

As Reported by the Committee of Conference

125th General Assembly

Regular Session

2003-2004

Am. Sub. S. B. No. 4

**Senators Spada, Amstutz, Goodman, Jacobson, Harris, Austria, Blessing,
Schuring, Stivers, Herington, Fedor, Dann, Armbruster, Brady, Carey,
Carnes, Coughlin, DiDonato, Fingerhut, Randy Gardner, Robert Gardner,
Hagan, Hottinger, Jordan, Mallory, Miller, Mumper, Nein, Prentiss, Roberts,
Schuler, Wachtmann, White**

**Representatives Reidelbach, Widowfield, Book, Gilb, Harwood, Allen,
Aslanides, Barrett, Beatty, Brown, Buehrer, Callender, Calvert, Carano,
Carmichael, Cates, Chandler, Cirelli, Clancy, Collier, Core, Daniels, DeBose,
DePiero, Domenick, Driehaus, C. Evans, D. Evans, Faber, Fessler, Flowers,
Gibbs, Hagan, Hartnett, Hollister, Hoops, Hughes, Husted, Jolivette, Kearns,
Key, Kilbane, Latta, Martin, Niehaus, Oelslager, Olman, Otterman, S. Patton,
T. Patton, Perry, Peterson, Price, Raussen, Redfern, Reinhard, Schaffer,
Schlichter, Schmidt, Schneider, Seaver, Seitz, Setzer, G. Smith, S. Smith,
D. Stewart, J. Stewart, Strahorn, Taylor, Ujvagi, Wagner, Webster, White,
Widener, Willamowski, Wilson, Wolpert, Woodard**

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, and to provide a mechanism for the 10

closing of developmental centers of the Department 11
of Mental Retardation and Developmental 12
Disabilities that involves independent studies and 13
public hearings. 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 43
existed prior to July 1, 1996, a violation of section 2919.23 of 44
the Revised Code that would have been a violation of section 45
2905.04 of the Revised Code as it existed prior to July 1, 1996, 46
had the violation been committed prior to that date, or a 47
violation of section 2925.11 of the Revised Code that is not a 48
minor drug possession offense; 49

(b) A violation of an existing or former law of this state, 50
any other state, or the United States that is substantially 51
equivalent to any of the offenses listed in division (A)(1)(a) of 52
this section. 53

(2) On receipt of a request pursuant to section 5123.081 of 54
the Revised Code with respect to an applicant for employment in 55
any position with the department of mental retardation and 56
developmental disabilities, pursuant to section 5126.28 of the 57
Revised Code with respect to an applicant for employment in any 58
position with a county board of mental retardation and 59
developmental disabilities, or pursuant to section 5126.281 of the 60
Revised Code with respect to an applicant for employment in a 61
direct services position with an entity contracting with a county 62
board for employment, a completed form prescribed pursuant to 63
division (C)(1) of this section, and a set of fingerprint 64
impressions obtained in the manner described in division (C)(2) of 65
this section, the superintendent of the bureau of criminal 66
identification and investigation shall conduct a criminal records 67
check. The superintendent shall conduct the criminal records check 68
in the manner described in division (B) of this section to 69
determine whether any information exists that indicates that the 70

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

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

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

(a) A violation of section 2903.01, 2903.02, 2903.03,
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34,
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05,
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31,

2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 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 3701.881 of 137
the Revised Code with respect to an applicant for employment with 138
a home health agency in a position that involves providing direct 139
care to an older adult, a completed form prescribed pursuant to 140
division (C)(1) of this section, and a set of fingerprint 141
impressions obtained in the manner described in division (C)(2) of 142
this section, the superintendent of the bureau of criminal 143
identification and investigation shall conduct a criminal records 144
check. The superintendent shall conduct the criminal records check 145
in the manner described in division (B) of this section to 146
determine whether any information exists that indicates that the 147
person who is the subject of the request previously has been 148
convicted of or pleaded guilty to any of the following: 149

(a) A violation of section 2903.01, 2903.02, 2903.03, 150
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 151
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 152
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 153
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 154
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 155
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 156
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 157
2925.22, 2925.23, or 3716.11 of the Revised Code; 158

(b) An existing or former law of this state, any other state, 159
or the United States that is substantially equivalent to any of 160
the offenses listed in division (A)(5)(a) of this section. 161

(6) When conducting a criminal records check upon a request 162
pursuant to section 3319.39 of the Revised Code for an applicant 163
who is a teacher, in addition to the determination made under 164

division (A)(1) of this section, the superintendent shall 165
determine whether any information exists that indicates that the 166
person who is the subject of the request previously has been 167
convicted of or pleaded guilty to any offense specified in section 168
3319.31 of the Revised Code. 169

(7) When conducting a criminal records check on a request 170
pursuant to section 2151.86 of the Revised Code for a person who 171
is a prospective foster caregiver or who is eighteen years old or 172
older and resides in the home of a prospective foster caregiver, 173
the superintendent, in addition to the determination made under 174
division (A)(1) of this section, shall determine whether any 175
information exists that indicates that the person has been 176
convicted of or pleaded guilty to a violation of: 177

(a) Section 2909.02 or 2909.03 of the Revised Code; 178

(b) An existing or former law of this state, any other state, 179
or the United States that is substantially equivalent to section 180
2909.02 or 2909.03 of the Revised Code. 181

(8) Not later than thirty days after the date the 182
superintendent receives the request, completed form, and 183
fingerprint impressions, the superintendent shall send the person, 184
board, or entity that made the request any information, other than 185
information the dissemination of which is prohibited by federal 186
law, the superintendent determines exists with respect to the 187
person who is the subject of the request that indicates that the 188
person previously has been convicted of or pleaded guilty to any 189
offense listed or described in division (A)(1), (2), (3), (4), 190
(5), (6), or (7) of this section, as appropriate. The 191
superintendent shall send the person, board, or entity that made 192
the request a copy of the list of offenses specified in division 193
(A)(1), (2), (3), (4), (5), (6), or (7) of this section, as 194
appropriate. If the request was made under section 3701.881 of the 195

Revised Code with regard to an applicant who may be both 196
responsible for the care, custody, or control of a child and 197
involved in providing direct care to an older adult, the 198
superintendent shall provide a list of the offenses specified in 199
divisions (A)(4) and (5) of this section. 200

(B) The superintendent shall conduct any criminal records 201
check requested under section 173.41, 2151.86, 3301.32, 3301.541, 202
3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 203
5104.013, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised 204
Code as follows: 205

