applicant. With regard to an 3036  
applicant who becomes a board employee, if the employee holds an 3037  
occupational or professional license or other credentials, the 3038  
superintendent may request that the state or federal agency that 3039  
regulates the employee's occupation or profession supply the board 3040  
with a written report of any information pertaining to the 3041  
employee's criminal record that the agency obtains in the course 3042  
of conducting an investigation or in the process of renewing the 3043  
employee's license or other credentials. 3044

(E) Except as provided in division (K)(2) of this section and 3045  
in rules adopted by the department of mental retardation and 3046  
developmental disabilities in accordance with division (M) of this 3047  
section, no county board of mental retardation and developmental 3048  
disabilities shall employ a person to fill a position with the 3049  
board who has been convicted of or pleaded guilty to any of the 3050  
following: 3051

(1) A violation of section 2903.01, 2903.02, 2903.03, 3052  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 3053  
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 3054  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 3055  
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 3056  
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 3057  
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 3058  
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 3059  
section 2905.04 of the Revised Code as it existed prior to July 1, 3060  
1996, a violation of section 2919.23 of the Revised Code that 3061

would have been a violation of section 2905.04 of the Revised Code 3062  
as it existed prior to July 1, 1996, had the violation occurred 3063  
prior to that date, a violation of section 2925.11 of the Revised 3064  
Code that is not a minor drug possession offense, or felonious 3065  
sexual penetration in violation of former section 2907.12 of the 3066  
Revised Code; 3067

(2) A felony contained in the Revised Code that is not listed 3068  
in this division, if the felony bears a direct and substantial 3069  
relationship to the duties and responsibilities of the position 3070  
being filled; 3071

(3) Any offense contained in the Revised Code constituting a 3072  
misdemeanor of the first degree on the first offense and a felony 3073  
on a subsequent offense, if the offense bears a direct and 3074  
substantial relationship to the position being filled and the 3075  
nature of the services being provided by the county board; 3076

(4) A violation of an existing or former municipal ordinance 3077  
or law of this state, any other state, or the United States, if 3078  
the offense is substantially equivalent to any of the offenses 3079  
listed or described in division (E)(1), (2), or (3) of this 3080  
section. 3081

(F) Prior to employing an applicant, the county board 3082  
superintendent shall require the applicant to submit a statement 3083  
with the applicant's signature attesting that the applicant has 3084  
not been convicted of or pleaded guilty to any of the offenses 3085  
listed or described in division (E) of this section. The 3086  
superintendent also shall require the applicant to sign an 3087  
agreement under which the applicant agrees to notify the 3088  
superintendent within fourteen calendar days if, while employed by 3089  
the board, the applicant is ever formally charged with, convicted 3090  
of, or pleads guilty to any of the offenses listed or described in 3091  
division (E) of this section. The agreement shall inform the 3092  
applicant that failure to report formal charges, a conviction, or 3093

a guilty plea may result in being dismissed from employment. 3094

(G) A county board of mental retardation and developmental 3095  
disabilities shall pay to the bureau of criminal identification 3096  
and investigation the fee prescribed pursuant to division (C)(3) 3097  
of section 109.572 of the Revised Code for each criminal records 3098  
check requested and conducted pursuant to this section. 3099

(H)(1) Any report obtained pursuant to this section is not a 3100  
public record for purposes of section 149.43 of the Revised Code 3101  
and shall not be made available to any person, other than the 3102  
applicant who is the subject of the records check or criminal 3103  
records check or the applicant's representative, the board 3104  
requesting the records check or criminal records check or its 3105  
representative, the department of mental retardation and 3106  
developmental disabilities, and any court, hearing officer, or 3107  
other necessary individual involved in a case dealing with the 3108  
denial of employment to the applicant or the denial, suspension, 3109  
or revocation of a certificate or evidence of registration under 3110  
section 5126.25 of the Revised Code. 3111

(2) An individual for whom a county board superintendent has 3112  
obtained reports under this section may submit a written request 3113  
to the county board to have copies of the reports sent to any 3114  
state agency, entity of local government, or private entity. The 3115  
individual shall specify in the request the agencies or entities 3116  
to which the copies are to be sent. On receiving the request, the 3117  
county board shall send copies of the reports to the agencies or 3118  
entities specified. 3119

A county board may request that a state agency, entity of 3120  
local government, or private entity send copies to the board of 3121  
any report regarding a records check or criminal records check 3122  
that the agency or entity possesses, if the county board obtains 3123  
the written consent of the individual who is the subject of the 3124  
report. 3125

