

## As Passed by the House

**125th General Assembly  
Regular Session  
2003-2004**

**Am. S. B. No. 178**

**Senators Spada, Austria, Amstutz, Carey, Harris, Jacobson, Padgett,  
Armbruster**

**Representatives Allen, Aslanides, Brown, Calvert, Carmichael, Cates, Clancy,  
Collier, Core, Daniels, DeBose, Domenick, Driehaus, C. Evans, D. Evans,  
Faber, Fessler, Flowers, Gibbs, Gilb, Grendell, Hagan, Hollister, Hughes,  
Kearns, Key, Kilbane, Martin, McGregor, Niehaus, Oelslager, Olman,  
S. Patton, T. Patton, Peterson, Price, Raga, Raussen, Redfern, Reidelbach,  
Reinhard, Schaffer, Schlichter, Schmidt, Schneider, Seitz, Setzer, J. Stewart,  
Strahorn, Taylor, Wagner, Walcher, Webster, Widener, Willamowski,  
Williams**

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### A B I L L

To amend sections 109.572, 313.12, 2108.50, 2151.421,	1
2311.14, 2930.03, 5120.173, 5123.081, 5123.50,	2
5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and	3
5126.33 and to enact sections 2108.521, 2152.821,	4
2903.341, 2930.061, 2945.482, 2945.491, 5123.032,	5
5123.541, 5123.542, 5123.614, 5126.058, 5126.331,	6
5126.332, and 5126.333 of the Revised Code to	7
implement the recommendations of the MR/DD Victims	8
of Crime Task Force, to make related changes in	9
the law, to provide a mechanism for the closing of	10
developmental centers of the Department of Mental	11
Retardation and Developmental Disabilities that	12
involves independent studies and public hearings,	13
and to declare an emergency.	14

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

**Section 1.** That sections 109.572, 313.12, 2108.50, 2151.421, 15  
2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 5123.61, 16  
5123.99, 5126.28, 5126.30, and 5126.33 be amended and sections 17  
2108.521, 2152.821, 2903.341, 2930.061, 2945.482, 2945.491, 18  
5123.032, 5123.541, 5123.542, 5123.614, 5126.058, 5126.331, 19  
5126.332, and 5126.333 of the Revised Code be enacted to read as 20  
follows: 21

**Sec. 109.572.** (A)(1) Upon receipt of a request pursuant to 22  
section 2151.86, 3301.32, 3301.541, 3319.39, 5104.012, 5104.013, 23  
or 5153.111 of the Revised Code, a completed form prescribed 24  
pursuant to division (C)(1) of this section, and a set of 25  
fingerprint impressions obtained in the manner described in 26  
division (C)(2) of this section, the superintendent of the bureau 27  
of criminal identification and investigation shall conduct a 28  
criminal records check in the manner described in division (B) of 29  
this section to determine whether any information exists that 30  
indicates that the person who is the subject of the request 31  
previously has been convicted of or pleaded guilty to any of the 32  
following: 33

(a) A violation of section 2903.01, 2903.02, 2903.03, 34  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 35  
2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 36  
2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 37  
2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 38  
2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 39  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 40  
2925.06, or 3716.11 of the Revised Code, felonious sexual 41  
penetration in violation of former section 2907.12 of the Revised 42

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

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

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

(a) A violation of section 2903.01, 2903.02, 2903.03,  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34,

2903.341, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 75  
2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 76  
2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 77  
2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 78  
2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 79  
2925.03, or 3716.11 of the Revised Code; 80

(b) An existing or former municipal ordinance or law of this 81  
state, any other state, or the United States that is substantially 82  
equivalent to any of the offenses listed in division (A)(2)(a) of 83  
this section. 84

(3) On receipt of a request pursuant to section 173.41, 85  
3712.09, 3721.121, or 3722.151 of the Revised Code, a completed 86  
form prescribed pursuant to division (C)(1) of this section, and a 87  
set of fingerprint impressions obtained in the manner described in 88  
division (C)(2) of this section, the superintendent of the bureau 89  
of criminal identification and investigation shall conduct a 90  
criminal records check with respect to any person who has applied 91  
for employment in a position that involves providing direct care 92  
to an older adult. The superintendent shall conduct the criminal 93  
records check in the manner described in division (B) of this 94  
section to determine whether any information exists that indicates 95  
that the person who is the subject of the request previously has 96  
been convicted of or pleaded guilty to any of the following: 97

(a) A violation of section 2903.01, 2903.02, 2903.03, 98  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 99  
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 100  
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 101  
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 102  
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 103  
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 104  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 105  
2925.22, 2925.23, or 3716.11 of the Revised Code; 106

(b) An existing or former law of this state, any other state, 107  
or the United States that is substantially equivalent to any of 108  
the offenses listed in division (A)(3)(a) of this section. 109

(4) On receipt of a request pursuant to section 3701.881 of 110  
the Revised Code with respect to an applicant for employment with 111  
a home health agency as a person responsible for the care, 112  
custody, or control of a child, a completed form prescribed 113  
pursuant to division (C)(1) of this section, and a set of 114  
fingerprint impressions obtained in the manner described in 115  
division (C)(2) of this section, the superintendent of the bureau 116  
of criminal identification and investigation shall conduct a 117  
criminal records check. The superintendent shall conduct the 118  
criminal records check in the manner described in division (B) of 119  
this section to determine whether any information exists that 120  
indicates that the person who is the subject of the request 121  
previously has been convicted of or pleaded guilty to any of the 122  
following: 123

(a) A violation of section 2903.01, 2903.02, 2903.03, 124  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 125  
2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 126  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 127  
2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 128  
2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 129  
2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 130  
2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code or a 131  
violation of section 2925.11 of the Revised Code that is not a 132  
minor drug possession offense; 133

(b) An existing or former law of this state, any other state, 134  
or the United States that is substantially equivalent to any of 135  
the offenses listed in division (A)(4)(a) of this section. 136

(5) On receipt of a request pursuant to section 5111.95 or 137

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

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

existed prior to July 1, 1996, had the violation been committed 170  
prior to that date; 171

(b) An existing or former law of this state, any other state, 172  
or the United States that is substantially equivalent to any of 173  
the offenses listed in division (A)(5)(a) of this section. 174

(6) On receipt of a request pursuant to section 3701.881 of 175  
the Revised Code with respect to an applicant for employment with 176  
a home health agency in a position that involves providing direct 177  
care to an older adult, a completed form prescribed pursuant to 178  
division (C)(1) of this section, and a set of fingerprint 179  
impressions obtained in the manner described in division (C)(2) of 180  
this section, the superintendent of the bureau of criminal 181  
identification and investigation shall conduct a criminal records 182  
check. The superintendent shall conduct the criminal records check 183  
in the manner described in division (B) of this section to 184  
determine whether any information exists that indicates that the 185  
person who is the subject of the request previously has been 186  
convicted of or pleaded guilty to any of the following: 187

(a) A violation of section 2903.01, 2903.02, 2903.03, 188  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 189  
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 190  
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 191  
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 192  
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 193  
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 194  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 195  
2925.22, 2925.23, or 3716.11 of the Revised Code; 196

(b) An existing or former law of this state, any other state, 197  
or the United States that is substantially equivalent to any of 198  
the offenses listed in division (A)(6)(a) of this section. 199

(7) When conducting a criminal records check upon a request 200

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

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

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

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

(9) Not later than thirty days after the date the  
superintendent receives the request, completed form, and  
fingerprint impressions, the superintendent shall send the person,  
board, or entity that made the request any information, other than  
information the dissemination of which is prohibited by federal  
law, the superintendent determines exists with respect to the  
person who is the subject of the request that indicates that the  
person previously has been convicted of or pleaded guilty to any  
offense listed or described in division (A)(1), (2), (3), (4),  
(5), (6), (7), or (8) of this section, as appropriate. The  
superintendent shall send the person, board, or entity that made  
the request a copy of the list of offenses specified in division



(A)(1), (2), (3), (4), (5), (6), (7), or (8) of this section, as 232  
appropriate. If the request was made under section 3701.881 of the 233  
Revised Code with regard to an applicant who may be both 234  
responsible for the care, custody, or control of a child and 235  
involved in providing direct care to an older adult, the 236  
superintendent shall provide a list of the offenses specified in 237  
divisions (A)(4) and (6) of this section. 238

(B) The superintendent shall conduct any criminal records 239  
check requested under section 173.41, 2151.86, 3301.32, 3301.541, 240  
3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 241  
5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 242  
5153.111 of the Revised Code as follows: 243

(1) The superintendent shall review or cause to be reviewed 244  
any relevant information gathered and compiled by the bureau under 245  
division (A) of section 109.57 of the Revised Code that relates to 246  
the person who is the subject of the request, including any 247  
relevant information contained in records that have been sealed 248  
under section 2953.32 of the Revised Code; 249

(2) If the request received by the superintendent asks for 250  
information from the federal bureau of investigation, the 251  
superintendent shall request from the federal bureau of 252  
investigation any information it has with respect to the person 253  
who is the subject of the request and shall review or cause to be 254  
reviewed any information the superintendent receives from that 255  
bureau. 256

(C)(1) The superintendent shall prescribe a form to obtain 257  
the information necessary to conduct a criminal records check from 258  
any person for whom a criminal records check is required by 259  
section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 260  
3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 261  
5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The 262

form that the superintendent prescribes pursuant to this division 263  
may be in a tangible format, in an electronic format, or in both 264  
tangible and electronic formats. 265

(2) The superintendent shall prescribe standard impression 266  
sheets to obtain the fingerprint impressions of any person for 267  
whom a criminal records check is required by section 173.41, 268  
2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 269  
3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 270  
5126.281, or 5153.111 of the Revised Code. Any person for whom a 271  
records check is required by any of those sections shall obtain 272  
the fingerprint impressions at a county sheriff's office, 273  
municipal police department, or any other entity with the ability 274  
to make fingerprint impressions on the standard impression sheets 275  
prescribed by the superintendent. The office, department, or 276  
entity may charge the person a reasonable fee for making the 277  
impressions. The standard impression sheets the superintendent 278  
prescribes pursuant to this division may be in a tangible format, 279  
in an electronic format, or in both tangible and electronic 280  
formats. 281

(3) Subject to division (D) of this section, the 282  
superintendent shall prescribe and charge a reasonable fee for 283  
providing a criminal records check requested under section 173.41, 284  
2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 285  
3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 286  
5126.281, or 5153.111 of the Revised Code. The person making a 287  
criminal records request under section 173.41, 2151.86, 3301.32, 288  
3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 289  
5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, 290  
or 5153.111 of the Revised Code shall pay the fee prescribed 291  
pursuant to this division. A person making a request under section 292  
3701.881 of the Revised Code for a criminal records check for an 293  
applicant who may be both responsible for the care, custody, or 294

control of a child and involved in providing direct care to an 295  
older adult shall pay one fee for the request. 296

(4) The superintendent of the bureau of criminal 297  
identification and investigation may prescribe methods of 298  
forwarding fingerprint impressions and information necessary to 299  
conduct a criminal records check, which methods shall include, but 300  
not be limited to, an electronic method. 301

(D) A determination whether any information exists that 302  
indicates that a person previously has been convicted of or 303  
pleaded guilty to any offense listed or described in division 304  
(A)(1)(a) or (b), (A)(2)(a) or (b), (A)(3)(a) or (b), (A)(4)(a) or 305  
(b), (A)(5)(a) or (b), (A)(6), (A)(7)(a) or (b), or (A)(8)(a) or 306  
(b) of this section that is made by the superintendent with 307  
respect to information considered in a criminal records check in 308  
accordance with this section is valid for the person who is the 309  
subject of the criminal records check for a period of one year 310  
from the date upon which the superintendent makes the 311  
determination. During the period in which the determination in 312  
regard to a person is valid, if another request under this section 313  
is made for a criminal records check for that person, the 314  
superintendent shall provide the information that is the basis for 315  
the superintendent's initial determination at a lower fee than the 316  
fee prescribed for the initial criminal records check. 317

(E) As used in this section: 318

(1) "Criminal records check" means any criminal records check 319  
conducted by the superintendent of the bureau of criminal 320  
identification and investigation in accordance with division (B) 321  
of this section. 322

(2) "Home and community-based waiver services" and "waiver 323  
agency" have the same meanings as in section 5111.95 of the 324  
Revised Code. 325

(3) "Independent provider" has the same meaning as in section 5111.96 of the Revised Code. 326 327

(4) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code. 328 329

(5) "Older adult" means a person age sixty or older. 330

**Sec. 313.12.** (A) When any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, ~~or~~ when any person, including a child under two years of age, dies suddenly when in apparent good health, or when any mentally retarded person or developmentally disabled person dies regardless of the circumstances, the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from ~~his~~ the person's duties, shall immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of the death, and any other information ~~which~~ that is required pursuant to sections 313.01 to 313.22 of the Revised Code. In such cases, if a request is made for cremation, the funeral director called in attendance shall immediately notify the coroner. 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345

(B) As used in this section, "mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code. 346 347 348

**Sec. 2108.50.** (A) ~~An~~ Subject to section 2108.521 of the Revised Code, an autopsy or post-mortem examination may be performed upon the body of a deceased person by a licensed physician or surgeon if consent has been given in the order named by one of the following persons of sound mind and eighteen years of age or older in a written instrument executed by the person or on the person's behalf at the person's express direction: 349 350 351 352 353 354 355

(1) The deceased person during the deceased person's lifetime;	356 357
(2) The decedent's spouse;	358
(3) If there is no surviving spouse, if the address of the surviving spouse is unknown or outside the United States, if the surviving spouse is physically or mentally unable or incapable of giving consent, or if the deceased person was separated and living apart from such surviving spouse, then a person having the first named degree of relationship in the following list in which a relative of the deceased person survives and is physically and mentally able and capable of giving consent may execute consent:	359 360 361 362 363 364 365 366
(a) Children;	367
(b) Parents;	368
(c) Brothers or sisters.	369
(4) If there are no surviving persons of any degree of relationship listed in division (A)(3) of this section, any other relative or person who assumes custody of the body for burial <i>—i</i>	370 371 372
(5) A person authorized by written instrument executed by the deceased person to make arrangements for burial <i>—i</i>	373 374
(6) A person who, at the time of death of the deceased person, was serving as guardian of the person for the deceased person.	375 376 377
(B) Consent to an autopsy or post-mortem examination <u>given under this section</u> may be revoked only by the person executing the consent and in the same manner as required for execution of consent under this section.	378 379 380 381
(C) As used in this section, "written instrument" includes a telegram or cablegram.	382 383

**Sec. 2108.521.** (A) If a mentally retarded person or a 384

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

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

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(C) An autopsy or post-mortem examination ordered under this  
section may be performed upon the body of the deceased person by a  
licensed physician or surgeon. The court may identify in the order

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the person who is to perform the autopsy or post-mortem 416  
examination. If an autopsy or post-mortem examination is ordered 417  
under this section, the department or board that requested the 418  
autopsy or examination shall pay the physician or surgeon who 419  
performs the autopsy or examination for costs and expenses 420  
incurred in performing the autopsy or examination. 421