(1) The superintendent shall review or cause to be reviewed 206
any relevant information gathered and compiled by the bureau under 207
division (A) of section 109.57 of the Revised Code that relates to 208
the person who is the subject of the request, including any 209
relevant information contained in records that have been sealed 210
under section 2953.32 of the Revised Code; 211

(2) If the request received by the superintendent asks for 212
information from the federal bureau of investigation, the 213
superintendent shall request from the federal bureau of 214
investigation any information it has with respect to the person 215
who is the subject of the request and shall review or cause to be 216
reviewed any information the superintendent receives from that 217
bureau. 218

(C)(1) The superintendent shall prescribe a form to obtain 219
the information necessary to conduct a criminal records check from 220
any person for whom a criminal records check is required by 221
section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 222
3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5123.081, 223
5126.28, 5126.281, or 5153.111 of the Revised Code. The form that 224
the superintendent prescribes pursuant to this division may be in 225
a tangible format, in an electronic format, or in both tangible 226
and electronic formats. 227

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

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

(4) The superintendent of the bureau of criminal

identification and investigation may prescribe methods of 260
forwarding fingerprint impressions and information necessary to 261
conduct a criminal records check, which methods shall include, but 262
not be limited to, an electronic method. 263

(D) A determination whether any information exists that 264
indicates that a person previously has been convicted of or 265
pleaded guilty to any offense listed or described in division 266
(A)(1)(a) or (b), (A)(2)(a) or (b), (A)(3)(a) or (b), (A)(4)(a) or 267
(b), (A)(5)(a) or (b), (A)(6), or (A)(7)(a) or (b) of this section 268
that is made by the superintendent with respect to information 269
considered in a criminal records check in accordance with this 270
section is valid for the person who is the subject of the criminal 271
records check for a period of one year from the date upon which 272
the superintendent makes the determination. During the period in 273
which the determination in regard to a person is valid, if another 274
request under this section is made for a criminal records check 275
for that person, the superintendent shall provide the information 276
that is the basis for the superintendent's initial determination 277
at a lower fee than the fee prescribed for the initial criminal 278
records check. 279

(E) As used in this section: 280

(1) "Criminal records check" means any criminal records check 281
conducted by the superintendent of the bureau of criminal 282
identification and investigation in accordance with division (B) 283
of this section. 284

(2) "Minor drug possession offense" has the same meaning as 285
in section 2925.01 of the Revised Code. 286

(3) "Older adult" means a person age sixty or older. 287

Sec. 313.12. (A) When any person dies as a result of criminal 288
or other violent means, by casualty, by suicide, or in any 289

suspicious or unusual manner, ~~or~~ when any person, including a 290
child under two years of age, dies suddenly when in apparent good 291
health, or when any mentally retarded person or developmentally 292
disabled person dies regardless of the circumstances, the 293
physician called in attendance, or any member of an ambulance 294
service, emergency squad, or law enforcement agency who obtains 295
knowledge thereof arising from ~~his~~ the person's duties, shall 296
immediately notify the office of the coroner of the known facts 297
concerning the time, place, manner, and circumstances of the 298
death, and any other information ~~which~~ that is required pursuant 299
to sections 313.01 to 313.22 of the Revised Code. In such cases, 300
if a request is made for cremation, the funeral director called in 301
attendance shall immediately notify the coroner. 302

(B) As used in this section, "mentally retarded person" and 303
"developmentally disabled person" have the same meanings as in 304
section 5123.01 of the Revised Code. 305

Sec. 2108.50. (A) ~~An~~ Subject to section 2108.521 of the 306
Revised Code, an autopsy or post-mortem examination may be 307
performed upon the body of a deceased person by a licensed 308
physician or surgeon if consent has been given in the order named 309
by one of the following persons of sound mind and eighteen years 310
of age or older in a written instrument executed by the person or 311
on the person's behalf at the person's express direction: 312

(1) The deceased person during the deceased person's 313
lifetime; 314

(2) The decedent's spouse; 315

(3) If there is no surviving spouse, if the address of the 316
surviving spouse is unknown or outside the United States, if the 317
surviving spouse is physically or mentally unable or incapable of 318
giving consent, or if the deceased person was separated and living 319

apart from such surviving spouse, then a person having the first 320
named degree of relationship in the following list in which a 321
relative of the deceased person survives and is physically and 322
mentally able and capable of giving consent may execute consent: 323

(a) Children; 324

(b) Parents; 325

(c) Brothers or sisters. 326

(4) If there are no surviving persons of any degree of 327
relationship listed in division (A)(3) of this section, any other 328
relative or person who assumes custody of the body for burial; i 329

(5) A person authorized by written instrument executed by the 330
deceased person to make arrangements for burial; i 331

(6) A person who, at the time of death of the deceased 332
person, was serving as guardian of the person for the deceased 333
person. 334

(B) Consent to an autopsy or post-mortem examination given 335
under this section may be revoked only by the person executing the 336
consent and in the same manner as required for execution of 337
consent under this section. 338

(C) As used in this section, "written instrument" includes a 339
telegram or cablegram. 340

Sec. 2108.521. (A) If a mentally retarded person or a 341
developmentally disabled person dies, if the department of mental 342
retardation and developmental disabilities or a county board of 343
mental retardation and developmental disabilities has a good faith 344
reason to believe that the deceased person's death occurred under 345
suspicious circumstances, if the coroner was apprised of the 346
circumstances of the death, and if the coroner after being so 347
apprised of the circumstances declines to conduct an autopsy, the 348
department or the board may file a petition in a court of common 349

pleas seeking an order authorizing an autopsy or post-mortem examination under this section. 350
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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. 352
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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 the person who is to perform the autopsy or post-mortem examination. If an autopsy or post-mortem examination is ordered under this section, the department or board that requested the autopsy or examination shall pay the physician or surgeon who performs the autopsy or examination for costs and expenses incurred in performing the autopsy or examination. 370
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Sec. 2151.421. (A)(1)(a) No person described in division 379

(A)(1)(b) of this section who is acting in an official or 380
professional capacity and knows or suspects that a child under 381
eighteen years of age or a mentally retarded, developmentally 382
disabled, or physically impaired child under twenty-one years of 383
age has suffered or faces a threat of suffering any physical or 384
mental wound, injury, disability, or condition of a nature that 385
reasonably indicates abuse or neglect of the child, shall fail to 386
immediately report that knowledge or suspicion to the entity or 387
persons specified in this division. Except as provided in section 388
5120.173 of the Revised Code, the person making the report shall 389
make it to the public children services agency or a municipal or 390
county peace officer in the county in which the child resides or 391
in which the abuse or neglect is occurring or has occurred. In the 392
circumstances described in section 5120.173 of the Revised Code, 393
the person making the report shall make it to the entity specified 394
in that section. 395