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

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

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

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

(L) The board may charge an applicant a fee for costs it incurs in obtaining reports, abstracts, or fingerprint impressions

under this section. A fee charged under this division shall not 3157  
exceed the amount of the fees the board pays under divisions (G) 3158  
and (I) of this section. If a fee is charged under this division, 3159  
the board shall notify the applicant of the amount of the fee at 3160  
the time of the applicant's initial application for employment and 3161  
that, unless the fee is paid, the board will not consider the 3162  
applicant for employment. 3163

(M) The department of mental retardation and developmental 3164  
disabilities shall adopt rules pursuant to Chapter 119. of the 3165  
Revised Code to implement this section and section 5126.281 of the 3166  
Revised Code, including rules specifying circumstances under which 3167  
a county board or contracting entity may hire a person who has 3168  
been convicted of or pleaded guilty to an offense listed or 3169  
described in division (E) of this section but who meets standards 3170  
in regard to rehabilitation set by the department. The rules may 3171  
not authorize a county board or contracting entity to hire an 3172  
individual who is included in the registry established under 3173  
section 5123.52 of the Revised Code. 3174

**Sec. 5126.30.** As used in sections 5126.30 to 5126.34 of the 3175  
Revised Code: 3176

(A) "Adult" means a person eighteen years of age or older 3177  
with mental retardation or a developmental disability. 3178

(B) "Caretaker" means a person who is responsible for the 3179  
care of an adult by order of a court, including an order of 3180  
guardianship, or who assumes the responsibility for the care of an 3181  
adult as a volunteer, as a family member, by contract, or by the 3182  
acceptance of payment for care. 3183

(C) "Abuse" has the same meaning as in section 5123.50 of the 3184  
Revised Code, except that it includes a misappropriation, as 3185  
defined in that section. 3186

(D) "Neglect" has the same meaning as in section 5123.50 of the Revised Code. 3187  
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(E) "Exploitation" means the unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain, including misappropriation, as defined in section 5123.50 of the Revised Code, of an adult's resources. 3189  
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(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday, except when that day is a holiday as defined in section 1.14 of the Revised Code. 3194  
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~~(F)~~(G) "Incapacitated" means lacking understanding or capacity, with or without the assistance of a caretaker, to make and carry out decisions regarding food, clothing, shelter, health care, or other necessities, but does not include mere refusal to consent to the provision of services. 3197  
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(H) "Emergency protective services" means protective services furnished to a person with mental retardation or a developmental disability to prevent immediate physical harm. 3202  
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(I) "Protective services" means services provided by the county board of mental retardation and developmental disabilities to an adult with mental retardation or a developmental disability for the prevention, correction, or discontinuance of an act of as well as conditions resulting from abuse, neglect, or exploitation. 3205  
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(J) "Protective service plan" means an individualized plan developed by the county board of mental retardation and developmental disabilities to prevent the further abuse, neglect, or exploitation of an adult with mental retardation or a developmental disability. 3210  
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(K) "Substantial risk" has the same meaning as in section 2901.01 of the Revised Code. 3215  
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<u>(L) "Party" means all of the following:</u>	3217
<u>(1) An adult who is the subject of a probate proceeding under sections 5126.30 to 5126.33 of the Revised Code;</u>	3218
<u>(2) A caretaker, unless otherwise ordered by the probate court;</u>	3219
<u>(3) Any other person designated as a party by the probate court including but not limited to, the adult's spouse, custodian, guardian, or parent.</u>	3220
<u>(M) "Board" has the same meaning as in section 5126.02 of the Revised Code.</u>	3221
<b>Sec. 5126.33.</b> (A) A county board of mental retardation and developmental disabilities may file a complaint with the probate court of the county in which an adult with mental retardation or a developmental disability resides for an order authorizing the board to arrange services described in division (C) of section 5126.31 of the Revised Code for that adult if <u>the adult is eligible to receive services or support under section 5126.041 of the Revised Code and</u> the board has been unable to secure consent. The complaint shall include:	3222
<u>(1) The name, age, and address of the adult;</u>	3223
<u>(2) Facts describing the nature of the abuse <del>or</del>, neglect, or exploitation and supporting the board's belief that services are needed;</u>	3224
<u>(3) The types of services proposed by the board, as set forth in the <del>individualized protective</del> service plan prepared pursuant to described in division (J) of section <del>5126.31</del> 5126.30 of the Revised Code and filed with the complaint;</u>	3225
<u>(4) Facts showing the board's attempts to obtain the consent of the adult or the adult's guardian to the services.</u>	3226
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(B) The board shall give the adult notice of the filing of the complaint and in simple and clear language shall inform the adult of the adult's rights in the hearing under division (C) of this section and explain the consequences of a court order. This notice shall be personally served upon ~~the adult~~ all parties, and also shall be given to ~~the adult's caretaker~~, the adult's legal counsel, if any, and the legal rights service. The notice shall be given at least twenty-four hours prior to the hearing, although the court may waive this requirement upon a showing that there is a substantial risk that the adult will suffer immediate physical harm in the twenty-four hour period and that the board has made reasonable attempts to give the notice required by this division.