**Sec. 2151.421.** (A)(1)(a) No person described in division 422  
(A)(1)(b) of this section who is acting in an official or 423  
professional capacity and knows or suspects that a child under 424  
eighteen years of age or a mentally retarded, developmentally 425  
disabled, or physically impaired child under twenty-one years of 426  
age has suffered or faces a threat of suffering any physical or 427  
mental wound, injury, disability, or condition of a nature that 428  
reasonably indicates abuse or neglect of the child, shall fail to 429  
immediately report that knowledge or suspicion to the entity or 430  
persons specified in this division. Except as provided in section 431  
5120.173 of the Revised Code, the person making the report shall 432  
make it to the public children services agency or a municipal or 433  
county peace officer in the county in which the child resides or 434  
in which the abuse or neglect is occurring or has occurred. In the 435  
circumstances described in section 5120.173 of the Revised Code, 436  
the person making the report shall make it to the entity specified 437  
in that section. 438

(b) Division (A)(1)(a) of this section applies to any person 439  
who is an attorney; physician, including a hospital intern or 440  
resident; dentist; podiatrist; practitioner of a limited branch of 441  
medicine as specified in section 4731.15 of the Revised Code; 442  
registered nurse; licensed practical nurse; visiting nurse; other 443  
health care professional; licensed psychologist; licensed school 444  
psychologist; independent marriage and family therapist or 445  
marriage and family therapist; speech pathologist or audiologist; 446

coroner; administrator or employee of a child day-care center; 447  
administrator or employee of a residential camp or child day camp; 448  
administrator or employee of a certified child care agency or 449  
other public or private children services agency; school teacher; 450  
school employee; school authority; person engaged in social work 451  
or the practice of professional counseling; agent of a county 452  
humane society; ~~or a~~ person rendering spiritual treatment through 453  
prayer in accordance with the tenets of a well-recognized 454  
religion; superintendent, board member, or employee of a county 455  
board of mental retardation; investigative agent contracted with 456  
by a county board of mental retardation; or employee of the 457  
department of mental retardation and developmental disabilities. 458

(2) An attorney or a physician is not required to make a 459  
report pursuant to division (A)(1) of this section concerning any 460  
communication the attorney or physician receives from a client or 461  
patient in an attorney-client or physician-patient relationship, 462  
if, in accordance with division (A) or (B) of section 2317.02 of 463  
the Revised Code, the attorney or physician could not testify with 464  
respect to that communication in a civil or criminal proceeding, 465  
except that the client or patient is deemed to have waived any 466  
testimonial privilege under division (A) or (B) of section 2317.02 467  
of the Revised Code with respect to that communication and the 468  
attorney or physician shall make a report pursuant to division 469  
(A)(1) of this section with respect to that communication, if all 470  
of the following apply: 471

(a) The client or patient, at the time of the communication, 472  
is either a child under eighteen years of age or a mentally 473  
retarded, developmentally disabled, or physically impaired person 474  
under twenty-one years of age. 475

(b) The attorney or physician knows or suspects, as a result 476  
of the communication or any observations made during that 477  
communication, that the client or patient has suffered or faces a 478



threat of suffering any physical or mental wound, injury, 479  
disability, or condition of a nature that reasonably indicates 480  
abuse or neglect of the client or patient. 481

(c) The attorney-client or physician-patient relationship 482  
does not arise out of the client's or patient's attempt to have an 483  
abortion without the notification of her parents, guardian, or 484  
custodian in accordance with section 2151.85 of the Revised Code. 485

(B) Anyone, who knows or suspects that a child under eighteen 486  
years of age or a mentally retarded, developmentally disabled, or 487  
physically impaired person under twenty-one years of age has 488  
suffered or faces a threat of suffering any physical or mental 489  
wound, injury, disability, or other condition of a nature that 490  
reasonably indicates abuse or neglect of the child may report or 491  
cause reports to be made of that knowledge or suspicion to the 492  
entity or persons specified in this division. Except as provided 493  
in section 5120.173 of the Revised Code, a person making a report 494  
or causing a report to be made under this division shall make it 495  
or cause it to be made to the public children services agency or 496  
to a municipal or county peace officer. In the circumstances 497  
described in section 5120.173 of the Revised Code, a person making 498  
a report or causing a report to be made under this division shall 499  
make it or cause it to be made to the entity specified in that 500  
section. 501

(C) Any report made pursuant to division (A) or (B) of this 502  
section shall be made forthwith either by telephone or in person 503  
and shall be followed by a written report, if requested by the 504  
receiving agency or officer. The written report shall contain: 505

(1) The names and addresses of the child and the child's 506  
parents or the person or persons having custody of the child, if 507  
known; 508

(2) The child's age and the nature and extent of the child's 509

known or suspected injuries, abuse, or neglect or of the known or 510  
suspected threat of injury, abuse, or neglect, including any 511  
evidence of previous injuries, abuse, or neglect; 512

(3) Any other information that might be helpful in 513  
establishing the cause of the known or suspected injury, abuse, or 514  
neglect or of the known or suspected threat of injury, abuse, or 515  
neglect. 516

Any person, who is required by division (A) of this section 517  
to report known or suspected child abuse or child neglect, may 518  
take or cause to be taken color photographs of areas of trauma 519  
visible on a child and, if medically indicated, cause to be 520  
performed radiological examinations of the child. 521

(D)(1) When a municipal or county peace officer receives a 522  
report concerning the possible abuse or neglect of a child or the 523  
possible threat of abuse or neglect of a child, upon receipt of 524  
the report, the municipal or county peace officer who receives the 525  
report shall refer the report to the appropriate public children 526  
services agency. 527

(2) When a public children services agency receives a report 528  
pursuant to this division or division (A) or (B) of this section, 529  
upon receipt of the report, the public children services agency 530  
shall comply with section 2151.422 of the Revised Code. 531

(E) No township, municipal, or county peace officer shall 532  
remove a child about whom a report is made pursuant to this 533  
section from the child's parents, stepparents, or guardian or any 534  
other persons having custody of the child without consultation 535  
with the public children services agency, unless, in the judgment 536  
of the officer, and, if the report was made by physician, the 537  
physician, immediate removal is considered essential to protect 538  
the child from further abuse or neglect. The agency that must be 539  
consulted shall be the agency conducting the investigation of the 540

report as determined pursuant to section 2151.422 of the Revised 541  
Code. 542

(F)(1) Except as provided in section 2151.422 of the Revised 543  
Code, the public children services agency shall investigate, 544  
within twenty-four hours, each report of known or suspected child 545  
abuse or child neglect and of a known or suspected threat of child 546  
abuse or child neglect that is referred to it under this section 547  
to determine the circumstances surrounding the injuries, abuse, or 548  
neglect or the threat of injury, abuse, or neglect, the cause of 549  
the injuries, abuse, neglect, or threat, and the person or persons 550  
responsible. The investigation shall be made in cooperation with 551  
the law enforcement agency and in accordance with the memorandum 552  
of understanding prepared under division (J) of this section. A 553  
failure to make the investigation in accordance with the 554  
memorandum is not grounds for, and shall not result in, the 555  
dismissal of any charges or complaint arising from the report or 556  
the suppression of any evidence obtained as a result of the report 557  
and does not give, and shall not be construed as giving, any 558  
rights or any grounds for appeal or post-conviction relief to any 559  
person. The public children services agency shall report each case 560  
to a central registry which the department of job and family 561  
services shall maintain in order to determine whether prior 562  
reports have been made in other counties concerning the child or 563  
other principals in the case. The public children services agency 564  
shall submit a report of its investigation, in writing, to the law 565  
enforcement agency. 566

(2) The public children services agency shall make any 567  
recommendations to the county prosecuting attorney or city 568  
director of law that it considers necessary to protect any 569  
children that are brought to its attention. 570

(G)(1)(a) Except as provided in division (H)(3) of this 571  
section, anyone or any hospital, institution, school, health 572

department, or agency participating in the making of reports under 573  
division (A) of this section, anyone or any hospital, institution, 574  
school, health department, or agency participating in good faith 575  
in the making of reports under division (B) of this section, and 576  
anyone participating in good faith in a judicial proceeding 577  
resulting from the reports, shall be immune from any civil or 578  
criminal liability for injury, death, or loss to person or 579  
property that otherwise might be incurred or imposed as a result 580  
of the making of the reports or the participation in the judicial 581  
proceeding. 582

(b) Notwithstanding section 4731.22 of the Revised Code, the 583  
physician-patient privilege shall not be a ground for excluding 584  
evidence regarding a child's injuries, abuse, or neglect, or the 585  
cause of the injuries, abuse, or neglect in any judicial 586  
proceeding resulting from a report submitted pursuant to this 587  
section. 588

(2) In any civil or criminal action or proceeding in which it 589  
is alleged and proved that participation in the making of a report 590  
under this section was not in good faith or participation in a 591  
judicial proceeding resulting from a report made under this 592  
section was not in good faith, the court shall award the 593  
prevailing party reasonable attorney's fees and costs and, if a 594  
civil action or proceeding is voluntarily dismissed, may award 595  
reasonable attorney's fees and costs to the party against whom the 596  
civil action or proceeding is brought. 597

(H)(1) Except as provided in divisions (H)(4), (M), and (N) 598  
of this section, a report made under this section is confidential. 599  
The information provided in a report made pursuant to this section 600  
and the name of the person who made the report shall not be 601  
released for use, and shall not be used, as evidence in any civil 602  
action or proceeding brought against the person who made the 603  
report. In a criminal proceeding, the report is admissible in 604

evidence in accordance with the Rules of Evidence and is subject 605  
to discovery in accordance with the Rules of Criminal Procedure. 606

(2) No person shall permit or encourage the unauthorized 607  
dissemination of the contents of any report made under this 608  
section. 609

(3) A person who knowingly makes or causes another person to 610  
make a false report under division (B) of this section that 611  
alleges that any person has committed an act or omission that 612  
resulted in a child being an abused child or a neglected child is 613  
guilty of a violation of section 2921.14 of the Revised Code. 614

(4) If a report is made pursuant to division (A) or (B) of 615  
this section and the child who is the subject of the report dies 616  
for any reason at any time after the report is made, but before 617  
the child attains eighteen years of age, the public children 618  
services agency or municipal or county peace officer to which the 619  
report was made or referred, on the request of the child fatality 620  
review board, shall submit a summary sheet of information 621  
providing a summary of the report to the review board of the 622  
county in which the deceased child resided at the time of death. 623  
On the request of the review board, the agency or peace officer 624  
may, at its discretion, make the report available to the review 625  
board. 626

(5) A public children services agency shall advise a person 627  
alleged to have inflicted abuse or neglect on a child who is the 628  
subject of a report made pursuant to this section in writing of 629  
the disposition of the investigation. The agency shall not provide 630  
to the person any information that identifies the person who made 631  
the report, statements of witnesses, or police or other 632  
investigative reports. 633

(I) Any report that is required by this section, other than a 634  
report that is made to the state highway patrol as described in 635

section 5120.173 of the Revised Code, shall result in protective 636  
services and emergency supportive services being made available by 637  
the public children services agency on behalf of the children 638  
about whom the report is made, in an effort to prevent further 639  
neglect or abuse, to enhance their welfare, and, whenever 640  
possible, to preserve the family unit intact. The agency required 641  
to provide the services shall be the agency conducting the 642  
investigation of the report pursuant to section 2151.422 of the 643  
Revised Code. 644

(J)(1) Each public children services agency shall prepare a 645  
memorandum of understanding that is signed by all of the 646  
following: 647

(a) If there is only one juvenile judge in the county, the 648  
juvenile judge of the county or the juvenile judge's 649  
representative; 650

(b) If there is more than one juvenile judge in the county, a 651  
juvenile judge or the juvenile judges' representative selected by 652  
the juvenile judges or, if they are unable to do so for any 653  
reason, the juvenile judge who is senior in point of service or 654  
the senior juvenile judge's representative; 655

(c) The county peace officer; 656

(d) All chief municipal peace officers within the county; 657

(e) Other law enforcement officers handling child abuse and 658  
neglect cases in the county; 659

(f) The prosecuting attorney of the county; 660

(g) If the public children services agency is not the county 661  
department of job and family services, the county department of 662  
job and family services; 663

(h) The county humane society. 664

(2) A memorandum of understanding shall set forth the normal 665

operating procedure to be employed by all concerned officials in 666  
the execution of their respective responsibilities under this 667  
section and division (C) of section 2919.21, division (B)(1) of 668  
section 2919.22, division (B) of section 2919.23, and section 669  
2919.24 of the Revised Code and shall have as two of its primary 670  
goals the elimination of all unnecessary interviews of children 671  
who are the subject of reports made pursuant to division (A) or 672  
(B) of this section and, when feasible, providing for only one 673  
interview of a child who is the subject of any report made 674  
pursuant to division (A) or (B) of this section. A failure to 675  
follow the procedure set forth in the memorandum by the concerned 676  
officials is not grounds for, and shall not result in, the 677  
dismissal of any charges or complaint arising from any reported 678  
case of abuse or neglect or the suppression of any evidence 679  
obtained as a result of any reported child abuse or child neglect 680  
and does not give, and shall not be construed as giving, any 681  
rights or any grounds for appeal or post-conviction relief to any 682  
person. 683

(3) A memorandum of understanding shall include all of the 684  
following: 685

(a) The roles and responsibilities for handling emergency and 686  
nonemergency cases of abuse and neglect; 687

(b) Standards and procedures to be used in handling and 688  
coordinating investigations of reported cases of child abuse and 689  
reported cases of child neglect, methods to be used in 690  
interviewing the child who is the subject of the report and who 691  
allegedly was abused or neglected, and standards and procedures 692  
addressing the categories of persons who may interview the child 693  
who is the subject of the report and who allegedly was abused or 694  
neglected. 695

(K)(1) Except as provided in division (K)(4) of this section, 696  
a person who is required to make a report pursuant to division (A) 697

of this section may make a reasonable number of requests of the 698  
public children services agency that receives or is referred the 699  
report to be provided with the following information: 700

(a) Whether the agency has initiated an investigation of the 701  
report; 702

(b) Whether the agency is continuing to investigate the 703  
report; 704

(c) Whether the agency is otherwise involved with the child 705  
who is the subject of the report; 706

(d) The general status of the health and safety of the child 707  
who is the subject of the report; 708

(e) Whether the report has resulted in the filing of a 709  
complaint in juvenile court or of criminal charges in another 710  
court. 711

(2) A person may request the information specified in 712  
division (K)(1) of this section only if, at the time the report is 713  
made, the person's name, address, and telephone number are 714  
provided to the person who receives the report. 715

When a municipal or county peace officer or employee of a 716  
public children services agency receives a report pursuant to 717  
division (A) or (B) of this section the recipient of the report 718  
shall inform the person of the right to request the information 719  
described in division (K)(1) of this section. The recipient of the 720  
report shall include in the initial child abuse or child neglect 721  
report that the person making the report was so informed and, if 722  
provided at the time of the making of the report, shall include 723  
the person's name, address, and telephone number in the report. 724

Each request is subject to verification of the identity of 725  
the person making the report. If that person's identity is 726  
verified, the agency shall provide the person with the information 727



described in division (K)(1) of this section a reasonable number 728  
of times, except that the agency shall not disclose any 729  
confidential information regarding the child who is the subject of 730  
the report other than the information described in those 731  
divisions. 732

(3) A request made pursuant to division (K)(1) of this 733  
section is not a substitute for any report required to be made 734  
pursuant to division (A) of this section. 735

(4) If an agency other than the agency that received or was 736  
referred the report is conducting the investigation of the report 737  
pursuant to section 2151.422 of the Revised Code, the agency 738  
conducting the investigation shall comply with the requirements of 739  
division (K) of this section. 740