(b) Division (A)(1)(a) of this section applies to any person 396
who is an attorney; physician, including a hospital intern or 397
resident; dentist; podiatrist; practitioner of a limited branch of 398
medicine as specified in section 4731.15 of the Revised Code; 399
registered nurse; licensed practical nurse; visiting nurse; other 400
health care professional; licensed psychologist; licensed school 401
psychologist; independent marriage and family therapist or 402
marriage and family therapist; speech pathologist or audiologist; 403
coroner; administrator or employee of a child day-care center; 404
administrator or employee of a residential camp or child day camp; 405
administrator or employee of a certified child care agency or 406
other public or private children services agency; school teacher; 407
school employee; school authority; person engaged in social work 408
or the practice of professional counseling; agent of a county 409
humane society; ~~or~~ a person rendering spiritual treatment through 410
prayer in accordance with the tenets of a well-recognized 411

; superintendent, board member, or employee of a county board of 412
mental retardation; investigative agent contracted with by a 413
county board of mental retardation; or employee of the department 414
of mental retardation and developmental disabilities. 415

(2) An attorney or a physician is not required to make a 416
report pursuant to division (A)(1) of this section concerning any 417
communication the attorney or physician receives from a client or 418
patient in an attorney-client or physician-patient relationship, 419
if, in accordance with division (A) or (B) of section 2317.02 of 420
the Revised Code, the attorney or physician could not testify with 421
respect to that communication in a civil or criminal proceeding, 422
except that the client or patient is deemed to have waived any 423
testimonial privilege under division (A) or (B) of section 2317.02 424
of the Revised Code with respect to that communication and the 425
attorney or physician shall make a report pursuant to division 426
(A)(1) of this section with respect to that communication, if all 427
of the following apply: 428

(a) The client or patient, at the time of the communication, 429
is either a child under eighteen years of age or a mentally 430
retarded, developmentally disabled, or physically impaired person 431
under twenty-one years of age. 432

(b) The attorney or physician knows or suspects, as a result 433
of the communication or any observations made during that 434
communication, that the client or patient has suffered or faces a 435
threat of suffering any physical or mental wound, injury, 436
disability, or condition of a nature that reasonably indicates 437
abuse or neglect of the client or patient. 438

(c) The attorney-client or physician-patient relationship 439
does not arise out of the client's or patient's attempt to have an 440
abortion without the notification of her parents, guardian, or 441
custodian in accordance with section 2151.85 of the Revised Code. 442

(B) Anyone, who knows or suspects that a child under eighteen 443
years of age or a mentally retarded, developmentally disabled, or 444
physically impaired person under twenty-one years of age has 445
suffered or faces a threat of suffering any physical or mental 446
wound, injury, disability, or other condition of a nature that 447
reasonably indicates abuse or neglect of the child may report or 448
cause reports to be made of that knowledge or suspicion to the 449
entity or persons specified in this division. Except as provided 450
in section 5120.173 of the Revised Code, a person making a report 451
or causing a report to be made under this division shall make it 452
or cause it to be made to the public children services agency or 453
to a municipal or county peace officer. In the circumstances 454
described in section 5120.173 of the Revised Code, a person making 455
a report or causing a report to be made under this division shall 456
make it or cause it to be made to the entity specified in that 457
section. 458

(C) Any report made pursuant to division (A) or (B) of this 459
section shall be made forthwith either by telephone or in person 460
and shall be followed by a written report, if requested by the 461
receiving agency or officer. The written report shall contain: 462

(1) The names and addresses of the child and the child's 463
parents or the person or persons having custody of the child, if 464
known; 465

(2) The child's age and the nature and extent of the child's 466
known or suspected injuries, abuse, or neglect or of the known or 467
suspected threat of injury, abuse, or neglect, including any 468
evidence of previous injuries, abuse, or neglect; 469

(3) Any other information that might be helpful in 470
establishing the cause of the known or suspected injury, abuse, or 471
neglect or of the known or suspected threat of injury, abuse, or 472
neglect. 473

Any person, who is required by division (A) of this section 474
to report known or suspected child abuse or child neglect, may 475
take or cause to be taken color photographs of areas of trauma 476
visible on a child and, if medically indicated, cause to be 477
performed radiological examinations of the child. 478

(D)(1) When a municipal or county peace officer receives a 479
report concerning the possible abuse or neglect of a child or the 480
possible threat of abuse or neglect of a child, upon receipt of 481
the report, the municipal or county peace officer who receives the 482
report shall refer the report to the appropriate public children 483
services agency. 484

(2) When a public children services agency receives a report 485
pursuant to this division or division (A) or (B) of this section, 486
upon receipt of the report, the public children services agency 487
shall comply with section 2151.422 of the Revised Code. 488

(E) No township, municipal, or county peace officer shall 489
remove a child about whom a report is made pursuant to this 490
section from the child's parents, stepparents, or guardian or any 491
other persons having custody of the child without consultation 492
with the public children services agency, unless, in the judgment 493
of the officer, and, if the report was made by physician, the 494
physician, immediate removal is considered essential to protect 495
the child from further abuse or neglect. The agency that must be 496
consulted shall be the agency conducting the investigation of the 497
report as determined pursuant to section 2151.422 of the Revised 498
Code. 499

(F)(1) Except as provided in section 2151.422 of the Revised 500
Code, the public children services agency shall investigate, 501
within twenty-four hours, each report of known or suspected child 502
abuse or child neglect and of a known or suspected threat of child 503
abuse or child neglect that is referred to it under this section 504

to determine the circumstances surrounding the injuries, abuse, or 505
neglect or the threat of injury, abuse, or neglect, the cause of 506
the injuries, abuse, neglect, or threat, and the person or persons 507
responsible. The investigation shall be made in cooperation with 508
the law enforcement agency and in accordance with the memorandum 509
of understanding prepared under division (J) of this section. A 510
failure to make the investigation in accordance with the 511
memorandum is not grounds for, and shall not result in, the 512
dismissal of any charges or complaint arising from the report or 513
the suppression of any evidence obtained as a result of the report 514
and does not give, and shall not be construed as giving, any 515
rights or any grounds for appeal or post-conviction relief to any 516
person. The public children services agency shall report each case 517
to a central registry which the department of job and family 518
services shall maintain in order to determine whether prior 519
reports have been made in other counties concerning the child or 520
other principals in the case. The public children services agency 521
shall submit a report of its investigation, in writing, to the law 522
enforcement agency. 523