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

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

- (a) The adult has been abused ~~or~~, neglected, or exploited;
- (b) The adult is incapacitated;
- (c) There is a substantial risk to the adult of immediate

physical harm or death; 3277

(d) The adult is in need of the services; 3278

(e) No person authorized by law or court order to give 3279  
consent for the adult is available or willing to consent to the 3280  
services. 3281

(2) The board shall develop a detailed protective service 3282  
plan describing the services that the board will provide, or 3283  
arrange for the provision of, to the adult to prevent further 3284  
abuse, neglect, or exploitation. The board shall submit the plan 3285  
to the court for approval. The protective service plan may be 3286  
changed only by court order. 3287

(3) In formulating the order, the court shall consider the 3288  
individual protective service plan and shall specifically 3289  
designate the services that are necessary to deal with the abuse 3290  
~~or,~~ neglect, or exploitation or condition resulting from abuse ~~or,~~ 3291  
neglect, or exploitation and that are available locally, and 3292  
authorize the board to arrange for these services only. The court 3293  
shall limit the provision of these services to a period not 3294  
exceeding ~~fourteen days~~ six months, renewable for an additional 3295  
~~fourteen day~~ six-month period on a showing by the board that 3296  
continuation of the order is necessary. 3297

(E) If the court finds that all other options for meeting the 3298  
adult's needs have been exhausted, it may order that the adult be 3299  
removed from the adult's place of residence and placed in another 3300  
residential setting. Before issuing that order, the court shall 3301  
consider the adult's choice of residence and shall determine that 3302  
the new residential setting is the least restrictive alternative 3303  
available for meeting the adult's needs and is a place where the 3304  
adult can obtain the necessary requirements for daily living in 3305  
safety. The court shall not order an adult to a hospital or public 3306  
hospital as defined in section 5122.01 or a state institution as 3307

defined in section 5123.01 of the Revised Code. 3308

(F) The court shall not authorize a change in an adult's 3309  
placement ordered under division (E) of this section unless it 3310  
finds compelling reasons to justify a change. The parties to whom 3311  
notice was given in division (B) of this section shall be given 3312  
notice of a proposed change at least five working days prior to 3313  
the change. 3314

(G) The adult, the board, or any other person who received 3315  
notice of the petition may file a motion for modification of the 3316  
court order at any time. 3317

(H) The county board shall pay court costs incurred in 3318  
proceedings brought pursuant to this section. The adult shall not 3319  
be required to pay for court-ordered services. 3320

(I)(1) After the filing of a complaint for an order under 3321  
this section, the court, prior to the final disposition, may enter 3322  
any temporary order that the court finds necessary to protect the 3323  
adult with mental retardation or a developmental disability from 3324  
abuse, neglect, or exploitation including, but not limited to, the 3325  
following: 3326

(a) A temporary protection order; 3327

(b) An order requiring the evaluation of the adult; 3328

(c) An order requiring a party to vacate the adult's place of 3329  
residence or legal settlement, provided that, subject to division 3330  
(K)(1)(d) of this section, no operator of a residential facility 3331  
licensed by the department may be removed under this division; 3332

(d) In the circumstances described in, and in accordance with 3333  
the procedures set forth in, section 5123.191 of the Revised Code, 3334  
an order of the type described in that section that appoints a 3335  
receiver to take possession of and operate a residential facility 3336  
licensed by the department. 3337

(2) The court may grant an ex parte order pursuant to this division on its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it if it appears to the court that the best interest and the welfare of the adult require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an ex parte order, to the extent possible, shall give notice of its intent or of the request to all parties, the adult's legal counsel, if any, and the legal rights service. If the court issues an ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court shall give written notice of the hearing to all parties to the action.