(L) The director of job and family services shall adopt rules 741  
in accordance with Chapter 119. of the Revised Code to implement 742  
this section. The department of job and family services may enter 743  
into a plan of cooperation with any other governmental entity to 744  
aid in ensuring that children are protected from abuse and 745  
neglect. The department shall make recommendations to the attorney 746  
general that the department determines are necessary to protect 747  
children from child abuse and child neglect. 748

(M) No later than the end of the day following the day on 749  
which a public children services agency receives a report of 750  
alleged child abuse or child neglect, or a report of an alleged 751  
threat of child abuse or child neglect, that allegedly occurred in 752  
or involved an out-of-home care entity, the agency shall provide 753  
written notice of the allegations contained in and the person 754  
named as the alleged perpetrator in the report to the 755  
administrator, director, or other chief administrative officer of 756  
the out-of-home care entity that is the subject of the report 757  
unless the administrator, director, or other chief administrative 758  
officer is named as an alleged perpetrator in the report. If the 759

administrator, director, or other chief administrative officer of 760  
an out-of-home care entity is named as an alleged perpetrator in a 761  
report of alleged child abuse or child neglect, or a report of an 762  
alleged threat of child abuse or child neglect, that allegedly 763  
occurred in or involved the out-of-home care entity, the agency 764  
shall provide the written notice to the owner or governing board 765  
of the out-of-home care entity that is the subject of the report. 766  
The agency shall not provide witness statements or police or other 767  
investigative reports. 768

(N) No later than three days after the day on which a public 769  
children services agency that conducted the investigation as 770  
determined pursuant to section 2151.422 of the Revised Code makes 771  
a disposition of an investigation involving a report of alleged 772  
child abuse or child neglect, or a report of an alleged threat of 773  
child abuse or child neglect, that allegedly occurred in or 774  
involved an out-of-home care entity, the agency shall send written 775  
notice of the disposition of the investigation to the 776  
administrator, director, or other chief administrative officer and 777  
the owner or governing board of the out-of-home care entity. The 778  
agency shall not provide witness statements or police or other 779  
investigative reports. 780

**Sec. 2152.821.** (A) As used in this section: 781

(1) "Mentally retarded person" and "developmentally disabled 782  
person" have the same meanings as in section 5123.01 of the 783  
Revised Code. 784

(2) "Mentally retarded or developmentally disabled victim" 785  
includes any of the following persons: 786

(a) A mentally retarded person or developmentally disabled 787  
person who was a victim of a violation identified in division 788  
(B)(1) of this section or an act that would be an offense of 789  
violence if committed by an adult; 790

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

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

have the right, as at an adjudication hearing, to full examination 823  
and cross-examination of the mentally retarded or developmentally 824  
disabled victim whose deposition is to be taken. 825

If a deposition taken under this division is intended to be 826  
offered as evidence in the proceeding, it shall be filed in the 827  
juvenile court in which the action is pending and is admissible in 828  
the manner described in division (C) of this section. If a 829  
deposition of a mentally retarded or developmentally disabled 830  
victim taken under this division is admitted as evidence at the 831  
proceeding under division (C) of this section, the mentally 832  
retarded or developmentally disabled victim shall not be required 833  
to testify in person at the proceeding. 834

At any time before the conclusion of the proceeding, the 835  
attorney for the child charged with the violation or act may file 836  
a motion with the judge requesting that another deposition of the 837  
mentally retarded or developmentally disabled victim be taken 838  
because new evidence material to the defense of the child charged 839  
has been discovered that the attorney for the child charged could 840  
not with reasonable diligence have discovered prior to the taking 841  
of the admitted deposition. Any motion requesting another 842  
deposition shall be accompanied by supporting affidavits. Upon the 843  
filing of the motion and affidavits, the court may order that 844  
additional testimony of the mentally retarded or developmentally 845  
disabled victim relative to the new evidence be taken by another 846  
deposition. If the court orders the taking of another deposition 847  
under this provision, the deposition shall be taken in accordance 848  
with this division. If the admitted deposition was a videotaped 849  
deposition taken in accordance with division (B)(2) of this 850  
section, the new deposition also shall be videotaped in accordance 851  
with that division. In other cases, the new deposition may be 852  
videotaped in accordance with that division. 853

(2) If the prosecution requests that a deposition to be taken 854

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

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

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

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

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

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

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

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

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

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

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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

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

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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.

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

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

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proceeding. The juvenile judge may issue the order upon the motion  
of the prosecution filed under this division, if the judge  
determines that the mentally retarded or developmentally disabled  
victim is unavailable to testify in the room in which the  
proceeding is being conducted in the physical presence of the  
child charged with the violation or act for one or more of the  
reasons set forth in division (F) of this section. If a juvenile  
judge issues an order of that nature, the judge shall exclude from  
the room in which the testimony is to be taken every person except  
a person described in division (B)(2) of this section. The judge,  
at the judge's discretion, may preside during the giving of the  
testimony by electronic means from outside the room in which it is  
being given, subject to the limitations set forth in division  
(B)(2) of this section. To the extent feasible, any person  
operating the televising equipment shall be hidden from the sight  
and hearing of the mentally retarded or developmentally disabled  
victim giving the testimony, in a manner similar to that described  
in division (B)(2) of this section. The child who is charged with  
the violation or act shall be permitted to observe and hear the  
testimony of the mentally retarded or developmentally disabled  
victim giving the testimony on a monitor, shall be provided with  
an electronic means of immediate communication with the attorney  
of the child who is charged with the violation or act during the  
testimony, and shall be restricted to a location from which the  
child who is charged with the violation or act cannot be seen or  
heard by the mentally retarded or developmentally disabled victim  
giving the testimony, except on a monitor provided for that  
purpose. The mentally retarded or developmentally disabled victim  
giving the testimony shall be provided with a monitor on which the  
mentally retarded or developmentally disabled victim can observe,  
while giving testimony, the child who is charged with the  
violation or act.

(E) In any proceeding in juvenile court involving a 1014  
complaint, indictment, or information in which a child is charged 1015  
with a violation listed in division (B)(1) of this section or an 1016  
act that would be an offense of violence if committed by an adult 1017  
and in which an alleged victim of the violation or offense was a 1018  
mentally retarded or developmentally disabled person, the 1019  
prosecution may file a motion with the juvenile judge requesting 1020  
the judge to order the testimony of the mentally retarded or 1021  
developmentally disabled victim to be taken outside of the room in 1022  
which the proceeding is being conducted and be recorded for 1023  
showing in the room in which the proceeding is being conducted 1024  
before the judge, the child who is charged with the violation or 1025  
act, and any other persons who would have been present during the 1026  
testimony of the mentally retarded or developmentally disabled 1027  
victim had it been given in the room in which the proceeding is 1028  
being conducted. Except for good cause shown, the prosecution 1029  
shall file a motion under this division at least seven days before 1030  
the date of the proceeding. The juvenile judge may issue the order 1031  
upon the motion of the prosecution filed under this division, if 1032  
the judge determines that the mentally retarded or developmentally 1033  
disabled victim is unavailable to testify in the room in which the 1034  
proceeding is being conducted in the physical presence of the 1035  
child charged with the violation or act, due to one or more of the 1036  
reasons set forth in division (F) of this section. If a juvenile 1037  
judge issues an order of that nature, the judge shall exclude from 1038  
the room in which the testimony is to be taken every person except 1039  
a person described in division (B)(2) of this section. To the 1040  
extent feasible, any person operating the recording equipment 1041  
shall be hidden from the sight and hearing of the mentally 1042  
retarded or developmentally disabled victim giving the testimony, 1043  
in a manner similar to that described in division (B)(2) of this 1044  
section. The child who is charged with the violation or act shall 1045  
be permitted to observe and hear the testimony of the mentally 1046

retarded or developmentally disabled victim giving the testimony 1047  
on a monitor, shall be provided with an electronic means of 1048  
immediate communication with the attorney of the child who is 1049  
charged with the violation or act during the testimony, and shall 1050  
be restricted to a location from which the child who is charged 1051  
with the violation or act cannot be seen or heard by the mentally 1052  
retarded or developmentally disabled victim giving the testimony, 1053  
except on a monitor provided for that purpose. The mentally 1054  
retarded or developmentally disabled victim giving the testimony 1055  
shall be provided with a monitor on which the mentally retarded or 1056  
developmentally disabled victim can observe, while giving 1057  
testimony, the child who is charged with the violation or act. No 1058  
order for the taking of testimony by recording shall be issued 1059  
under this division unless the provisions set forth in divisions 1060  
(B)(2)(a), (b), (c), and (d) of this section apply to the 1061  
recording of the testimony. 1062

(F) For purposes of divisions (D) and (E) of this section, a 1063  
juvenile judge may order the testimony of a mentally retarded or 1064  
developmentally disabled victim to be taken outside of the room in 1065  
which a proceeding is being conducted if the judge determines that 1066  
the mentally retarded or developmentally disabled victim is 1067  
unavailable to testify in the room in the physical presence of the 1068  
child charged with the violation or act due to one or more of the 1069  
following circumstances: 1070

(1) The persistent refusal of the mentally retarded or 1071  
developmentally disabled victim to testify despite judicial 1072  
requests to do so; 1073

(2) The inability of the mentally retarded or developmentally 1074  
disabled victim to communicate about the alleged violation or 1075  
offense because of extreme fear, failure of memory, or another 1076  
similar reason; 1077

(3) The substantial likelihood that the mentally retarded or 1078  
developmentally disabled victim will suffer serious emotional 1079  
trauma from so testifying. 1080

(G)(1) If a juvenile judge issues an order pursuant to 1081  
division (D) or (E) of this section that requires the testimony of 1082  
a mentally retarded or developmentally disabled victim in a 1083  
juvenile court proceeding to be taken outside of the room in which 1084  
the proceeding is being conducted, the order shall specifically 1085  
identify the mentally retarded or developmentally disabled victim 1086  
to whose testimony it applies, the order applies only during the 1087  
testimony of the specified mentally retarded or developmentally 1088  
disabled victim, and the mentally retarded or developmentally 1089  
disabled victim giving the testimony shall not be required to 1090  
testify at the proceeding other than in accordance with the order. 1091  
The authority of a judge to close the taking of a deposition under 1092  
division (B)(2) of this section or a proceeding under division (D) 1093  
or (E) of this section is in addition to the authority of a judge 1094  
to close a hearing pursuant to section 2151.35 of the Revised 1095  
Code. 1096

(2) A juvenile judge who makes any determination regarding 1097  
the admissibility of a deposition under divisions (B) and (C) of 1098  
this section, the videotaping of a deposition under division 1099  
(B)(2) of this section, or the taking of testimony outside of the 1100  
room in which a proceeding is being conducted under division (D) 1101  
or (E) of this section shall enter the determination and findings 1102  
on the record in the proceeding. 1103

**Sec. 2311.14.** (A)(1) Whenever because of a hearing, speech, 1104  
or other impairment a party to or witness in a legal proceeding 1105  
cannot readily understand or communicate, the court shall appoint 1106  
a qualified interpreter to assist such person. Before appointing 1107  
any interpreter under this division for a party or witness who is 1108

a mentally retarded person or developmentally disabled person, the 1109  
court shall evaluate the qualifications of the interpreter and 1110  
shall make a determination as to the ability of the interpreter to 1111  
effectively interpret on behalf of the party or witness that the 1112  
interpreter will assist, and the court may appoint the interpreter 1113  
only if the court is satisfied that the interpreter is able to 1114  
effectively interpret on behalf of that party or witness. 1115

(2) This section is not limited to a person who speaks a 1116  
language other than English. It also applies to the language and 1117  
descriptions of any mentally retarded person or developmentally 1118  
disabled person who cannot be reasonably understood, or who cannot 1119  
understand questioning, without the aid of an interpreter. The 1120  
interpreter may aid the parties in formulating methods of 1121  
questioning the person with mental retardation or a developmental 1122  
disability and in interpreting the answers of the person. 1123

(B) Before entering upon ~~his~~ official duties, the interpreter 1124  
shall take an oath that ~~he~~ the interpreter will make a true 1125  
interpretation of the proceedings to the party or witness, and 1126  
that ~~he~~ the interpreter will truly repeat the statements made by 1127  
such party or witness to the court, to the best of ~~his~~ the 1128  
interpreter's ability. If the interpreter is appointed to assist a 1129  
mentally retarded person or developmentally disabled person as 1130  
described in division (A)(2) of this section, the oath also shall 1131  
include an oath that the interpreter will not prompt, lead, 1132  
suggest, or otherwise improperly influence the testimony of the 1133  
witness or party. 1134

(C) The court shall determine a reasonable fee for all such 1135  
interpreter service which shall be paid out of the same funds as 1136  
witness fees. 1137

(D) As used in this section, "mentally retarded person" and 1138  
"developmentally disabled person" have the same meanings as in 1139

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

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

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

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

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

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

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of such a person and the actor took reasonable steps to summon 1201  
aid. 1202

(E)(1) Except as provided in division (E)(2) or (E)(3) of 1203  
this section, whoever violates division (B) or (C) of this section 1204  
is guilty of patient endangerment, a misdemeanor of the first 1205  
degree. 1206

(2) If the offender previously has been convicted of, or 1207  
pleaded guilty to, a violation of this section, patient 1208  
endangerment is a felony of the fourth degree. 1209

(3) If the violation results in serious physical harm to the 1210  
person with mental retardation or a developmental disability, 1211  
patient endangerment is a felony of the third degree. 1212

**Sec. 2930.03.** (A) A person or entity required or authorized 1213  
under this chapter to give notice to a victim shall give the 1214  
notice to the victim by any means reasonably calculated to provide 1215  
prompt actual notice. Except when a provision requires that notice 1216  
is to be given in a specific manner, a notice may be oral or 1217  
written. 1218

(B) Except for receipt of the initial information and notice 1219  
required to be given to a victim under divisions (A) and (B) of 1220  
section 2930.04, section 2930.05, and divisions (A) and (B) of 1221  
section 2930.06 of the Revised Code, a victim who wishes to 1222  
receive any notice authorized by this chapter shall make a request 1223  
for the notice to the prosecutor or the custodial agency that is 1224  
to provide the notice, as specified in this chapter. If the victim 1225  
does not make a request as described in this division, the 1226  
prosecutor or custodial agency is not required to provide any 1227  
notice described in this chapter other than the initial 1228  
information and notice required to be given to a victim under 1229  
divisions (A) and (B) of section 2930.04, section 2930.05, and 1230



divisions (A) and (B) of section 2930.06 of the Revised Code. 1231

(C) A person or agency that is required to furnish notice 1232  
under this chapter shall give the notice to the victim at the 1233  
address or telephone number provided to the person or agency by 1234  
the victim. A victim who requests to receive notice under this 1235  
chapter as described in division (B) of this section shall inform 1236  
the person or agency of the name, address, or telephone number of 1237  
the victim and of any change to that information. 1238

(D) A person or agency that has furnished information to a 1239  
victim in accordance with any requirement or authorization under 1240  
this chapter shall notify the victim promptly of any significant 1241  
changes to that information. 1242

(E) Divisions (A) to (D) of this section do not apply 1243  
regarding a notice that a prosecutor is required to provide under 1244  
section 2930.061 of the Revised Code. A prosecutor required to 1245  
provide notice under that section shall provide the notice as 1246  
specified in that section. 1247

**Sec. 2930.061.** (A) If a person is charged in a complaint, 1248  
indictment, or information with any crime or specified delinquent 1249  
act or with any other violation of law, and if the case involves a 1250  
victim that the prosecutor in the case knows is a mentally 1251  
retarded person or a developmentally disabled person, in addition 1252  
to any other notices required under this chapter or under any 1253  
other provision of law, the prosecutor in the case shall send 1254  
written notice of the charges to the department of mental 1255  
retardation and developmental disabilities. The written notice 1256  
shall specifically identify the person so charged. 1257

(B) As used in this section, "mentally retarded person" and 1258  
"developmentally disabled person" have the same meanings as in 1259  
section 5123.01 of the Revised Code. 1260

Sec. 2945.482. (A) As used in this section: 1261

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code. 1262  
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(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. 1265  
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(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 1272  
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shall be taken in the manner provided in civil cases, except that  
the judge shall preside at the taking of the deposition and shall  
rule at the time on any objections of the prosecution or the  
attorney for the defense. The prosecution and the attorney for the  
defense shall have the right, as at trial, to full examination and  
cross-examination of the mentally retarded or developmentally  
disabled victim whose deposition is to be taken. If a deposition  
taken under this division is intended to be offered as evidence in  
the proceeding, it shall be filed in the court in which the action  
is pending and is admissible in the manner described in division  
(C) of this section.