(2) The public children services agency shall make any 524
recommendations to the county prosecuting attorney or city 525
director of law that it considers necessary to protect any 526
children that are brought to its attention. 527

(G)(1)(a) Except as provided in division (H)(3) of this 528
section, anyone or any hospital, institution, school, health 529
department, or agency participating in the making of reports under 530
division (A) of this section, anyone or any hospital, institution, 531
school, health department, or agency participating in good faith 532
in the making of reports under division (B) of this section, and 533
anyone participating in good faith in a judicial proceeding 534
resulting from the reports, shall be immune from any civil or 535
criminal liability for injury, death, or loss to person or 536

property that otherwise might be incurred or imposed as a result 537
of the making of the reports or the participation in the judicial 538
proceeding. 539

(b) Notwithstanding section 4731.22 of the Revised Code, the 540
physician-patient privilege shall not be a ground for excluding 541
evidence regarding a child's injuries, abuse, or neglect, or the 542
cause of the injuries, abuse, or neglect in any judicial 543
proceeding resulting from a report submitted pursuant to this 544
section. 545

(2) In any civil or criminal action or proceeding in which it 546
is alleged and proved that participation in the making of a report 547
under this section was not in good faith or participation in a 548
judicial proceeding resulting from a report made under this 549
section was not in good faith, the court shall award the 550
prevailing party reasonable attorney's fees and costs and, if a 551
civil action or proceeding is voluntarily dismissed, may award 552
reasonable attorney's fees and costs to the party against whom the 553
civil action or proceeding is brought. 554

(H)(1) Except as provided in divisions (H)(4), (M), and (N) 555
of this section, a report made under this section is confidential. 556
The information provided in a report made pursuant to this section 557
and the name of the person who made the report shall not be 558
released for use, and shall not be used, as evidence in any civil 559
action or proceeding brought against the person who made the 560
report. In a criminal proceeding, the report is admissible in 561
evidence in accordance with the Rules of Evidence and is subject 562
to discovery in accordance with the Rules of Criminal Procedure. 563

(2) No person shall permit or encourage the unauthorized 564
dissemination of the contents of any report made under this 565
section. 566

(3) A person who knowingly makes or causes another person to 567

make a false report under division (B) of this section that 568
alleges that any person has committed an act or omission that 569
resulted in a child being an abused child or a neglected child is 570
guilty of a violation of section 2921.14 of the Revised Code. 571

(4) If a report is made pursuant to division (A) or (B) of 572
this section and the child who is the subject of the report dies 573
for any reason at any time after the report is made, but before 574
the child attains eighteen years of age, the public children 575
services agency or municipal or county peace officer to which the 576
report was made or referred, on the request of the child fatality 577
review board, shall submit a summary sheet of information 578
providing a summary of the report to the review board of the 579
county in which the deceased child resided at the time of death. 580
On the request of the review board, the agency or peace officer 581
may, at its discretion, make the report available to the review 582
board. 583

(5) A public children services agency shall advise a person 584
alleged to have inflicted abuse or neglect on a child who is the 585
subject of a report made pursuant to this section in writing of 586
the disposition of the investigation. The agency shall not provide 587
to the person any information that identifies the person who made 588
the report, statements of witnesses, or police or other 589
investigative reports. 590

(I) Any report that is required by this section, other than a 591
report that is made to the state highway patrol as described in 592
section 5120.173 of the Revised Code, shall result in protective 593
services and emergency supportive services being made available by 594
the public children services agency on behalf of the children 595
about whom the report is made, in an effort to prevent further 596
neglect or abuse, to enhance their welfare, and, whenever 597
possible, to preserve the family unit intact. The agency required 598
to provide the services shall be the agency conducting the 599

investigation of the report pursuant to section 2151.422 of the Revised Code. 600
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(J)(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following: 602
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(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative; 605
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(b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative; 608
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(c) The county peace officer; 613

(d) All chief municipal peace officers within the county; 614

(e) Other law enforcement officers handling child abuse and neglect cases in the county; 615
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(f) The prosecuting attorney of the county; 617

(g) If the public children services agency is not the county department of job and family services, the county department of job and family services; 618
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(h) The county humane society. 621

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or 622
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(B) of this section and, when feasible, providing for only one 630
interview of a child who is the subject of any report made 631
pursuant to division (A) or (B) of this section. A failure to 632
follow the procedure set forth in the memorandum by the concerned 633
officials is not grounds for, and shall not result in, the 634
dismissal of any charges or complaint arising from any reported 635
case of abuse or neglect or the suppression of any evidence 636
obtained as a result of any reported child abuse or child neglect 637
and does not give, and shall not be construed as giving, any 638
rights or any grounds for appeal or post-conviction relief to any 639
person. 640

(3) A memorandum of understanding shall include all of the 641
following: 642

(a) The roles and responsibilities for handling emergency and 643
nonemergency cases of abuse and neglect; 644

(b) Standards and procedures to be used in handling and 645
coordinating investigations of reported cases of child abuse and 646
reported cases of child neglect, methods to be used in 647
interviewing the child who is the subject of the report and who 648
allegedly was abused or neglected, and standards and procedures 649
addressing the categories of persons who may interview the child 650
who is the subject of the report and who allegedly was abused or 651
neglected. 652

(K)(1) Except as provided in division (K)(4) of this section, 653
a person who is required to make a report pursuant to division (A) 654
of this section may make a reasonable number of requests of the 655
public children services agency that receives or is referred the 656
report to be provided with the following information: 657

(a) Whether the agency has initiated an investigation of the 658
report; 659

(b) Whether the agency is continuing to investigate the 660

report; 661

(c) Whether the agency is otherwise involved with the child 662
who is the subject of the report; 663

(d) The general status of the health and safety of the child 664
who is the subject of the report; 665

(e) Whether the report has resulted in the filing of a 666
complaint in juvenile court or of criminal charges in another 667
court. 668

(2) A person may request the information specified in 669
division (K)(1) of this section only if, at the time the report is 670
made, the person's name, address, and telephone number are 671
provided to the person who receives the report. 672

When a municipal or county peace officer or employee of a 673
public children services agency receives a report pursuant to 674
division (A) or (B) of this section the recipient of the report 675
shall inform the person of the right to request the information 676
described in division (K)(1) of this section. The recipient of the 677
report shall include in the initial child abuse or child neglect 678
report that the person making the report was so informed and, if 679
provided at the time of the making of the report, shall include 680
the person's name, address, and telephone number in the report. 681

Each request is subject to verification of the identity of 682
the person making the report. If that person's identity is 683
verified, the agency shall provide the person with the information 684
described in division (K)(1) of this section a reasonable number 685
of times, except that the agency shall not disclose any 686
confidential information regarding the child who is the subject of 687
the report other than the information described in those 688
divisions. 689