**Sec. 5126.331.** (A) A probate court, through a probate judge or magistrate, may issue by telephone an ex parte emergency order authorizing any of the actions described in division (B) of this section if all of the following are the case:

(1) The court receives notice from the county board of mental retardation and developmental disabilities, or an authorized employee of the board, that the board or employee believes an emergency order is needed as described in this section.

(2) The adult who is the subject of the notice is eligible to receive services or support under section 5126.041 of the Revised Code.

(3) There is reasonable cause to believe that the adult is incapacitated.

(4) There is reasonable cause to believe that there is a substantial risk to the adult of immediate physical harm or death.

(B) An order issued under this section may authorize the 3368  
county board of mental retardation and developmental disabilities 3369  
to do any of the following: 3370

(1) Provide, or arrange for the provision of, emergency 3371  
protective services for the adult; 3372

(2) Remove the adult from the adult's place of residence or 3373  
legal settlement; 3374

(3) Remove the adult from the place where the abuse, neglect, 3375  
or exploitation occurred. 3376

(C) A court shall not issue an order under this section to 3377  
remove an adult from a place described in division (B)(2) or (3) 3378  
of this section until the court is satisfied that reasonable 3379  
efforts have been made to notify the adult and any person with 3380  
whom the adult resides of the proposed removal and the reasons for 3381  
it, except that, the court may issue an order prior to giving the 3382  
notice if one of the following is the case: 3383

(1) Notification could jeopardize the physical or emotional 3384  
safety of the adult. 3385

(2) The notification could result in the adult being removed 3386  
from the court's jurisdiction. 3387

(D) An order issued under this section shall be in effect for 3388  
not longer than twenty-four hours, except that if the day 3389  
following the day on which the order is issued is a weekend-day or 3390  
legal holiday, the order shall remain in effect until the next 3391  
business day. 3392

(E)(1) Except as provided in division (E)(2) of this section, 3393  
not later than twenty-four hours after an order is issued under 3394  
this section, the county board or employee that provided notice to 3395  
the probate court shall file a complaint with the court in 3396  
accordance with division (A) of section 5126.33 of the Revised 3397

Code. 3398

(2) If the day following the day on which the order was issued is a weekend-day or a holiday, the county board or employee shall file the complaint with the probate court on the next business day. 3399  
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(3) Except as provided in section 5126.332 of the Revised Code, proceedings on the complaint filed pursuant to this division shall be conducted in accordance with section 5126.33 of the Revised Code. 3403  
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**Sec. 5126.332.** (A) If an order is issued pursuant to section 5126.331 of the Revised Code, the court shall hold a hearing not later than twenty-four hours after the issuance to determine whether there is probable cause for the order, except that if the day following the day on which the order is issued is a weekend-day or legal holiday, the court shall hold the hearing on the next business day. 3407  
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(B) At the hearing, the court: 3414

(1) Shall consider the adult's choice of residence and determine whether protective services are the least restrictive alternative available for meeting the adult's needs; 3415  
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(2) May issue temporary orders to protect the adult from immediate physical harm, including, but not limited to, temporary protection orders, evaluations, and orders requiring a party to vacate the adult's place of residence or legal settlement; 3418  
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(3) May order emergency protective services. 3422

(C) A temporary order issued pursuant to division (B)(2) of this section is effective for thirty days. The court may renew the order for an additional thirty-day period. 3423  
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3425

**Sec. 5126.333.** Any person who has reason to believe that 3426

there is a substantial risk to an adult with mental retardation or 3427  
a developmental disability of immediate physical harm or death and 3428  
that the responsible county board of mental retardation and 3429  
developmental disabilities has failed to seek an order pursuant to 3430  
section 5126.33 or 5126.331 of the Revised Code may notify the 3431  
department of mental retardation and developmental disabilities. 3432  
Within twenty-four hours of receipt of such notice, the department 3433  
shall cause an investigation to be conducted regarding the notice. 3434  
The department shall provide assistance to the county board to 3435  
provide for the health and safety of the adult as permitted by 3436  
law. 3437