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

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

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

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

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

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

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

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

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

determined by the judge, is identified.

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

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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:

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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.

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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.

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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.

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(3) The provisions of divisions (B) and (C) of this section 1419  
are in addition to any other provisions of the Revised Code, the 1420  
Rules of Criminal Procedure, or the Rules of Evidence that pertain 1421  
to the taking or admission of depositions in a criminal proceeding 1422  
and do not limit the admissibility under any of those other 1423  
provisions of any deposition taken under division (B) of this 1424  
section or otherwise taken. 1425

(D) In any proceeding in the prosecution of any charge of a 1426  
violation listed in division (B)(1) of this section or an offense 1427  
of violence and in which an alleged victim of the violation or 1428  
offense was a mentally retarded or developmentally disabled 1429  
person, the prosecution may file a motion with the judge 1430  
requesting the judge to order the testimony of the mentally 1431  
retarded or developmentally disabled victim to be taken in a room 1432  
other than the room in which the proceeding is being conducted and 1433  
be televised, by closed circuit equipment, into the room in which 1434  
the proceeding is being conducted to be viewed by the jury, if 1435  
applicable, the defendant, and any other persons who are not 1436  
permitted in the room in which the testimony is to be taken but 1437  
who would have been present during the testimony of the mentally 1438  
retarded or developmentally disabled victim had it been given in 1439  
the room in which the proceeding is being conducted. Except for 1440  
good cause shown, the prosecution shall file a motion under this 1441  
division at least seven days before the date of the proceeding. 1442  
The judge may issue the order upon the motion of the prosecution 1443  
filed under this section, if the judge determines that the 1444  
mentally retarded or developmentally disabled victim is 1445  
unavailable to testify in the room in which the proceeding is 1446  
being conducted in the physical presence of the defendant for one 1447  
or more of the reasons set forth in division (F) of this section. 1448  
If a judge issues an order of that nature, the judge shall exclude 1449  
from the room in which the testimony is to be taken every person 1450

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.

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(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

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1483 during the testimony of the mentally retarded or developmentally  
1484 disabled victim had it been given in the room in which the  
1485 proceeding is being conducted. Except for good cause shown, the  
1486 prosecution shall file a motion under this division at least seven  
1487 days before the date of the proceeding. The judge may issue the  
1488 order upon the motion of the prosecution filed under this  
1489 division, if the judge determines that the mentally retarded or  
1490 developmentally disabled victim is unavailable to testify in the  
1491 room in which the proceeding is being conducted in the physical  
1492 presence of the defendant, for one or more of the reasons set  
1493 forth in division (F) of this section. If a judge issues an order  
1494 of that nature, the judge shall exclude from the room in which the  
1495 testimony is to be taken every person except a person described in  
1496 division (B)(2) of this section. To the extent feasible, any  
1497 person operating the recording equipment shall be hidden from the  
1498 sight and hearing of the mentally retarded or developmentally  
1499 disabled victim giving the testimony, in a manner similar to that  
1500 described in division (B)(2) of this section. The defendant shall  
1501 be permitted to observe and hear the testimony of the mentally  
1502 retarded or developmentally disabled victim who is giving the  
1503 testimony on a monitor, shall be provided with an electronic means  
1504 of immediate communication with the defendant's attorney during  
1505 the testimony, and shall be restricted to a location from which  
1506 the defendant cannot be seen or heard by the mentally retarded or  
1507 developmentally disabled victim giving the testimony, except on a  
1508 monitor provided for that purpose. The mentally retarded or  
1509 developmentally disabled victim giving the testimony shall be  
1510 provided with a monitor on which the victim can observe, during  
1511 the testimony, the defendant. No order for the taking of testimony  
1512 by recording shall be issued under this division unless the  
1513 provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of  
1514 this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a 1515  
judge may order the testimony of a mentally retarded or 1516  
developmentally disabled victim to be taken outside the room in 1517  
which the proceeding is being conducted if the judge determines 1518  
that the mentally retarded or developmentally disabled victim is 1519  
unavailable to testify in the room in the physical presence of the 1520  
defendant due to one or more of the following: 1521

(1) The persistent refusal of the mentally retarded or 1522  
developmentally disabled victim to testify despite judicial 1523  
requests to do so; 1524

(2) The inability of the mentally retarded or developmentally 1525  
disabled victim to communicate about the alleged violation or 1526  
offense because of extreme fear, failure of memory, or another 1527  
similar reason; 1528

(3) The substantial likelihood that the mentally retarded or 1529  
developmentally disabled victim will suffer serious emotional 1530  
trauma from so testifying. 1531

(G)(1) If a judge issues an order pursuant to division (D) or 1532  
(E) of this section that requires the testimony of a mentally 1533  
retarded or developmentally disabled victim in a criminal 1534  
proceeding to be taken outside of the room in which the proceeding 1535  
is being conducted, the order shall specifically identify the 1536  
mentally retarded or developmentally disabled victim to whose 1537  
testimony it applies, the order applies only during the testimony 1538  
of the specified mentally retarded or developmentally disabled 1539  
victim, and the mentally retarded or developmentally disabled 1540  
victim giving the testimony shall not be required to testify at 1541  
the proceeding other than in accordance with the order. 1542

(2) A judge who makes any determination regarding the 1543  
admissibility of a deposition under divisions (B) and (C) of this 1544  
section, the videotaping of a deposition under division (B)(2) of 1545

this section, or the taking of testimony outside of the room in 1546  
which a proceeding is being conducted under division (D) or (E) of 1547  
this section shall enter the determination and findings on the 1548  
record in the proceeding. 1549

**Sec. 2945.491.** (A) As used in this section: 1550

(1) "Mentally retarded person" and "developmentally disabled 1551  
person" have the same meanings as in section 5123.01 of the 1552  
Revised Code. 1553

(2) "Mentally retarded or developmentally disabled victim" 1554  
includes a mentally retarded or developmentally disabled person 1555  
who was a victim of a felony violation identified in division 1556  
(B)(1) of this section or a felony offense of violence or against 1557  
whom was directed any conduct that constitutes, or that is an 1558  
element of, a felony violation identified in division (B)(1) of 1559  
this section or a felony offense of violence. 1560

(B)(1) At a trial on a charge of a felony violation of 1561  
section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 1562  
2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 1563  
2907.323 of the Revised Code or an offense of violence and in 1564  
which an alleged victim of the violation or offense was a mentally 1565  
retarded or developmentally disabled person, the court, upon 1566  
motion of the prosecutor in the case, may admit videotaped 1567  
preliminary hearing testimony of the mentally retarded or 1568  
developmentally disabled victim as evidence at the trial, in lieu 1569  
of the mentally retarded or developmentally disabled victim 1570  
appearing as a witness and testifying at trial, if all of the 1571  
following apply: 1572

(a) The videotape of the testimony was made at the 1573  
preliminary hearing at which probable cause of the violation 1574  
charged was found. 1575

(b) The videotape of the testimony was made in accordance 1576  
with division (C) of section 2937.11 of the Revised Code. 1577

(c) The testimony in the videotape is not excluded by the 1578  
hearsay rule and otherwise is admissible under the Rules of 1579  
Evidence. For purposes of this division, testimony is not excluded 1580  
by the hearsay rule if the testimony is not hearsay under Evidence 1581  
Rule 801, the testimony is within an exception to the hearsay rule 1582  
set forth in Evidence Rule 803, the mentally retarded or 1583  
developmentally disabled victim who gave the testimony is 1584  
unavailable as a witness, as defined in Evidence Rule 804, and the 1585  
testimony is admissible under that rule, or both of the following 1586  
apply: 1587

(i) The accused had an opportunity and similar motive at the 1588  
preliminary hearing to develop the testimony of the mentally 1589  
retarded or developmentally disabled victim by direct, cross, or 1590  
redirect examination. 1591

(ii) The court determines that there is reasonable cause to 1592  
believe that if the mentally retarded or developmentally disabled 1593  
victim who gave the testimony at the preliminary hearing were to 1594  
testify in person at the trial, the mentally retarded or 1595  
developmentally disabled victim would experience serious emotional 1596  
trauma as a result of the victim's participation at the trial. 1597

(2) If a mentally retarded or developmentally disabled victim 1598  
of an alleged felony violation of section 2903.16, 2903.34, 1599  
2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 1600  
2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an 1601  
alleged felony offense of violence testifies at the preliminary 1602  
hearing in the case, if the testimony of the mentally retarded or 1603  
developmentally disabled victim at the preliminary hearing was 1604  
videotaped pursuant to division (C) of section 2937.11 of the 1605  
Revised Code, and if the defendant in the case files a written 1606

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

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

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

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

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

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

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

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

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

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

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

pursuant to division (B) of that section, any person who is 1669  
required to report suspected abuse or neglect of a person with 1670  
mental retardation or a developmental disability pursuant to 1671  
division (C) of section 5123.61 of the Revised Code, and any 1672  
person who is permitted to report suspected abuse or neglect of a 1673  
person with mental retardation or a developmental disability 1674  
pursuant to division (F) of that section and who makes or causes 1675  
the report to be made, shall direct that report to the state 1676  
highway patrol if the child or the person with mental retardation 1677  
or a developmental disability is an inmate in the custody of a 1678  
state correctional institution. If the state highway patrol 1679  
determines after receipt of the report that it is probable that 1680  
abuse or neglect of the inmate occurred, the patrol shall report 1681  
its findings to the department of rehabilitation and correction, 1682  
to the court that sentenced the inmate for the offense for which 1683  
the inmate is in the custody of the department, and to the 1684  
chairman and vice-chairman of the correctional institution 1685  
inspection committee established by section 103.71 of the Revised 1686  
Code. 1687

**Sec. 5123.032.** (A) As used in this section, "developmental 1688  
center" means any institution or facility of the department of 1689  
mental retardation and developmental disabilities that, on or 1690  
after the effective date of this section, is named, designated, or 1691  
referred to as a developmental center. 1692

(B) Notwithstanding any other provision of law, on and after 1693  
the effective date of this section, any closure of a developmental 1694  
center shall be subject to, and in accordance with, this section. 1695  
Notwithstanding any other provision of law, if the governor 1696  
announced on or after January 1, 2003, and prior to the effective 1697  
date of this section the intended closure of a developmental 1698  
center and if the closure identified in the announcement has not 1699

occurred prior to the effective date of this section, the closure 1700  
identified in the announcement shall be subject to the criteria 1701  
set forth in this section as if the announcement had been made on 1702  
or after the effective date of this section, except for the time 1703  
at which the notice to the general assembly must be provided as 1704  
identified in division (C) of this section. 1705

(C) Notwithstanding any other provision of law, on and after 1706  
the effective date of this section, at least ten days prior to 1707  
making any official, public announcement that the governor intends 1708  
to close one or more developmental centers, the governor shall 1709  
notify the general assembly in writing that the governor intends 1710  
to close one or more developmental centers. Notwithstanding any 1711  
other provision of law, if the governor announced on or after 1712  
January 1, 2003, and prior to the effective date of this section 1713  
the intended closure of a developmental center and if the closure 1714  
identified in the announcement has not occurred prior to the 1715  
effective date of this section, not later than ten days after the 1716  
effective date of this section, the governor shall notify the 1717  
general assembly in writing of the prior announcement and that the 1718  
governor intends to close the center identified in the prior 1719  
announcement, and the notification to the general assembly shall 1720  
constitute, for purposes of this section, the governor's official, 1721  
public announcement that the governor intends to close that 1722  
center. 1723

The notice required by this division shall identify by name 1724  
each developmental center that the governor intends to close or, 1725  
if the governor has not determined any specific developmental 1726  
center to close, shall state the governor's general intent to 1727  
close one or more developmental centers. When the governor 1728  
notifies the general assembly as required by this division, the 1729  
legislative service commission promptly shall conduct an 1730  
independent study of the developmental centers of the department 1731



of mental retardation and developmental disabilities and of the 1732  
department's operation of the centers, and the study shall address 1733  
relevant criteria and factors, including, but not limited to, all 1734  
of the following: 1735

(1) The manner in which the closure of developmental centers 1736  
in general would affect the safety, health, well-being, and 1737  
lifestyle of the centers' residents and their family members and 1738  
would affect public safety and, if the governor's notice 1739  
identifies by name one or more developmental centers that the 1740  
governor intends to close, the manner in which the closure of each 1741  
center so identified would affect the safety, health, well-being, 1742  
and lifestyle of the center's residents and their family members 1743  
and would affect public safety; 1744

(2) The availability of alternate facilities; 1745

(3) The cost effectiveness of the facilities identified for 1746  
closure; 1747

(4) A comparison of the cost of residing at a facility 1748  
identified for closure and the cost of new living arrangements; 1749

(5) The geographic factors associated with each facility and 1750  
its proximity to other similar facilities; 1751

(6) The impact of collective bargaining on facility 1752  
operations; 1753

(7) The utilization and maximization of resources; 1754

(8) Continuity of the staff and ability to serve the facility 1755  
population; 1756

(9) Continuing costs following closure of a facility; 1757

(10) The impact of the closure on the local economy; 1758

(11) Alternatives and opportunities for consolidation with 1759  
other facilities; 1760

(12) How the closing of a facility identified for closure 1761  
relates to the department's plans for the future of developmental 1762  
centers in this state; 1763

(13) The effect of the closure of developmental centers in 1764  
general upon the state's fiscal resources and fiscal status and, 1765  
if the governor's notice identifies by name one or more 1766  
developmental centers that the governor intends to close, the 1767  
effect of the closure of each center so identified upon the 1768  
state's fiscal resources and fiscal status. 1769

(D) The legislative service commission shall complete the 1770  
study required by division (C) of this section, and prepare a 1771  
report that contains its findings, not later than sixty days after 1772  
the governor makes the official, public announcement that the 1773  
governor intends to close one or more developmental centers as 1774  
described in division (C) of this section. The commission shall 1775  
provide a copy of the report to each member of the general 1776  
assembly who requests a copy of the report. 1777