(3) A request made pursuant to division (K)(1) of this 690
section is not a substitute for any report required to be made 691

pursuant to division (A) of this section. 692

(4) If an agency other than the agency that received or was 693
referred the report is conducting the investigation of the report 694
pursuant to section 2151.422 of the Revised Code, the agency 695
conducting the investigation shall comply with the requirements of 696
division (K) of this section. 697

(L) The director of job and family services shall adopt rules 698
in accordance with Chapter 119. of the Revised Code to implement 699
this section. The department of job and family services may enter 700
into a plan of cooperation with any other governmental entity to 701
aid in ensuring that children are protected from abuse and 702
neglect. The department shall make recommendations to the attorney 703
general that the department determines are necessary to protect 704
children from child abuse and child neglect. 705

(M) No later than the end of the day following the day on 706
which a public children services agency receives a report of 707
alleged child abuse or child neglect, or a report of an alleged 708
threat of child abuse or child neglect, that allegedly occurred in 709
or involved an out-of-home care entity, the agency shall provide 710
written notice of the allegations contained in and the person 711
named as the alleged perpetrator in the report to the 712
administrator, director, or other chief administrative officer of 713
the out-of-home care entity that is the subject of the report 714
unless the administrator, director, or other chief administrative 715
officer is named as an alleged perpetrator in the report. If the 716
administrator, director, or other chief administrative officer of 717
an out-of-home care entity is named as an alleged perpetrator in a 718
report of alleged child abuse or child neglect, or a report of an 719
alleged threat of child abuse or child neglect, that allegedly 720
occurred in or involved the out-of-home care entity, the agency 721
shall provide the written notice to the owner or governing board 722
of the out-of-home care entity that is the subject of the report. 723

The agency shall not provide witness statements or police or other 724
investigative reports. 725

(N) No later than three days after the day on which a public 726
children services agency that conducted the investigation as 727
determined pursuant to section 2151.422 of the Revised Code makes 728
a disposition of an investigation involving a report of alleged 729
child abuse or child neglect, or a report of an alleged threat of 730
child abuse or child neglect, that allegedly occurred in or 731
involved an out-of-home care entity, the agency shall send written 732
notice of the disposition of the investigation to the 733
administrator, director, or other chief administrative officer and 734
the owner or governing board of the out-of-home care entity. The 735
agency shall not provide witness statements or police or other 736
investigative reports. 737

Sec. 2152.821. (A) As used in this section: 738

(1) "Mentally retarded person" and "developmentally disabled 739
person" have the same meanings as in section 5123.01 of the 740
Revised Code. 741

(2) "Mentally retarded or developmentally disabled victim" 742
includes any of the following persons: 743

(a) A mentally retarded person or developmentally disabled 744
person who was a victim of a violation identified in division 745
(B)(1) of this section or an act that would be an offense of 746
violence if committed by an adult; 747

(b) A mentally retarded person or developmentally disabled 748
person against whom was directed any conduct that constitutes, or 749
that is an element of, a violation identified in division (B)(1) 750
of this section or an act that would be an offense of violence if 751
committed by an adult. 752

(B)(1) In any proceeding in juvenile court involving a 753

complaint, indictment, or information in which a child is charged 754
with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 755
2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 756
2907.322, or 2907.323 of the Revised Code or an act that would be 757
an offense of violence if committed by an adult and in which an 758
alleged victim of the violation or act was a mentally retarded 759
person or developmentally disabled person, the juvenile judge, 760
upon motion of the prosecution, shall order that the testimony of 761
the mentally retarded or developmentally disabled victim be taken 762
by deposition. The prosecution also may request that the 763
deposition be videotaped in accordance with division (B)(2) of 764
this section. The judge shall notify the mentally retarded or 765
developmentally disabled victim whose deposition is to be taken, 766
the prosecution, and the attorney for the child who is charged 767
with the violation or act of the date, time, and place for taking 768
the deposition. The notice shall identify the mentally retarded or 769
developmentally disabled victim who is to be examined and shall 770
indicate whether a request that the deposition be videotaped has 771
been made. The child who is charged with the violation or act 772
shall have the right to attend the deposition and the right to be 773
represented by counsel. Depositions shall be taken in the manner 774
provided in civil cases, except that the judge in the proceeding 775
shall preside at the taking of the deposition and shall rule at 776
that time on any objections of the prosecution or the attorney for 777
the child charged with the violation or act. The prosecution and 778
the attorney for the child charged with the violation or act shall 779
have the right, as at an adjudication hearing, to full examination 780
and cross-examination of the mentally retarded or developmentally 781
disabled victim whose deposition is to be taken. 782

If a deposition taken under this division is intended to be 783
offered as evidence in the proceeding, it shall be filed in the 784
juvenile court in which the action is pending and is admissible in 785

the manner described in division (C) of this section. If a 786
deposition of a mentally retarded or developmentally disabled 787
victim taken under this division is admitted as evidence at the 788
proceeding under division (C) of this section, the mentally 789
retarded or developmentally disabled victim shall not be required 790
to testify in person at the proceeding. 791

At any time before the conclusion of the proceeding, the 792
attorney for the child charged with the violation or act may file 793
a motion with the judge requesting that another deposition of the 794
mentally retarded or developmentally disabled victim be taken 795
because new evidence material to the defense of the child charged 796
has been discovered that the attorney for the child charged could 797
not with reasonable diligence have discovered prior to the taking 798
of the admitted deposition. Any motion requesting another 799
deposition shall be accompanied by supporting affidavits. Upon the 800
filing of the motion and affidavits, the court may order that 801
additional testimony of the mentally retarded or developmentally 802
disabled victim relative to the new evidence be taken by another 803
deposition. If the court orders the taking of another deposition 804
under this provision, the deposition shall be taken in accordance 805
with this division. If the admitted deposition was a videotaped 806
deposition taken in accordance with division (B)(2) of this 807
section, the new deposition also shall be videotaped in accordance 808
with that division. In other cases, the new deposition may be 809
videotaped in accordance with that division. 810