**Section 2.** That existing sections 109.572, 313.12, 2106.01, 3438  
2106.02, 2107.19, 2108.50, 2109.301, 2109.32, 2113.53, 2117.06, 3439  
2117.07, 2117.11, 2117.12, 2151.421, 2311.14, 2930.03, 5120.173, 3440  
5123.081, 5123.50, 5123.51, 5123.61, 5123.99, 5126.28, 5126.30, 3441  
and 5126.33 of the Revised Code are hereby repealed. 3442

**Section 3.** The Department of Mental Retardation and 3443  
Developmental Disabilities shall adopt rules pursuant to Chapter 3444  
119. of the Revised Code that provide standards for the 3445  
substantiation by the Department and by county boards of mental 3446  
retardation of reports of abuse or neglect filed under section 3447  
5123.61 of the Revised Code. 3448

**Section 4.** That the version of section 5123.50 of the Revised 3449  
Code that is scheduled to take effect on December 31, 2003, be 3450  
amended to read as follows: 3451

**Sec. 5123.50.** As used in this section and sections 5123.51 3452  
and, 5123.52, and 5123.541 of the Revised Code: 3453

(A) "Abuse" means all of the following: 3454

(1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;	3455 3456
(2) Sexual abuse;	3457
(3) Verbal abuse.	3458
(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.	3459 3460 3461 3462
(C) "MR/DD employee" means all of the following:	3463
(1) An employee of the department of mental retardation and developmental disabilities;	3464 3465
(2) An employee of a county board of mental retardation and developmental disabilities;	3466 3467
(3) An employee in a position that includes providing specialized services to an individual with mental retardation or a <u>another</u> developmental disability.	3468 3469 3470
(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.	3471 3472 3473 3474
(E) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.	3475 3476
(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, <del>as those terms are defined in section 2907.01 of the Revised Code.</del>	3477 3478 3479
(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	3480 3481 3482 3483

department of mental retardation and developmental disabilities. A 3484  
program or service available to the general public is not a 3485  
specialized service. 3486

(H) "Verbal abuse" means purposely using words to threaten, 3487  
coerce, intimidate, harass, or humiliate an individual. 3488

(I) "Sexual conduct," "sexual contact," and "spouse" have the 3489  
same meanings as in section 2907.01 of the Revised Code. 3490

**Section 5.** That the existing version of section 5123.50 of 3491  
the Revised Code that is scheduled to take effect on December 31, 3492  
2003, is hereby repealed. 3493

**Section 6.** Sections 4 and 5 of this act shall take effect 3494  
December 31, 2003. 3495

**Section 7.** Section 109.572 of the Revised Code is presented 3496  
in this act as a composite of the section as amended by both Sub. 3497  
H.B. 448 and Sub. H.B. 538 of the 123rd General Assembly. Section 3498  
2151.421 of the Revised Code is presented in this act as a 3499  
composite of the section as amended by Am. Sub. H.B. 374, Sub. 3500  
H.B. 510, and Am. Sub. S.B. 221 all of the 124th General Assembly. 3501  
Section 5126.28 of the Revised Code is presented in this act as a 3502  
composite of the section as amended by both Sub. H.B. 538 and Sub. 3503  
S.B. 171 of the 123rd General Assembly. The General Assembly, 3504  
applying the principle stated in division (B) of section 1.52 of 3505  
the Revised Code that amendments are to be harmonized if 3506  
reasonably capable of simultaneous operation, finds that the 3507  
composites are the resulting versions of the sections in effect 3508  
prior to the effective date of the sections as presented in this 3509  
act. 3510

**Section 8.** (A) Sections 2106.01, 2106.02, 2107.19, 2109.301, 3511  
2109.32, 2113.53, 2117.06, 2117.07, 2117.11, and 2117.12 of the 3512

Revised Code, as amended by this act, apply to estates that are in 3513  
existence or are initiated on or after the effective date of this 3514  
act. 3515

(B) Section 2101.163 of the Revised Code, as enacted by this 3516  
act, applies to civil actions and proceedings that are pending in 3517  
or brought before the probate court on or after the effective date 3518  
of this act. 3519

**Section 9.** It is hereby declared that it was the intent of 3520  
the General Assembly that the sections of the Revised Code 3521  
described in Section 2 of Sub. H.B. 85 of the 124th General 3522  
Assembly were to be repealed effective December 31, 2001, to 3523  
coincide with Section 5 of Sub. H.B. 85 of the 124th General 3524  
Assembly, and that the repeal of such Revised Code sections in 3525  
Section 2 of Sub. H.B. 85 of the 124th General Assembly was not to 3526  
be effective October 31, 2001. 3527