Not later than the date on which the legislative service 1778  
commission is required to complete the report under this division, 1779  
the mental retardation and developmental disabilities 1780  
developmental center closure commission is hereby created as 1781  
described in division (E) of this section. The officials with the 1782  
duties to appoint members of the closure commission, as described 1783  
in division (E) of this section, shall appoint the specified 1784  
members of the closure commission, and, as soon as possible after 1785  
the appointments, the closure commission shall meet for the 1786  
purposes described in that division. Upon completion of the report 1787  
and the creation of the closure commission under this division, 1788  
the legislative service commission promptly shall provide a copy 1789  
of the report to the closure commission and shall present the 1790  
report as described in division (E) of this section. 1791

(E)(1) A mental retardation and developmental disabilities 1792  
developmental center closure commission shall be created at the 1793  
time and in the manner specified in division (D) of this section. 1794  
The closure commission consists of six members. One member shall 1795  
be the director of the department of mental retardation and 1796  
developmental disabilities. One member shall be the director of 1797  
the department of health. One member shall be a private executive 1798  
with expertise in facility utilization, in economics, or in both 1799  
facility utilization and economics, jointly appointed by the 1800  
speaker of the house of representatives and the president of the 1801  
senate. The member appointed for expertise in facility 1802  
utilization, economics, or both may not be a member of the general 1803  
assembly and may not have a developmental center identified for 1804  
closure by the governor in the county in which the member resides. 1805  
One member shall be a member of the board of the Ohio civil 1806  
service employees' association, jointly appointed by the speaker 1807  
of the house of representatives and the president of the senate. 1808  
One member shall be either a family member of a resident of a 1809  
developmental center or a representative of a mental retardation 1810  
and developmental disabilities advocacy group, jointly appointed 1811  
by the speaker of the house of representatives and the president 1812  
of the senate. The member appointed who is a family member of a 1813  
developmental center resident or a representative of an advocacy 1814  
group may not be a member of the general assembly. One member 1815  
shall be a member of the law enforcement community, appointed by 1816  
the governor. The officials with the duties to appoint members of 1817  
the closure commission shall make the appointments, and the 1818  
closure commission shall meet, within the time periods specified 1819  
in division (D) of this section. The members of the closure 1820  
commission shall serve without compensation. At the closure 1821  
commission's first meeting, the members shall organize and appoint 1822  
a chairperson and vice-chairperson. 1823

The closure commission shall meet as often as is necessary 1824  
for the purpose of making the recommendations to the governor that 1825  
are described in this division. The closure commission's meetings 1826  
shall be open to the public, and the closure commission shall 1827  
accept public testimony. The legislative service commission shall 1828  
appear before the closure commission and present the report the 1829  
legislative service commission prepared under division (D) of this 1830  
section. The closure commission shall meet for the purpose of 1831  
making recommendations to the governor, which recommendations may 1832  
include all of the following: 1833

(a) Whether any developmental center should be closed; 1834

(b) If the recommendation described in division (E)(1)(a) of 1835  
this section is that one or more developmental centers should be 1836  
closed, which center or centers should be closed; 1837

(c) If the governor's notice described in division (C) of 1838  
this section identifies by name one or more developmental centers 1839  
that the governor intends to close, whether the center or centers 1840  
so identified should be closed. 1841

(2) The mental retardation and developmental disabilities 1842  
developmental center closure commission, not later than sixty days 1843  
after it receives the report of the legislative service commission 1844  
under division (D) of this section, shall prepare a report 1845  
containing its recommendations to the governor. The closure 1846  
commission shall send a copy of the report to the governor and to 1847  
each member of the general assembly who requests a copy of the 1848  
report. Upon receipt of the closure commission's report, the 1849  
governor shall review and consider the commission's 1850  
recommendation. The governor shall do one of the following: 1851

(a) Follow the recommendation of the commission; 1852

(b) Close no developmental center; 1853

(c) Take other action that the governor determines is 1854  
necessary for the purpose of expenditure reductions or budget cuts 1855  
and state the reasons for the action. 1856

The governor's decision is final. Upon the governor's making 1857  
of the decision, the closure commission shall cease to exist. 1858  
Another closure commission shall be created under this section 1859  
each time the governor subsequently makes an official, public 1860  
announcement that the governor intends to close one or more 1861  
developmental centers. 1862

**Sec. 5123.081.** (A) As used in this section: 1863

(1) "Applicant" means a person who is under final 1864  
consideration for appointment to or employment with the department 1865  
of mental retardation and developmental disabilities, including, 1866  
but not limited to, a person who is being transferred to the 1867  
department and an employee who is being recalled or reemployed 1868  
after a layoff. 1869

(2) "Criminal records check" has the same meaning as in 1870  
section 109.572 of the Revised Code. 1871

(3) "Minor drug possession offense" has the same meaning as 1872  
in section 2925.01 of the Revised Code. 1873

(B) The director of mental retardation and developmental 1874  
disabilities shall request the superintendent of the bureau of 1875  
criminal identification and investigation to conduct a criminal 1876  
records check with respect to each applicant, except that the 1877  
director is not required to request a criminal records check for 1878  
an employee of the department who is being considered for a 1879  
different position or is returning after a leave of absence or 1880  
seasonal break in employment, as long as the director has no 1881  
reason to believe that the employee has committed any of the 1882  
offenses listed or described in division (E) of this section. 1883

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 1916  
necessary to complete the form and shall provide the material with 1917  
the impressions of the applicant's fingerprints. If an applicant, 1918  
upon request, fails to provide the information necessary to 1919  
complete the form or fails to provide impressions of the 1920  
applicant's fingerprints, the director shall not employ the 1921  
applicant. 1922

(D) The director may request any other state or federal 1923  
agency to supply the director with a written report regarding the 1924  
criminal record of each applicant. With regard to an applicant who 1925  
becomes a department employee, if the employee holds an 1926  
occupational or professional license or other credentials, the 1927  
director may request that the state or federal agency that 1928  
regulates the employee's occupation or profession supply the 1929  
director with a written report of any information pertaining to 1930  
the employee's criminal record that the agency obtains in the 1931  
course of conducting an investigation or in the process of 1932  
renewing the employee's license or other credentials. 1933

(E) Except as provided in division (K)(2) of this section and 1934  
in rules adopted by the director in accordance with division (M) 1935  
of this section, the director shall not employ a person to fill a 1936  
position with the department who has been convicted of or pleaded 1937  
guilty to any of the following: 1938

(1) A violation of section 2903.01, 2903.02, 2903.03, 1939  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 1940  
2903.341, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 1941  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 1942  
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 1943  
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 1944  
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 1945  
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 1946  
section 2905.04 of the Revised Code as it existed prior to July 1, 1947

1996, a violation of section 2919.23 of the Revised Code that 1948  
would have been a violation of section 2905.04 of the Revised Code 1949  
as it existed prior to July 1, 1996, had the violation occurred 1950  
prior to that date, a violation of section 2925.11 of the Revised 1951  
Code that is not a minor drug possession offense, or felonious 1952  
sexual penetration in violation of former section 2907.12 of the 1953  
Revised Code; 1954

(2) A felony contained in the Revised Code that is not listed 1955  
in this division, if the felony bears a direct and substantial 1956  
relationship to the duties and responsibilities of the position 1957  
being filled; 1958

(3) Any offense contained in the Revised Code constituting a 1959  
misdemeanor of the first degree on the first offense and a felony 1960  
on a subsequent offense, if the offense bears a direct and 1961  
substantial relationship to the position being filled and the 1962  
nature of the services being provided by the department; 1963

(4) A violation of an existing or former municipal ordinance 1964  
or law of this state, any other state, or the United States, if 1965  
the offense is substantially equivalent to any of the offenses 1966  
listed or described in division (E)(1), (2), or (3) of this 1967  
section. 1968

(F) Prior to employing an applicant, the director shall 1969  
require the applicant to submit a statement with the applicant's 1970  
signature attesting that the applicant has not been convicted of 1971  
or pleaded guilty to any of the offenses listed or described in 1972  
division (E) of this section. The director also shall require the 1973  
applicant to sign an agreement under which the applicant agrees to 1974  
notify the director within fourteen calendar days if, while 1975  
employed with the department, the applicant is ever formally 1976  
charged with, convicted of, or pleads guilty to any of the 1977  
offenses listed or described in division (E) of this section. The 1978  
agreement shall inform the applicant that failure to report formal 1979



charges, a conviction, or a guilty plea may result in being 1980  
dismissed from employment. 1981

(G) The director shall pay to the bureau of criminal 1982  
identification and investigation the fee prescribed pursuant to 1983  
division (C)(3) of section 109.572 of the Revised Code for each 1984  
criminal records check requested and conducted pursuant to this 1985  
section. 1986

(H)(1) Any report obtained pursuant to this section is not a 1987  
public record for purposes of section 149.43 of the Revised Code 1988  
and shall not be made available to any person, other than the 1989  
applicant who is the subject of the records check or criminal 1990  
records check or the applicant's representative, the department or 1991  
its representative, a county board of mental retardation and 1992  
developmental disabilities, and any court, hearing officer, or 1993  
other necessary individual involved in a case dealing with the 1994  
denial of employment to the applicant or the denial, suspension, 1995  
or revocation of a certificate or evidence of registration under 1996  
section 5123.082 of the Revised Code. 1997

(2) An individual for whom the director has obtained reports 1998  
under this section may submit a written request to the director to 1999  
have copies of the reports sent to any state agency, entity of 2000  
local government, or private entity. The individual shall specify 2001  
in the request the agencies or entities to which the copies are to 2002  
be sent. On receiving the request, the director shall send copies 2003  
of the reports to the agencies or entities specified. 2004

The director may request that a state agency, entity of local 2005  
government, or private entity send copies to the director of any 2006  
report regarding a records check or criminal records check that 2007  
the agency or entity possesses, if the director obtains the 2008  
written consent of the individual who is the subject of the 2009  
report. 2010

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

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

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

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

(L) The director may charge an applicant a fee for costs the director incurs in obtaining reports, abstracts, or fingerprint impressions under this section. A fee charged under this division shall not exceed the amount of the fees the director pays under divisions (G) and (I) of this section. If a fee is charged under

this division, the director shall notify the applicant of the 2042  
amount of the fee at the time of the applicant's initial 2043  
application for employment and that, unless the fee is paid, the 2044  
director will not consider the applicant for employment. 2045

(M) The director shall adopt rules in accordance with Chapter 2046  
119. of the Revised Code to implement this section, including 2047  
rules specifying circumstances under which the director may employ 2048  
a person who has been convicted of or pleaded guilty to an offense 2049  
listed or described in division (E) of this section but who meets 2050  
standards in regard to rehabilitation set by the director. 2051

**Sec. 5123.50.** As used in this section and sections 5123.51 2052  
~~and, 5123.52, and 5123.541~~ of the Revised Code: 2053

(A) "Abuse" means all of the following: 2054

(1) The use of physical force that can reasonably be expected 2055  
to result in physical harm or serious physical harm; 2056

(2) Sexual abuse; 2057

(3) Verbal abuse. 2058

(B) "Misappropriation" means depriving, defrauding, or 2059  
otherwise obtaining the real or personal property of an individual 2060  
by any means prohibited by the Revised Code, including violations 2061  
of Chapter 2911. or 2913. of the Revised Code. 2062

(C) "MR/DD employee" means all of the following: 2063

(1) An employee of the department of mental retardation and 2064  
developmental disabilities; 2065

(2) An employee of a county board of mental retardation and 2066  
developmental disabilities; 2067

(3) An employee in a position that includes providing 2068  
specialized services to an individual with mental retardation or ~~a~~ 2069  
another developmental disability. 2070

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

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

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

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

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

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

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

section 2151.421 of the Revised Code. On receipt of a notice under 2101  
section 2930.061 or 5123.541 of the Revised Code, the department 2102  
shall review the notice. 2103  
2104

(B) The department shall do both of the following: 2105

(1) Investigate the allegation or adopt the findings of an 2106  
investigation or review of the allegation conducted by another 2107  
person or government entity and determine whether there is a 2108  
reasonable basis for the allegation; 2109

(2) If the department determines that there is a reasonable 2110  
basis for the allegation, conduct an adjudication pursuant to 2111  
Chapter 119. of the Revised Code. 2112

(C)(1) The department shall appoint an independent hearing 2113  
officer to conduct any hearing conducted pursuant to division 2114  
(B)(2) of this section, except that, if the hearing is regarding 2115  
an employee of the department who is represented by a union, the 2116  
department and a representative of the union shall jointly select 2117  
the hearing officer. 2118

(2) ~~No~~ (a) Except as provided in division (C)(2)(b) of this 2119  
section, no hearing shall be conducted under division (B)(2) of 2120  
this section until any criminal proceeding or collective 2121  
bargaining arbitration concerning the same allegation has 2122  
concluded. 2123

(b) The department may conduct a hearing pursuant to division 2124  
(B)(2) of this section before a criminal proceeding concerning the 2125  
same allegation is concluded if both of the following are the 2126  
case: 2127

(i) The department notifies the prosecutor responsible for 2128  
the criminal proceeding that the department proposes to conduct a 2129  
hearing. 2130

(ii) The prosecutor consents to the hearing. 2131

(3) In conducting a hearing pursuant to division (B)(2) of 2132  
this section, the hearing officer shall do ~~both~~ all of the 2133  
following: 2134

(a) Determine whether there is clear and convincing evidence 2135  
that the MR/DD employee has done any of the following: 2136

(i) Misappropriated the property of ~~an individual~~ one or more 2137  
individuals with mental retardation or a developmental disability 2138  
that has a value, either separately or taken together, of one 2139  
hundred dollars or more; 2140

(ii) Misappropriated property of an individual with mental 2141  
retardation or a developmental disability that is designed to be 2142  
used as a check, draft, negotiable instrument, credit card, charge 2143  
card, or device for initiating an electronic fund transfer at a 2144  
point of sale terminal, automated teller machine, or cash 2145  
dispensing machine; 2146

~~(ii)~~(iii) Knowingly abused ~~or neglected~~ such an individual; 2147

~~(iii)~~(iv) Recklessly abused or neglected such an individual, 2148  
with resulting physical harm; 2149

~~(iv)~~(v) Negligently abused or neglected such an individual, 2150  
with resulting serious physical harm; 2151

(vi) Recklessly neglected such an individual, creating a 2152  
substantial risk of serious physical harm; 2153

(vii) Engaged in sexual conduct or had sexual contact with an 2154  
individual with mental retardation or another developmental 2155  
disability who was not the MR/DD employee's spouse and for whom 2156  
the MR/DD employee was employed or under a contract to provide 2157  
care; 2158

(viii) Unreasonably failed to make a report pursuant to 2159  
division (C) of section 5123.61 of the Revised Code when the 2160

employee knew or should have known that the failure would result 2161  
in a substantial risk of harm to an individual with mental 2162  
retardation or a developmental disability. 2163

(b) Give weight to the decision in any collective bargaining 2164  
arbitration regarding the same allegation; 2165

(c) Give weight to any relevant facts presented at the 2166  
hearing. 2167

(D)(1) Unless the director of mental retardation and 2168  
developmental disabilities determines that there are extenuating 2169  
circumstances and except as provided in ~~divisions (D)(4) and~~ 2170  
division (E) of this section, the director shall include in the 2171  
registry established under section 5123.52 of the Revised Code the 2172  
name of an MR/DD employee if the director, after considering all 2173  
of the factors listed in division (C)(3) of this section, finds 2174  
that there is clear and convincing evidence that ~~the~~ an MR/DD 2175  
employee has done one or more of the things described in division 2176  
(C)(3)(a) of this section the director shall include the name of 2177  
the employee in the registry established under section 5123.52 of 2178  
the Revised Code. 2179