(2) If the prosecution requests that a deposition to be taken 811
under division (B)(1) of this section be videotaped, the juvenile 812
judge shall order that the deposition be videotaped in accordance 813
with this division. If a juvenile judge issues an order to video 814
tape the deposition, the judge shall exclude from the room in 815
which the deposition is to be taken every person except the 816
mentally retarded or developmentally disabled victim giving the 817

testimony, the judge, one or more interpreters if needed, the 818
attorneys for the prosecution and the child who is charged with 819
the violation or act, any person needed to operate the equipment 820
to be used, one person chosen by the mentally retarded or 821
developmentally disabled victim giving the deposition, and any 822
person whose presence the judge determines would contribute to the 823
welfare and well-being of the mentally retarded or developmentally 824
disabled victim giving the deposition. The person chosen by the 825
mentally retarded or developmentally disabled victim shall not be 826
a witness in the proceeding and, both before and during the 827
deposition, shall not discuss the testimony of the victim with any 828
other witness in the proceeding. To the extent feasible, any 829
person operating the recording equipment shall be restricted to a 830
room adjacent to the room in which the deposition is being taken, 831
or to a location in the room in which the deposition is being 832
taken that is behind a screen or mirror so that the person 833
operating the recording equipment can see and hear, but cannot be 834
seen or heard by, the mentally retarded or developmentally 835
disabled victim giving the deposition during the deposition. 836

The child who is charged with the violation or act shall be 837
permitted to observe and hear the testimony of the mentally 838
retarded or developmentally disabled victim giving the deposition 839
on a monitor, shall be provided with an electronic means of 840
immediate communication with the attorney of the child who is 841
charged with the violation or act during the testimony, and shall 842
be restricted to a location from which the child who is charged 843
with the violation or act cannot be seen or heard by the mentally 844
retarded or developmentally disabled victim giving the deposition, 845
except on a monitor provided for that purpose. The mentally 846
retarded or developmentally disabled victim giving the deposition 847
shall be provided with a monitor on which the mentally retarded or 848
developmentally disabled victim can observe, while giving 849

testimony, the child who is charged with the violation or act. The 850
judge, at the judge's discretion, may preside at the deposition by 851
electronic means from outside the room in which the deposition is 852
to be taken; if the judge presides by electronic means, the judge 853
shall be provided with monitors on which the judge can see each 854
person in the room in which the deposition is to be taken and with 855
an electronic means of communication with each person in that 856
room, and each person in the room shall be provided with a monitor 857
on which that person can see the judge and with an electronic 858
means of communication with the judge. A deposition that is 859
videotaped under this division shall be taken and filed in the 860
manner described in division (B)(1) of this section and is 861
admissible in the manner described in this division and division 862
(C) of this section. If a deposition that is videotaped under this 863
division is admitted as evidence at the proceeding, the mentally 864
retarded or developmentally disabled victim shall not be required 865
to testify in person at the proceeding. No deposition videotaped 866
under this division shall be admitted as evidence at any 867
proceeding unless division (C) of this section is satisfied 868
relative to the deposition and all of the following apply relative 869
to the recording: 870

(a) The recording is both aural and visual and is recorded on 871
film or videotape, or by other electronic means. 872

(b) The recording is authenticated under the Rules of 873
Evidence and the Rules of Criminal Procedure as a fair and 874
accurate representation of what occurred, and the recording is not 875
altered other than at the direction and under the supervision of 876
the judge in the proceeding. 877

(c) Each voice on the recording that is material to the 878
testimony on the recording or the making of the recording, as 879
determined by the judge, is identified. 880

(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. 881
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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: 884
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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. 898
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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. 902
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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. 909
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(3) The provisions of divisions (B) and (C) of this section 912
are in addition to any other provisions of the Revised Code, the 913
Rules of Juvenile Procedure, the Rules of Criminal Procedure, or 914
the Rules of Evidence that pertain to the taking or admission of 915
depositions in a juvenile court proceeding and do not limit the 916
admissibility under any of those other provisions of any 917
deposition taken under division (B) of this section or otherwise 918
taken. 919

(D) In any proceeding in juvenile court involving a 920
complaint, indictment, or information in which a child is charged 921
with a violation listed in division (B)(1) of this section or an 922
act that would be an offense of violence if committed by an adult 923
and in which an alleged victim of the violation or offense was a 924
mentally retarded or developmentally disabled person, the 925
prosecution may file a motion with the juvenile judge requesting 926
the judge to order the testimony of the mentally retarded or 927
developmentally disabled victim to be taken in a room other than 928
the room in which the proceeding is being conducted and be 929
televised, by closed circuit equipment, into the room in which the 930
proceeding is being conducted to be viewed by the child who is 931
charged with the violation or act and any other persons who are 932
not permitted in the room in which the testimony is to be taken 933
but who would have been present during the testimony of the 934
mentally retarded or developmentally disabled victim had it been 935
given in the room in which the proceeding is being conducted. 936
Except for good cause shown, the prosecution shall file a motion 937
under this division at least seven days before the date of the 938
proceeding. The juvenile judge may issue the order upon the motion 939
of the prosecution filed under this division, if the judge 940
determines that the mentally retarded or developmentally disabled 941
victim is unavailable to testify in the room in which the 942
proceeding is being conducted in the physical presence of the 943

child charged with the violation or act for one or more of the 944
reasons set forth in division (F) of this section. If a juvenile 945
judge issues an order of that nature, the judge shall exclude from 946
the room in which the testimony is to be taken every person except 947
a person described in division (B)(2) of this section. The judge, 948
at the judge's discretion, may preside during the giving of the 949
testimony by electronic means from outside the room in which it is 950
being given, subject to the limitations set forth in division 951
(B)(2) of this section. To the extent feasible, any person 952
operating the televising equipment shall be hidden from the sight 953
and hearing of the mentally retarded or developmentally disabled 954
victim giving the testimony, in a manner similar to that described 955
in division (B)(2) of this section. The child who is charged with 956
the violation or act shall be permitted to observe and hear the 957
testimony of the mentally retarded or developmentally disabled 958
victim giving the testimony on a monitor, shall be provided with 959
an electronic means of immediate communication with the attorney 960
of the child who is charged with the violation or act during the 961
testimony, and shall be restricted to a location from which the 962
child who is charged with the violation or act cannot be seen or 963
heard by the mentally retarded or developmentally disabled victim 964
giving the testimony, except on a monitor provided for that 965
purpose. The mentally retarded or developmentally disabled victim 966
giving the testimony shall be provided with a monitor on which the 967
mentally retarded or developmentally disabled victim can observe, 968
while giving testimony, the child who is charged with the 969
violation or act. 970