(2) Extenuating circumstances the director must consider 2180  
include the use of physical force by an MR/DD employee that was 2181  
necessary as self-defense. 2182

(3) If the director includes an MR/DD employee in the 2183  
registry established under section 5123.52 of the Revised Code, 2184  
the director shall notify the employee, the person or government 2185  
entity that employs or contracts with the employee, the individual 2186  
with mental retardation or a developmental disability who was the 2187  
subject of the report and that individual's legal guardian, if 2188  
any, the attorney general, and the prosecuting attorney or other 2189  
law enforcement agency. If the MR/DD employee holds a license, 2190  
certificate, registration, or other authorization to engage in a 2191

profession issued pursuant to Title XLVII of the Revised Code, the 2192  
director shall notify the appropriate agency, board, department, 2193  
or other entity responsible for regulating the employee's 2194  
professional practice. 2195

(4) ~~The director shall not include in the registry an~~ 2196  
~~individual who has been found not guilty by a court or jury of an~~ 2197  
~~offense arising from the same facts~~ If an individual whose name 2198  
appears on the registry is involved in a court proceeding or 2199  
arbitration arising from the same facts as the allegation 2200  
resulting in the individual's placement on the registry, the 2201  
disposition of the proceeding or arbitration shall be noted in the 2202  
registry next to the individual's name. 2203

(E) In the case of an allegation concerning an employee of 2204  
the department, after the hearing conducted pursuant to division 2205  
(B)(2) of this section, the director of health or that director's 2206  
designee shall review the decision of the hearing officer to 2207  
determine whether the standard described in division (C)~~(2)~~(3) of 2208  
this section has been met. If the director or designee determines 2209  
that the standard has been met and that no extenuating 2210  
circumstances exist, the director or designee shall notify the 2211  
director of mental retardation and developmental disabilities that 2212  
the MR/DD employee is to be included in the registry established 2213  
under section 5123.52 of the Revised Code. If the director of 2214  
mental retardation and developmental disabilities receives such 2215  
notification, the director shall include the MR/DD employee in the 2216  
registry, ~~unless division (D)(4) of this section applies,~~ and 2217  
shall provide the notification described in division (D)(3) of 2218  
this section. 2219

(F) If the department is required by Chapter 119. of the 2220  
Revised Code to give notice of an opportunity for a hearing and 2221  
the MR/DD employee subject to the notice does not timely request a 2222  
hearing in accordance with section 119.07 of the Revised Code, the 2223



department is not required to hold a hearing. 2224

(G) Files and records of investigations conducted pursuant to 2225  
this section are not public records as defined in section 149.43 2226  
of the Revised Code, but, on request, the department shall provide 2227  
copies of those files and records to the attorney general, a 2228  
prosecuting attorney, or a law enforcement agency. 2229

Sec. 5123.541. (A) No MR/DD employee shall engage in any 2230  
sexual conduct or have any sexual contact with an individual with 2231  
mental retardation or another developmental disability for whom 2232  
the MR/DD employee is employed or under a contract to provide care 2233  
unless the individual is the MR/DD employee's spouse. 2234

(B) Any MR/DD employee who violates division (A) of this 2235  
section shall be eligible to be included in the registry regarding 2236  
misappropriation, abuse, neglect, or other specified misconduct by 2237  
MR/DD employees established under section 5123.52 of the Revised 2238  
Code, in addition to any other sanction or penalty authorized or 2239  
required by law. 2240

(C)(1) Any person listed in division (C)(2) of section 2241  
5123.61 of the Revised Code who has reason to believe that an 2242  
MR/DD employee has violated division (A) of this section shall 2243  
immediately report that belief to the department of mental 2244  
retardation and developmental disabilities. 2245

(2) Any person who has reason to believe that an MR/DD 2246  
employee has violated division (A) of this section may report that 2247  
belief to the department of mental retardation and developmental 2248  
disabilities. 2249

Sec. 5123.542. (A) Each of the following shall annually 2250  
provide a written notice to each of its MR/DD employees explaining 2251  
the conduct for which an MR/DD employee may be included in the 2252  
registry established under section 5123.52 of the Revised Code: 2253

<u>(1) The department of mental retardation and developmental</u>	2254
<u>disabilities;</u>	2255
<u>(2) Each county board of mental retardation and developmental</u>	2256
<u>disabilities;</u>	2257
<u>(3) Each contracting entity, as defined in section 5126.281</u>	2258
<u>of the Revised Code;</u>	2259
<u>(4) Each owner, operator, or administrator of a residential</u>	2260
<u>facility, as defined in section 5123.19 of the Revised Code;</u>	2261
<u>(5) Each owner, operator, or administrator of a program</u>	2262
<u>certified by the department to provide supported living.</u>	2263
<u>(B) The notice described in division (A) of this section</u>	2264
<u>shall be in a form and provided in a manner prescribed by the</u>	2265
<u>department of mental retardation and developmental disabilities.</u>	2266
<u>The form shall be the same for all persons and entities required</u>	2267
<u>to provide notice under division (A) of this section.</u>	2268
<u>(C) The fact that an MR/DD employee does not receive the</u>	2269
<u>notice required by this section does not exempt the employee from</u>	2270
<u>inclusion in the registry established under section 5123.52 of the</u>	2271
<u>Revised Code.</u>	2272
<b>Sec. 5123.61.</b> (A) As used in this section:	2273
(1) "Law enforcement agency" means the state highway patrol,	2274
the police department of a municipal corporation, or a county	2275
sheriff.	2276
(2) "Abuse" has the same meaning as in section 5123.50 of the	2277
Revised Code, except that it includes a misappropriation, as	2278
defined in that section.	2279
(3) "Neglect" has the same meaning as in section 5123.50 of	2280
the Revised Code.	2281
(B) The department of mental retardation and developmental	2282

disabilities shall establish a registry office for the purpose of 2283  
maintaining reports of abuse, neglect, and other major unusual 2284  
incidents made to the department under this section and reports 2285  
received from county boards of mental retardation and 2286  
developmental disabilities under section 5126.31 of the Revised 2287  
Code. The department shall establish committees to review reports 2288  
of abuse, neglect, and other major unusual incidents. 2289

(C)(1) Any person listed in division (C)(2) of this section, 2290  
having reason to believe that a person with mental retardation or 2291  
a developmental disability has suffered or faces a substantial 2292  
risk of suffering any wound, injury, disability, or condition of 2293  
such a nature as to reasonably indicate abuse or neglect of that 2294  
person, shall immediately report or cause reports to be made of 2295  
such information to the entity specified in this division. Except 2296  
as provided in section 5120.173 of the Revised Code or as 2297  
otherwise provided in this division, the person making the report 2298  
shall make it to a law enforcement agency or to the county board 2299  
of mental retardation and developmental disabilities, ~~except that~~ 2300  
~~if.~~ If the report concerns a resident of a facility operated by 2301  
the department of mental retardation and developmental 2302  
disabilities the report shall be made either to a law enforcement 2303  
agency or to the department. If the report concerns any act or 2304  
omission of an employee of a county board of mental retardation 2305  
and developmental disabilities, the report immediately shall be 2306  
made to the department and to the county board. 2307

(2) All of the following persons are required to make a 2308  
report under division (C)(1) of this section: 2309

(a) Any physician, including a hospital intern or resident, 2310  
any dentist, podiatrist, chiropractor, practitioner of a limited 2311  
branch of medicine as specified in section 4731.15 of the Revised 2312  
Code, hospital administrator or employee of a hospital, nurse 2313  
licensed under Chapter 4723. of the Revised Code, employee of an 2314

ambulatory health facility as defined in section 5101.61 of the Revised Code, employee of a home health agency, employee of an adult care facility licensed under Chapter 3722. of the Revised Code, or employee of a community mental health facility;

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

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

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

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

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

employees of the legal rights service. 2346

(b) An attorney or physician is not required to make a report 2347  
pursuant to division (C)(1) of this section concerning any 2348  
communication the attorney or physician receives from a client or 2349  
patient in an attorney-client or physician-patient relationship, 2350  
if, in accordance with division (A) or (B) of section 2317.02 of 2351  
the Revised Code, the attorney or physician could not testify with 2352  
respect to that communication in a civil or criminal proceeding, 2353  
except that the client or patient is deemed to have waived any 2354  
testimonial privilege under division (A) or (B) of section 2317.02 2355  
of the Revised Code with respect to that communication and the 2356  
attorney or physician shall make a report pursuant to division 2357  
(C)(1) of this section, if both of the following apply: 2358

(i) The client or patient, at the time of the communication, 2359  
is a person with mental retardation or a developmental disability. 2360

(ii) The attorney or physician knows or suspects, as a result 2361  
of the communication or any observations made during that 2362  
communication, that the client or patient has suffered or faces a 2363  
substantial risk of suffering any wound, injury, disability, or 2364  
condition of a nature that reasonably indicates abuse or neglect 2365  
of the client or patient. 2366

(4) Any person who fails to make a report required under 2367  
division (C) of this section and who is an MR/DD employee, as 2368  
defined in section 5123.50 of the Revised Code, shall be eligible 2369  
to be included in the registry regarding misappropriation, abuse, 2370  
neglect, or other specified misconduct by MR/DD employees 2371  
established under section 5123.52 of the Revised Code. 2372

(D) The reports required under division (C) of this section 2373  
shall be made forthwith by telephone or in person and shall be 2374  
followed by a written report. The reports shall contain the 2375  
following: 2376

(1) The names and addresses of the person with mental 2377  
retardation or a developmental disability and the person's 2378  
custodian, if known; 2379

(2) The age of the person with mental retardation or a 2380  
developmental disability; 2381

(3) Any other information that would assist in the 2382  
investigation of the report. 2383

(E) When a physician performing services as a member of the 2384  
staff of a hospital or similar institution has reason to believe 2385  
that a person with mental retardation or a developmental 2386  
disability has suffered injury, abuse, or physical neglect, the 2387  
physician shall notify the person in charge of the institution or 2388  
that person's designated delegate, who shall make the necessary 2389  
reports. 2390

(F) Any person having reasonable cause to believe that a 2391  
person with mental retardation or a developmental disability has 2392  
suffered or faces a substantial risk of suffering abuse or neglect 2393  
may report ~~the belief~~, or cause a report to be made, of that 2394  
belief to the entity specified in this division. Except as 2395  
provided in section 5120.173 of the Revised Code or as otherwise 2396  
provided in this division, the person making the report shall make 2397  
it to a law enforcement agency or the county board of mental 2398  
retardation and developmental disabilities, ~~or, if,~~ If the person 2399  
is a resident of a facility operated by the department of mental 2400  
retardation and developmental disabilities, the report shall be 2401  
made to a law enforcement agency or to the department. If the 2402  
report concerns any act or omission of an employee of a county 2403  
board of mental retardation and developmental disabilities, the 2404  
report immediately shall be made to the department and to the 2405  
county board. 2406

(G)(1) Upon the receipt of a report concerning the possible 2407

abuse or neglect of a person with mental retardation or a 2408  
developmental disability, the law enforcement agency shall inform 2409  
the county board of mental retardation and developmental 2410  
disabilities or, if the person is a resident of a facility 2411  
operated by the department of mental retardation and developmental 2412  
disabilities, the director of the department or the director's 2413  
designee. 2414

(2) On receipt of a report under this section that includes 2415  
an allegation of action or inaction that may constitute a crime 2416  
under federal law or the law of this state, the department of 2417  
mental retardation and developmental disabilities shall notify the 2418  
law enforcement agency. 2419

(3) When a county board of mental retardation and 2420  
developmental disabilities receives a report under this section 2421  
that includes an allegation of action or inaction that may 2422  
constitute a crime under federal law or the law of this state, the 2423  
superintendent of the board or an individual the superintendent 2424  
designates under division (H) of this section shall notify the law 2425  
enforcement agency. The superintendent or individual shall notify 2426  
the department of mental retardation and developmental 2427  
disabilities when it receives any report under this section. 2428

(4) When a county board of mental retardation and 2429  
developmental disabilities receives a report under this section 2430  
and believes that the degree of risk to the person is such that 2431  
the report is an emergency, the superintendent of the board or an 2432  
employee of the board the superintendent designates shall attempt 2433  
a face-to-face contact with the person with mental retardation or 2434  
a developmental disability who allegedly is the victim within one 2435  
hour of the board's receipt of the report. 2436

(H) The superintendent of the board may designate an 2437  
individual to be responsible for notifying the law enforcement 2438  
agency and the department when the county board receives a report 2439

under this section. 2440

(I) An adult with mental retardation or a developmental 2441  
disability about whom a report is made may be removed from the 2442  
adult's place of residence only by law enforcement officers who 2443  
consider that the adult's immediate removal is essential to 2444  
protect the adult from further injury or abuse or in accordance 2445  
with the order of a court made pursuant to section 5126.33 of the 2446  
Revised Code. 2447

(J) A law enforcement agency shall investigate each report of 2448  
abuse or neglect it receives under this section. In addition, the 2449  
department, in cooperation with law enforcement officials, shall 2450  
investigate each report regarding a resident of a facility 2451  
operated by the department to determine the circumstances 2452  
surrounding the injury, the cause of the injury, and the person 2453  
responsible. The investigation shall be in accordance with the 2454  
memorandum of understanding prepared under section 5126.058 of the 2455  
Revised Code. The department shall determine, with the registry 2456  
office which shall be maintained by the department, whether prior 2457  
reports have been made concerning ~~and~~ an adult with mental 2458  
retardation or a developmental disability or other principals in 2459  
the case. If the department finds that the report involves action 2460  
or inaction that may constitute a crime under federal law or the 2461  
law of this state, it shall submit a report of its investigation, 2462  
in writing, to the law enforcement agency. If the person with 2463  
mental retardation or a developmental disability is an adult, with 2464  
the consent of the adult, the department shall provide such 2465  
protective services as are necessary to protect the adult. The law 2466  
enforcement agency shall make a written report of its findings to 2467  
the department. 2468

If the person is an adult and is not a resident of a facility 2469  
operated by the department, the county board of mental retardation 2470  
and developmental disabilities shall review the report of abuse or 2471



neglect in accordance with sections 5126.30 to 5126.33 of the 2472  
Revised Code and the law enforcement agency shall make the written 2473  
report of its findings to the county board. 2474

(K) Any person or any hospital, institution, school, health 2475  
department, or agency participating in the making of reports 2476  
pursuant to this section, any person participating as a witness in 2477  
an administrative or judicial proceeding resulting from the 2478  
reports, or any person or governmental entity that discharges 2479  
responsibilities under sections 5126.31 to 5126.33 of the Revised 2480  
Code shall be immune from any civil or criminal liability that 2481  
might otherwise be incurred or imposed as a result of such actions 2482  
except liability for perjury, unless the person or governmental 2483  
entity has acted in bad faith or with malicious purpose. 2484

(L) No employer or any person with the authority to do so 2485  
shall discharge, demote, transfer, prepare a negative work 2486  
performance evaluation, reduce pay or benefits, terminate work 2487  
privileges, or take any other action detrimental to an employee or 2488  
retaliate against an employee as a result of the employee's having 2489  
made a report under this section. This division does not preclude 2490  
an employer or person with authority from taking action with 2491  
regard to an employee who has made a report under this section if 2492  
there is another reasonable basis for the action. 2493

(M) Reports made under this section are not public records as 2494  
defined in section 149.43 of the Revised Code. Information 2495  
contained in the reports on request shall be made available to the 2496  
person who is the subject of the report, to the person's legal 2497  
counsel, and to agencies authorized to receive information in the 2498  
report by the department or by a county board of mental 2499  
retardation and developmental disabilities. 2500

(N) Notwithstanding section 4731.22 of the Revised Code, the 2501  
physician-patient privilege shall not be a ground for excluding 2502  
evidence regarding the injuries or physical neglect of a person 2503

with mental retardation or a developmental disability or the cause 2504  
thereof in any judicial proceeding resulting from a report 2505  
submitted pursuant to this section. 2506

Sec. 5123.614. (A) Subject to division (B) of this section, 2507  
on receipt of a report of a major unusual incident made pursuant 2508  
to section 5123.61 or 5126.31 of the Revised Code or rules adopted 2509  
under section 5123.612 of the Revised Code, the department of 2510  
mental retardation and developmental disabilities may do either of 2511  
the following: 2512

(1) Conduct an independent review or investigation of the 2513  
incident; 2514

(2) Request that an independent review or investigation of 2515  
the incident be conducted by a county board of mental retardation 2516  
and developmental disabilities that is not implicated in the 2517  
report, a regional council of government, or any other entity 2518  
authorized to conduct such investigations. 2519

(B) If a report described in division (A) of this section 2520  
concerning the health or safety of a person with mental 2521  
retardation or a developmental disability involves an allegation 2522  
that an employee of a county board of mental retardation and 2523  
developmental disabilities has created a substantial risk of 2524  
serious physical harm to a person with mental retardation or a 2525  
developmental disability, the department shall do one of the 2526  
following: 2527

(1) Conduct an independent investigation regarding the 2528  
incident; 2529

(2) Request that an independent review or investigation of 2530  
the incident be conducted by a county board of mental retardation 2531  
and developmental disabilities that is not implicated in the 2532  
report, a regional council of government, or any other entity 2533

authorized to conduct such investigations.

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

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

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

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(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.

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**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:

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

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(2) If there is more than one probate judge in the county, a

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probate judge or the probate judge's representative selected by 2563  
the probate judges or, if they are unable to do so for any reason, 2564  
the probate judge who is senior in point of service or the senior 2565  
probate judge's representative; 2566

(3) The county peace officer; 2567

(4) All chief municipal peace officers within the county; 2568

(5) Other law enforcement officers handling abuse, neglect, 2569  
and exploitation of mentally retarded and developmentally disabled 2570  
persons in the county; 2571

(6) The prosecuting attorney of the county; 2572

(7) The public children services agency; 2573

(8) The coroner of the county. 2574

(B) A memorandum of understanding shall set forth the normal 2575  
operating procedure to be employed by all concerned officials in 2576  
the execution of their respective responsibilities under this 2577  
section and sections 313.12, 2151.421, 2903.16, 5126.31, and 2578  
5126.33 of the Revised Code and shall have as its primary goal the 2579  
elimination of all unnecessary interviews of persons who are the 2580  
subject of reports made pursuant to this section. A failure to 2581  
follow the procedure set forth in the memorandum by the concerned 2582  
officials is not grounds for, and shall not result in, the 2583  
dismissal of any charge or complaint arising from any reported 2584  
case of abuse, neglect, or exploitation or the suppression of any 2585  
evidence obtained as a result of any reported abuse, neglect, or 2586  
exploitation and does not give any rights or grounds for appeal or 2587  
post-conviction relief to any person. 2588

(C) A memorandum of understanding shall include, but is not 2589  
limited to, all of the following: 2590

(1) The roles and responsibilities for handling emergency and 2591  
nonemergency cases of abuse, neglect, or exploitation; 2592

(2) The roles and responsibilities for handling and 2593  
coordinating investigations of reported cases of abuse, neglect, 2594  
or exploitation and methods to be used in interviewing the person 2595  
who is the subject of the report and who allegedly was abused, 2596  
neglected, or exploited; 2597

(3) The roles and responsibilities for addressing the 2598  
categories of persons who may interview the person who is the 2599  
subject of the report and who allegedly was abused, neglected, or 2600  
exploited; 2601

(4) The roles and responsibilities for providing victim 2602  
services to mentally retarded and developmentally disabled persons 2603  
pursuant to Chapter 2930. of the Revised Code; 2604

(5) The roles and responsibilities for the filing of criminal 2605  
charges against persons alleged to have abused, neglected, or 2606  
exploited mentally retarded or developmentally disabled persons. 2607

(D) A memorandum of understanding may be signed by victim 2608  
advocates, municipal court judges, municipal prosecutors, and any 2609  
other person whose participation furthers the goals of a 2610  
memorandum of understanding, as set forth in this section. 2611

**Sec. 5126.28.** (A) As used in this section: 2612

(1) "Applicant" means a person who is under final 2613  
consideration for appointment or employment in a position with a 2614  
county board of mental retardation and developmental disabilities, 2615  
including, but not limited to, a person who is being transferred 2616  
to the county board and an employee who is being recalled or 2617  
reemployed after a layoff. 2618

(2) "Criminal records check" has the same meaning as in 2619  
section 109.572 of the Revised Code. 2620

(3) "Minor drug possession offense" has the same meaning as 2621  
in section 2925.01 of the Revised Code. 2622

(B) The superintendent of a county board of mental 2623  
retardation and developmental disabilities shall request the 2624  
superintendent of the bureau of criminal identification and 2625  
investigation to conduct a criminal records check with respect to 2626  
any applicant who has applied to the board for employment in any 2627  
position, except that a county board superintendent is not 2628  
required to request a criminal records check for an employee of 2629  
the board who is being considered for a different position or is 2630  
returning after a leave of absence or seasonal break in 2631  
employment, as long as the superintendent has no reason to believe 2632  
that the employee has committed any of the offenses listed or 2633  
described in division (E) of this section. 2634

If the applicant does not present proof that the applicant 2635  
has been a resident of this state for the five-year period 2636  
immediately prior to the date upon which the criminal records 2637  
check is requested, the county board superintendent shall request 2638  
that the superintendent of the bureau obtain information from the 2639  
federal bureau of investigation as a part of the criminal records 2640  
check for the applicant. If the applicant presents proof that the 2641  
applicant has been a resident of this state for that five-year 2642  
period, the county board superintendent may request that the 2643  
superintendent of the bureau include information from the federal 2644  
bureau of investigation in the criminal records check. For 2645  
purposes of this division, an applicant may provide proof of 2646  
residency in this state by presenting, with a notarized statement 2647  
asserting that the applicant has been a resident of this state for 2648  
that five-year period, a valid driver's license, notification of 2649  
registration as an elector, a copy of an officially filed federal 2650  
or state tax form identifying the applicant's permanent residence, 2651  
or any other document the superintendent considers acceptable. 2652

(C) The county board superintendent shall provide to each 2653  
applicant a copy of the form prescribed pursuant to division 2654

(C)(1) of section 109.572 of the Revised Code, provide to each 2655  
applicant a standard impression sheet to obtain fingerprint 2656  
impressions prescribed pursuant to division (C)(2) of section 2657  
109.572 of the Revised Code, obtain the completed form and 2658  
impression sheet from each applicant, and forward the completed 2659  
form and impression sheet to the superintendent of the bureau of 2660  
criminal identification and investigation at the time the criminal 2661  
records check is requested. 2662

Any applicant who receives pursuant to this division a copy 2663  
of the form prescribed pursuant to division (C)(1) of section 2664  
109.572 of the Revised Code and a copy of an impression sheet 2665  
prescribed pursuant to division (C)(2) of that section and who is 2666  
requested to complete the form and provide a set of fingerprint 2667  
impressions shall complete the form or provide all the information 2668  
necessary to complete the form and shall provide the impression 2669  
sheet with the impressions of the applicant's fingerprints. If an 2670  
applicant, upon request, fails to provide the information 2671  
necessary to complete the form or fails to provide impressions of 2672  
the applicant's fingerprints, the county board superintendent 2673  
shall not employ that applicant. 2674

(D) A county board superintendent may request any other state 2675  
or federal agency to supply the board with a written report 2676  
regarding the criminal record of each applicant. With regard to an 2677  
applicant who becomes a board employee, if the employee holds an 2678  
occupational or professional license or other credentials, the 2679  
superintendent may request that the state or federal agency that 2680  
regulates the employee's occupation or profession supply the board 2681  
with a written report of any information pertaining to the 2682  
employee's criminal record that the agency obtains in the course 2683  
of conducting an investigation or in the process of renewing the 2684  
employee's license or other credentials. 2685

(E) Except as provided in division (K)(2) of this section and 2686

in rules adopted by the department of mental retardation and 2687  
developmental disabilities in accordance with division (M) of this 2688  
section, no county board of mental retardation and developmental 2689  
disabilities shall employ a person to fill a position with the 2690  
board who has been convicted of or pleaded guilty to any of the 2691  
following: 2692

(1) A violation of section 2903.01, 2903.02, 2903.03, 2693  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2694  
2903.341, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2695  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2696  
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2697  
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2698  
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2699  
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 2700  
section 2905.04 of the Revised Code as it existed prior to July 1, 2701  
1996, a violation of section 2919.23 of the Revised Code that 2702  
would have been a violation of section 2905.04 of the Revised Code 2703  
as it existed prior to July 1, 1996, had the violation occurred 2704  
prior to that date, a violation of section 2925.11 of the Revised 2705  
Code that is not a minor drug possession offense, or felonious 2706  
sexual penetration in violation of former section 2907.12 of the 2707  
Revised Code; 2708

(2) A felony contained in the Revised Code that is not listed 2709  
in this division, if the felony bears a direct and substantial 2710  
relationship to the duties and responsibilities of the position 2711  
being filled; 2712

(3) Any offense contained in the Revised Code constituting a 2713  
misdemeanor of the first degree on the first offense and a felony 2714  
on a subsequent offense, if the offense bears a direct and 2715  
substantial relationship to the position being filled and the 2716  
nature of the services being provided by the county board; 2717

(4) A violation of an existing or former municipal ordinance 2718



or law of this state, any other state, or the United States, if 2719  
the offense is substantially equivalent to any of the offenses 2720  
listed or described in division (E)(1), (2), or (3) of this 2721  
section. 2722

(F) Prior to employing an applicant, the county board 2723  
superintendent shall require the applicant to submit a statement 2724  
with the applicant's signature attesting that the applicant has 2725  
not been convicted of or pleaded guilty to any of the offenses 2726  
listed or described in division (E) of this section. The 2727  
superintendent also shall require the applicant to sign an 2728  
agreement under which the applicant agrees to notify the 2729  
superintendent within fourteen calendar days if, while employed by 2730  
the board, the applicant is ever formally charged with, convicted 2731  
of, or pleads guilty to any of the offenses listed or described in 2732  
division (E) of this section. The agreement shall inform the 2733  
applicant that failure to report formal charges, a conviction, or 2734  
a guilty plea may result in being dismissed from employment. 2735

(G) A county board of mental retardation and developmental 2736  
disabilities shall pay to the bureau of criminal identification 2737  
and investigation the fee prescribed pursuant to division (C)(3) 2738  
of section 109.572 of the Revised Code for each criminal records 2739  
check requested and conducted pursuant to this section. 2740

(H)(1) Any report obtained pursuant to this section is not a 2741  
public record for purposes of section 149.43 of the Revised Code 2742  
and shall not be made available to any person, other than the 2743  
applicant who is the subject of the records check or criminal 2744  
records check or the applicant's representative, the board 2745  
requesting the records check or criminal records check or its 2746  
representative, the department of mental retardation and 2747  
developmental disabilities, and any court, hearing officer, or 2748  
other necessary individual involved in a case dealing with the 2749  
denial of employment to the applicant or the denial, suspension, 2750

or revocation of a certificate or evidence of registration under 2751  
section 5126.25 of the Revised Code. 2752

(2) An individual for whom a county board superintendent has 2753  
obtained reports under this section may submit a written request 2754  
to the county board to have copies of the reports sent to any 2755  
state agency, entity of local government, or private entity. The 2756  
individual shall specify in the request the agencies or entities 2757  
to which the copies are to be sent. On receiving the request, the 2758  
county board shall send copies of the reports to the agencies or 2759  
entities specified. 2760

A county board may request that a state agency, entity of 2761  
local government, or private entity send copies to the board of 2762  
any report regarding a records check or criminal records check 2763  
that the agency or entity possesses, if the county board obtains 2764  
the written consent of the individual who is the subject of the 2765  
report. 2766

(I) Each county board superintendent shall request the 2767  
registrar of motor vehicles to supply the superintendent with a 2768  
certified abstract regarding the record of convictions for 2769  
violations of motor vehicle laws of each applicant who will be 2770  
required by the applicant's employment to transport individuals 2771  
with mental retardation or developmental disabilities or to 2772  
operate the board's vehicles for any other purpose. For each 2773  
abstract provided under this section, the board shall pay the 2774  
amount specified in section 4509.05 of the Revised Code. 2775

(J) The county board superintendent shall provide each 2776  
applicant with a copy of any report or abstract obtained about the 2777  
applicant under this section. At the request of the director of 2778  
mental retardation and developmental disabilities, the 2779  
superintendent also shall provide the director with a copy of a 2780  
report or abstract obtained under this section. 2781

(K)(1) The county board superintendent shall inform each 2782  
person, at the time of the person's initial application for 2783  
employment, that the person is required to provide a set of 2784  
impressions of the person's fingerprints and that a criminal 2785  
records check is required to be conducted and satisfactorily 2786  
completed in accordance with section 109.572 of the Revised Code 2787  
if the person comes under final consideration for appointment or 2788  
employment as a precondition to employment in a position. 2789

(2) A board may employ an applicant pending receipt of 2790  
reports requested under this section. The board shall terminate 2791  
employment of any such applicant if it is determined from the 2792  
reports that the applicant failed to inform the county board that 2793  
the applicant had been convicted of or pleaded guilty to any of 2794  
the offenses listed or described in division (E) of this section. 2795

(L) The board may charge an applicant a fee for costs it 2796  
incurs in obtaining reports, abstracts, or fingerprint impressions 2797  
under this section. A fee charged under this division shall not 2798  
exceed the amount of the fees the board pays under divisions (G) 2799  
and (I) of this section. If a fee is charged under this division, 2800  
the board shall notify the applicant of the amount of the fee at 2801  
the time of the applicant's initial application for employment and 2802  
that, unless the fee is paid, the board will not consider the 2803  
applicant for employment. 2804

(M) The department of mental retardation and developmental 2805  
disabilities shall adopt rules pursuant to Chapter 119. of the 2806  
Revised Code to implement this section and section 5126.281 of the 2807  
Revised Code, including rules specifying circumstances under which 2808  
a county board or contracting entity may hire a person who has 2809  
been convicted of or pleaded guilty to an offense listed or 2810  
described in division (E) of this section but who meets standards 2811  
in regard to rehabilitation set by the department. The rules may 2812  
not authorize a county board or contracting entity to hire an 2813

individual who is included in the registry established under 2814  
section 5123.52 of the Revised Code. 2815