(E) In any proceeding in juvenile court involving a 971
complaint, indictment, or information in which a child is charged 972
with a violation listed in division (B)(1) of this section or an 973
act that would be an offense of violence if committed by an adult 974
and in which an alleged victim of the violation or offense was a 975

mentally retarded or developmentally disabled person, the 976
prosecution may file a motion with the juvenile judge requesting 977
the judge to order the testimony of the mentally retarded or 978
developmentally disabled victim to be taken outside of the room in 979
which the proceeding is being conducted and be recorded for 980
showing in the room in which the proceeding is being conducted 981
before the judge, the child who is charged with the violation or 982
act, and any other persons who would have been present during the 983
testimony of the mentally retarded or developmentally disabled 984
victim had it been given in the room in which the proceeding is 985
being conducted. Except for good cause shown, the prosecution 986
shall file a motion under this division at least seven days before 987
the date of the proceeding. The juvenile judge may issue the order 988
upon the motion of the prosecution filed under this division, if 989
the judge determines that the mentally retarded or developmentally 990
disabled victim is unavailable to testify in the room in which the 991
proceeding is being conducted in the physical presence of the 992
child charged with the violation or act, due to one or more of the 993
reasons set forth in division (F) of this section. If a juvenile 994
judge issues an order of that nature, the judge shall exclude from 995
the room in which the testimony is to be taken every person except 996
a person described in division (B)(2) of this section. To the 997
extent feasible, any person operating the recording equipment 998
shall be hidden from the sight and hearing of the mentally 999
retarded or developmentally disabled victim giving the testimony, 1000
in a manner similar to that described in division (B)(2) of this 1001
section. The child who is charged with the violation or act shall 1002
be permitted to observe and hear the testimony of the mentally 1003
retarded or developmentally disabled victim giving the testimony 1004
on a monitor, shall be provided with an electronic means of 1005
immediate communication with the attorney of the child who is 1006
charged with the violation or act during the testimony, and shall 1007
be restricted to a location from which the child who is charged 1008

with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

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

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

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

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

(G)(1) If a juvenile judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of

a mentally retarded or developmentally disabled victim in a 1040
juvenile court proceeding to be taken outside of the room in which 1041
the proceeding is being conducted, the order shall specifically 1042
identify the mentally retarded or developmentally disabled victim 1043
to whose testimony it applies, the order applies only during the 1044
testimony of the specified mentally retarded or developmentally 1045
disabled victim, and the mentally retarded or developmentally 1046
disabled victim giving the testimony shall not be required to 1047
testify at the proceeding other than in accordance with the order. 1048
The authority of a judge to close the taking of a deposition under 1049
division (B)(2) of this section or a proceeding under division (D) 1050
or (E) of this section is in addition to the authority of a judge 1051
to close a hearing pursuant to section 2151.35 of the Revised 1052
Code. 1053

(2) A juvenile judge who makes any determination regarding 1054
the admissibility of a deposition under divisions (B) and (C) of 1055
this section, the videotaping of a deposition under division 1056
(B)(2) of this section, or the taking of testimony outside of the 1057
room in which a proceeding is being conducted under division (D) 1058
or (E) of this section shall enter the determination and findings 1059
on the record in the proceeding. 1060

Sec. 2311.14. (A)(1) Whenever because of a hearing, speech, 1061
or other impairment a party to or witness in a legal proceeding 1062
cannot readily understand or communicate, the court shall appoint 1063
a qualified interpreter to assist such person. Before appointing 1064
any interpreter under this division for a party or witness who is 1065
a mentally retarded person or developmentally disabled person, the 1066
court shall evaluate the qualifications of the interpreter and 1067
shall make a determination as to the ability of the interpreter to 1068
effectively interpret on behalf of the party or witness that the 1069
interpreter will assist, and the court may appoint the interpreter 1070

only if the court is satisfied that the interpreter is able to 1071
effectively interpret on behalf of that party or witness. 1072

(2) This section is not limited to a person who speaks a 1073
language other than English. It also applies to the language and 1074
descriptions of any mentally retarded person or developmentally 1075
disabled person who cannot be reasonably understood, or who cannot 1076
understand questioning, without the aid of an interpreter. The 1077
interpreter may aid the parties in formulating methods of 1078
questioning the person with mental retardation or a developmental 1079
disability and in interpreting the answers of the person. 1080

(B) Before entering upon ~~his~~ official duties, the interpreter 1081
shall take an oath that ~~he~~ the interpreter will make a true 1082
interpretation of the proceedings to the party or witness, and 1083
that ~~he~~ the interpreter will truly repeat the statements made by 1084
such party or witness to the court, to the best of ~~his~~ the 1085
interpreter's ability. If the interpreter is appointed to assist a 1086
mentally retarded person or developmentally disabled person as 1087
described in division (A)(2) of this section, the oath also shall 1088
include an oath that the interpreter will not prompt, lead, 1089
suggest, or otherwise improperly influence the testimony of the 1090
witness or party. 1091

(C) The court shall determine a reasonable fee for all such 1092
interpreter service which shall be paid out of the same funds as 1093
witness fees. 1094

(D) As used in this section, "mentally retarded person" and 1095
"developmentally disabled person" have the same meanings as in 1096
section 5123.01 of the Revised Code. 1097

Sec. 2903.341. (A) As used in this section: 1098

(1) "MR/DD caretaker" means any MR/DD employee or any person 1099
who assumes the duty to provide for the care and protection of a 1100

mentally retarded person or a developmentally disabled person on a 1101
voluntary basis, by contract, through receipt of payment for care 1102
and protection, as a result of a family relationship, or by order 1103
of a court of competent jurisdiction. "MR/DD caretaker" includes a 1104
person who is an employee of a care facility and a person who is 1105
an employee of an entity under contract with a provider. "MR/DD 1106
caretaker" does not include a person who owns, operates, or 1107
administers a care facility or who is an agent of a care facility 1108
unless that person also personally provides care to persons with 1109
mental retardation or a developmental disability. 1110

(2) "Mentally retarded person" and "developmentally disabled 1111
person" have the same meanings as in section 5123.01 of the 1112
Revised Code. 1113

(3) "MR/DD employee" has the same meaning as in section 1114
5123.50 of the Revised Code. 1115

(B) No MR/DD caretaker shall create a substantial risk to the 1116
health or safety of a mentally retarded person or a 1117
developmentally disabled person. An MR/DD caretaker does not 1118
create a substantial risk to the health or safety of a mentally 1119
retarded person or a developmentally disabled person under this 1120
division when the MR/DD caretaker treats a physical or mental 1121
illness or defect of the mentally retarded person or 1122
developmentally disabled person by spiritual means through prayer 1123
alone, in accordance with the tenets of a recognized religious 1124
body. 1125