**Sec. 5126.30.** As used in sections 5126.30 to 5126.34 of the 2816  
Revised Code: 2817

(A) "Adult" means a person eighteen years of age or older 2818  
with mental retardation or a developmental disability. 2819

(B) "Caretaker" means a person who is responsible for the 2820  
care of an adult by order of a court, including an order of 2821  
guardianship, or who assumes the responsibility for the care of an 2822  
adult as a volunteer, as a family member, by contract, or by the 2823  
acceptance of payment for care. 2824

(C) "Abuse" has the same meaning as in section 5123.50 of the 2825  
Revised Code, except that it includes a misappropriation, as 2826  
defined in that section. 2827

(D) "Neglect" has the same meaning as in section 5123.50 of 2828  
the Revised Code. 2829

(E) "Exploitation" means the unlawful or improper act of a 2830  
caretaker using an adult or an adult's resources for monetary or 2831  
personal benefit, profit, or gain, including misappropriation, as 2832  
defined in section 5123.50 of the Revised Code, of an adult's 2833  
resources. 2834

(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, 2835  
or Friday, except when that day is a holiday as defined in section 2836  
1.14 of the Revised Code. 2837

~~(F)~~(G) "Incapacitated" means lacking understanding or 2838  
capacity, with or without the assistance of a caretaker, to make 2839  
and carry out decisions regarding food, clothing, shelter, health 2840  
care, or other necessities, but does not include mere refusal to 2841  
consent to the provision of services. 2842

(H) "Emergency protective services" means protective services 2843

furnished to a person with mental retardation or a developmental 2844  
disability to prevent immediate physical harm. 2845

(I) "Protective services" means services provided by the 2846  
county board of mental retardation and developmental disabilities 2847  
to an adult with mental retardation or a developmental disability 2848  
for the prevention, correction, or discontinuance of an act of as 2849  
well as conditions resulting from abuse, neglect, or exploitation. 2850

(J) "Protective service plan" means an individualized plan 2851  
developed by the county board of mental retardation and 2852  
developmental disabilities to prevent the further abuse, neglect, 2853  
or exploitation of an adult with mental retardation or a 2854  
developmental disability. 2855

(K) "Substantial risk" has the same meaning as in section 2856  
2901.01 of the Revised Code. 2857

(L) "Party" means all of the following: 2858

(1) An adult who is the subject of a probate proceeding under 2859  
sections 5126.30 to 5126.33 of the Revised Code; 2860

(2) A caretaker, unless otherwise ordered by the probate 2861  
court; 2862

(3) Any other person designated as a party by the probate 2863  
court including but not limited to, the adult's spouse, custodian, 2864  
guardian, or parent. 2865

(M) "Board" has the same meaning as in section 5126.02 of the 2866  
Revised Code. 2867

**Sec. 5126.33.** (A) A county board of mental retardation and 2868  
developmental disabilities may file a complaint with the probate 2869  
court of the county in which an adult with mental retardation or a 2870  
developmental disability resides for an order authorizing the 2871  
board to arrange services described in division (C) of section 2872

5126.31 of the Revised Code for that adult if the adult is 2873  
eligible to receive services or support under section 5126.041 of 2874  
the Revised Code and the board has been unable to secure consent. 2875  
The complaint shall include: 2876

(1) The name, age, and address of the adult; 2877

(2) Facts describing the nature of the abuse ~~or~~, neglect, or 2878  
exploitation and supporting the board's belief that services are 2879  
needed; 2880

(3) The types of services proposed by the board, as set forth 2881  
in the ~~individualized protective service plan prepared pursuant to~~ 2882  
described in division (J) of section 5126.31 5126.30 of the 2883  
Revised Code and filed with the complaint; 2884

(4) Facts showing the board's attempts to obtain the consent 2885  
of the adult or the adult's guardian to the services. 2886

(B) The board shall give the adult notice of the filing of 2887  
the complaint and in simple and clear language shall inform the 2888  
adult of the adult's rights in the hearing under division (C) of 2889  
this section and explain the consequences of a court order. This 2890  
notice shall be personally served upon ~~the adult~~ all parties, and 2891  
also shall be given to ~~the adult's caretaker~~, the adult's legal 2892  
counsel, if any, and the legal rights service. The notice shall be 2893  
given at least twenty-four hours prior to the hearing, although 2894  
the court may waive this requirement upon a showing that there is 2895  
a substantial risk that the adult will suffer immediate physical 2896  
harm in the twenty-four hour period and that the board has made 2897  
reasonable attempts to give the notice required by this division. 2898

(C) Upon the filing of a complaint for an order under this 2899  
section, the court shall hold a hearing at least twenty-four hours 2900  
and no later than seventy-two hours after the notice under 2901  
division (B) of this section has been given unless the court has 2902

waived the notice. ~~The adult~~ All parties shall have the right to 2903  
be present at the hearing, present evidence, and examine and 2904  
cross-examine witnesses. The Ohio Rules of Evidence shall apply to 2905  
a hearing conducted pursuant to this division. The adult shall be 2906  
represented by counsel unless the court finds that the adult has 2907  
made a voluntary, informed, and knowing waiver of the right to 2908  
counsel. If the adult is indigent, the court shall appoint counsel 2909  
to represent the adult. The board shall be represented by the 2910  
county prosecutor or an attorney designated by the board. 2911

(D)(1) The court shall issue an order authorizing the board 2912  
to arrange the protective services if it finds, on the basis of 2913  
clear and convincing evidence, all of the following: 2914

(a) The adult has been abused ~~or~~, neglected, or exploited; 2915

(b) The adult is incapacitated; 2916

(c) There is a substantial risk to the adult of immediate 2917  
physical harm or death; 2918

(d) The adult is in need of the services; 2919

(e) No person authorized by law or court order to give 2920  
consent for the adult is available or willing to consent to the 2921  
services. 2922

(2) The board shall develop a detailed protective service 2923  
plan describing the services that the board will provide, or 2924  
arrange for the provision of, to the adult to prevent further 2925  
abuse, neglect, or exploitation. The board shall submit the plan 2926  
to the court for approval. The protective service plan may be 2927  
changed only by court order. 2928

(3) In formulating the order, the court shall consider the 2929  
individual protective service plan and shall specifically 2930  
designate the services that are necessary to deal with the abuse 2931  
~~or~~, neglect, or exploitation or condition resulting from abuse ~~or~~, 2932

neglect, or exploitation and that are available locally, and 2933  
authorize the board to arrange for these services only. The court 2934  
shall limit the provision of these services to a period not 2935  
exceeding ~~fourteen days~~ six months, renewable for an additional 2936  
~~fourteen-day~~ six-month period on a showing by the board that 2937  
continuation of the order is necessary. 2938

(E) If the court finds that all other options for meeting the 2939  
adult's needs have been exhausted, it may order that the adult be 2940  
removed from the adult's place of residence and placed in another 2941  
residential setting. Before issuing that order, the court shall 2942  
consider the adult's choice of residence and shall determine that 2943  
the new residential setting is the least restrictive alternative 2944  
available for meeting the adult's needs and is a place where the 2945  
adult can obtain the necessary requirements for daily living in 2946  
safety. The court shall not order an adult to a hospital or public 2947  
hospital as defined in section 5122.01 or a state institution as 2948  
defined in section 5123.01 of the Revised Code. 2949

(F) The court shall not authorize a change in an adult's 2950  
placement ordered under division (E) of this section unless it 2951  
finds compelling reasons to justify a change. The parties to whom 2952  
notice was given in division (B) of this section shall be given 2953  
notice of a proposed change at least five working days prior to 2954  
the change. 2955

(G) The adult, the board, or any other person who received 2956  
notice of the petition may file a motion for modification of the 2957  
court order at any time. 2958

(H) The county board shall pay court costs incurred in 2959  
proceedings brought pursuant to this section. The adult shall not 2960  
be required to pay for court-ordered services. 2961

(I)(1) After the filing of a complaint for an order under 2962  
this section, the court, prior to the final disposition, may enter 2963



any temporary order that the court finds necessary to protect the 2964  
adult with mental retardation or a developmental disability from 2965  
abuse, neglect, or exploitation including, but not limited to, the 2966  
following: 2967

(a) A temporary protection order; 2968

(b) An order requiring the evaluation of the adult; 2969

(c) An order requiring a party to vacate the adult's place of 2970  
residence or legal settlement, provided that, subject to division 2971  
(K)(1)(d) of this section, no operator of a residential facility 2972  
licensed by the department may be removed under this division; 2973

(d) In the circumstances described in, and in accordance with 2974  
the procedures set forth in, section 5123.191 of the Revised Code, 2975  
an order of the type described in that section that appoints a 2976  
receiver to take possession of and operate a residential facility 2977  
licensed by the department. 2978

(2) The court may grant an ex parte order pursuant to this 2979  
division on its own motion or if a party files a written motion or 2980  
makes an oral motion requesting the issuance of the order and 2981  
stating the reasons for it if it appears to the court that the 2982  
best interest and the welfare of the adult require that the court 2983  
issue the order immediately. The court, if acting on its own 2984  
motion, or the person requesting the granting of an ex parte 2985  
order, to the extent possible, shall give notice of its intent or 2986  
of the request to all parties, the adult's legal counsel, if any, 2987  
and the legal rights service. If the court issues an ex parte 2988  
order, the court shall hold a hearing to review the order within 2989  
seventy-two hours after it is issued or before the end of the next 2990  
day after the day on which it is issued, whichever occurs first. 2991  
The court shall give written notice of the hearing to all parties 2992  
to the action. 2993

Sec. 5126.331. (A) A probate court, through a probate judge 2994  
or magistrate, may issue by telephone an ex parte emergency order 2995  
authorizing any of the actions described in division (B) of this 2996  
section if all of the following are the case: 2997

(1) The court receives notice from the county board of mental 2998  
retardation and developmental disabilities, or an authorized 2999  
employee of the board, that the board or employee believes an 3000  
emergency order is needed as described in this section. 3001

(2) The adult who is the subject of the notice is eligible to 3002  
receive services or support under section 5126.041 of the Revised 3003  
Code. 3004

(3) There is reasonable cause to believe that the adult is 3005  
incapacitated. 3006

(4) There is reasonable cause to believe that there is a 3007  
substantial risk to the adult of immediate physical harm or death. 3008

(B) An order issued under this section may authorize the 3009  
county board of mental retardation and developmental disabilities 3010  
to do any of the following: 3011

(1) Provide, or arrange for the provision of, emergency 3012  
protective services for the adult; 3013

(2) Remove the adult from the adult's place of residence or 3014  
legal settlement; 3015

(3) Remove the adult from the place where the abuse, neglect, 3016  
or exploitation occurred. 3017

(C) A court shall not issue an order under this section to 3018  
remove an adult from a place described in division (B)(2) or (3) 3019  
of this section until the court is satisfied that reasonable 3020  
efforts have been made to notify the adult and any person with 3021  
whom the adult resides of the proposed removal and the reasons for 3022

it, except that, the court may issue an order prior to giving the 3023  
notice if one of the following is the case: 3024

(1) Notification could jeopardize the physical or emotional 3025  
safety of the adult. 3026

(2) The notification could result in the adult being removed 3027  
from the court's jurisdiction. 3028

(D) An order issued under this section shall be in effect for 3029  
not longer than twenty-four hours, except that if the day 3030  
following the day on which the order is issued is a weekend-day or 3031  
legal holiday, the order shall remain in effect until the next 3032  
business day. 3033

(E)(1) Except as provided in division (E)(2) of this section, 3034  
not later than twenty-four hours after an order is issued under 3035  
this section, the county board or employee that provided notice to 3036  
the probate court shall file a complaint with the court in 3037  
accordance with division (A) of section 5126.33 of the Revised 3038  
Code. 3039

(2) If the day following the day on which the order was 3040  
issued is a weekend-day or a holiday, the county board or employee 3041  
shall file the complaint with the probate court on the next 3042  
business day. 3043

(3) Except as provided in section 5126.332 of the Revised 3044  
Code, proceedings on the complaint filed pursuant to this division 3045  
shall be conducted in accordance with section 5126.33 of the 3046  
Revised Code. 3047

**Sec. 5126.332.** (A) If an order is issued pursuant to section 3048  
5126.331 of the Revised Code, the court shall hold a hearing not 3049  
later than twenty-four hours after the issuance to determine 3050  
whether there is probable cause for the order, except that if the 3051  
day following the day on which the order is issued is a 3052

weekend-day or legal holiday, the court shall hold the hearing on 3053  
the next business day. 3054

(B) At the hearing, the court: 3055

(1) Shall consider the adult's choice of residence and 3056  
determine whether protective services are the least restrictive 3057  
alternative available for meeting the adult's needs; 3058

(2) May issue temporary orders to protect the adult from 3059  
immediate physical harm, including, but not limited to, temporary 3060  
protection orders, evaluations, and orders requiring a party to 3061  
vacate the adult's place of residence or legal settlement; 3062

(3) May order emergency protective services. 3063

(C) A temporary order issued pursuant to division (B)(2) of 3064  
this section is effective for thirty days. The court may renew the 3065  
order for an additional thirty-day period. 3066

**Sec. 5126.333.** Any person who has reason to believe that 3067  
there is a substantial risk to an adult with mental retardation or 3068  
a developmental disability of immediate physical harm or death and 3069  
that the responsible county board of mental retardation and 3070  
developmental disabilities has failed to seek an order pursuant to 3071  
section 5126.33 or 5126.331 of the Revised Code may notify the 3072  
department of mental retardation and developmental disabilities. 3073  
Within twenty-four hours of receipt of such notice, the department 3074  
shall cause an investigation to be conducted regarding the notice. 3075  
The department shall provide assistance to the county board to 3076  
provide for the health and safety of the adult as permitted by 3077  
law. 3078

**Section 2.** That existing sections 109.572, 313.12, 2108.50, 3079  
2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 3080  
5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 of the Revised 3081

Code are hereby repealed. 3082

**Section 3.** The Department of Mental Retardation and 3083  
Developmental Disabilities shall adopt rules pursuant to Chapter 3084  
119. of the Revised Code that provide standards for the 3085  
substantiation by the Department and by county boards of mental 3086  
retardation of reports of abuse or neglect filed under section 3087  
5123.61 of the Revised Code. 3088

**Section 4.** Section 2151.421 of the Revised Code is presented 3089  
in this act as a composite of the section as amended by Am. Sub. 3090  
H.B. 374, Sub. H.B. 510, and Am. Sub. S.B. 221 all of the 124th 3091  
General Assembly. Section 5126.28 of the Revised Code is presented 3092  
in this act as a composite of the section as amended by both Sub. 3093  
H.B. 538 and Sub. S.B. 171 of the 123rd General Assembly. The 3094  
General Assembly, applying the principle stated in division (B) of 3095  
section 1.52 of the Revised Code that amendments are to be 3096  
harmonized if reasonably capable of simultaneous operation, finds 3097  
that the composites are the resulting versions of the sections in 3098  
effect prior to the effective date of the sections as presented in 3099  
this act. 3100

**Section 5.** This act is hereby declared to be an emergency 3101  
measure necessary for the immediate preservation of the public 3102  
peace, health, and safety. The reason for such necessity is that 3103  
persons who are mentally retarded or developmentally disabled 3104  
crucially need the protections this act affords against their 3105  
victimization by criminal conduct, and the procedures this act 3106  
provides regarding the investigation and prosecution of criminal 3107  
conduct committed against them. Therefore, this act shall go into 3108  
immediate effect. 3109