(C) No person who owns, operates, or administers a care 1126
facility or who is an agent of a care facility shall condone, or 1127
knowingly permit, any conduct by an MR/DD caretaker who is 1128
employed by or under the control of the owner, operator, 1129
administrator, or agent that is in violation of division (B) of 1130
this section and that involves a mentally retarded person or a 1131

developmentally disabled person who is under the care of the 1132
owner, operator, administrator, or agent. A person who relies upon 1133
treatment by spiritual means through prayer alone, in accordance 1134
with the tenets of a recognized religious denomination, shall not 1135
be considered endangered under this division for that reason 1136
alone. 1137

(D)(1) It is an affirmative defense to a charge of a 1138
violation of division (B) or (C) of this section that the actor's 1139
conduct was committed in good faith solely because the actor was 1140
ordered to commit the conduct by a person to whom one of the 1141
following applies: 1142

(a) The person has supervisory authority over the actor. 1143

(b) The person has authority over the actor's conduct 1144
pursuant to a contract for the provision of services. 1145

(2) It is an affirmative defense to a charge of a violation 1146
of division (C) of this section that the person who owns, 1147
operates, or administers a care facility or who is an agent of a 1148
care facility and who is charged with the violation is following 1149
the individual service plan for the involved mentally retarded 1150
person or a developmentally disabled person or that the admission, 1151
discharge, and transfer rule set forth in the Administrative Code 1152
is being followed. 1153

(3) It is an affirmative defense to a charge of a violation 1154
of division (C) of this section that the actor did not have 1155
readily available a means to prevent either the harm to the person 1156
with mental retardation or a developmental disability or the death 1157
of such a person and the actor took reasonable steps to summon 1158
aid. 1159

(E)(1) Except as provided in division (E)(2) or (E)(3) of 1160
this section, whoever violates division (B) or (C) of this section 1161
is guilty of patient endangerment, a misdemeanor of the first 1162

<u>degree.</u>	1163
<u>(2) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section, patient endangerment is a felony of the fourth degree.</u>	1164
<u>(3) If the violation results in serious physical harm to the person with mental retardation or a developmental disability, patient endangerment is a felony of the third degree.</u>	1165
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Sec. 2930.03. (A) A person or entity required or authorized under this chapter to give notice to a victim shall give the notice to the victim by any means reasonably calculated to provide prompt actual notice. Except when a provision requires that notice is to be given in a specific manner, a notice may be oral or written.	1170
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(B) Except for receipt of the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code, a victim who wishes to receive any notice authorized by this chapter shall make a request for the notice to the prosecutor or the custodial agency that is to provide the notice, as specified in this chapter. If the victim does not make a request as described in this division, the prosecutor or custodial agency is not required to provide any notice described in this chapter other than the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code.	1176
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(C) A person or agency that is required to furnish notice under this chapter shall give the notice to the victim at the address or telephone number provided to the person or agency by the victim. A victim who requests to receive notice under this	1189
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chapter as described in division (B) of this section shall inform 1193
the person or agency of the name, address, or telephone number of 1194
the victim and of any change to that information. 1195

(D) A person or agency that has furnished information to a 1196
victim in accordance with any requirement or authorization under 1197
this chapter shall notify the victim promptly of any significant 1198
changes to that information. 1199

(E) Divisions (A) to (D) of this section do not apply 1200
regarding a notice that a prosecutor is required to provide under 1201
section 2930.061 of the Revised Code. A prosecutor required to 1202
provide notice under that section shall provide the notice as 1203
specified in that section. 1204

Sec. 2930.061. (A) If a person is charged in a complaint, 1205
indictment, or information with any crime or specified delinquent 1206
act or with any other violation of law, and if the case involves a 1207
victim that the prosecutor in the case knows is a mentally 1208
retarded person or a developmentally disabled person, in addition 1209
to any other notices required under this chapter or under any 1210
other provision of law, the prosecutor in the case shall send 1211
written notice of the charges to the department of mental 1212
retardation and developmental disabilities. The written notice 1213
shall specifically identify the person so charged. 1214

(B) As used in this section, "mentally retarded person" and 1215
"developmentally disabled person" have the same meanings as in 1216
section 5123.01 of the Revised Code. 1217

Sec. 2945.482. (A) As used in this section: 1218

(1) "Mentally retarded person" and "developmentally disabled 1219
person" have the same meanings as in section 5123.01 of the 1220
Revised Code. 1221

(2) "Mentally retarded or developmentally disabled victim" 1222

includes a mentally retarded or developmentally disabled person 1223
who was a victim of a violation identified in division (B)(1) of 1224
this section or an offense of violence or against whom was 1225
directed any conduct that constitutes, or that is an element of, a 1226
violation identified in division (B)(1) of this section or an 1227
offense of violence. 1228

(B)(1) In any proceeding in the prosecution of a charge of a 1229
violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 1230
2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 1231
2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an 1232
offense of violence and in which an alleged victim of the 1233
violation or offense was a mentally retarded or developmentally 1234
disabled person, the judge of the court in which the prosecution 1235
is being conducted, upon motion of an attorney for the 1236
prosecution, shall order that the testimony of the mentally 1237
retarded or developmentally disabled victim be taken by 1238
deposition. The prosecution also may request that the deposition 1239
be videotaped in accordance with division (B)(2) of this section. 1240
The judge shall notify the mentally retarded or developmentally 1241
disabled victim whose deposition is to be taken, the prosecution, 1242
and the defense of the date, time, and place for taking the 1243
deposition. The notice shall identify the mentally retarded or 1244
developmentally disabled victim who is to be examined and shall 1245
indicate whether a request that the deposition be videotaped has 1246
been made. The defendant shall have the right to attend the 1247
deposition and the right to be represented by counsel. Depositions 1248
shall be taken in the manner provided in civil cases, except that 1249
the judge shall preside at the taking of the deposition and shall 1250
rule at the time on any objections of the prosecution or the 1251
attorney for the defense. The prosecution and the attorney for the 1252
defense shall have the right, as at trial, to full examination and 1253
cross-examination of the mentally retarded or developmentally 1254

disabled victim whose deposition is to be taken. If a deposition 1255
taken under this division is intended to be offered as evidence in 1256
the proceeding, it shall be filed in the court in which the action 1257
is pending and is admissible in the manner described in division 1258
(C) of this section. 1259

If a deposition of a mentally retarded or developmentally 1260
disabled victim taken under this division is admitted as evidence 1261
at the proceeding under division (C) of this section, the mentally 1262
retarded or developmentally disabled victim shall not be required 1263
to testify in person at the proceeding. 1264

At any time before the conclusion of the proceeding, the 1265
attorney for the defense may file a motion with the judge 1266
requesting that another deposition of the mentally retarded or 1267
developmentally disabled victim be taken because new evidence 1268
material to the defense has been discovered that the attorney for 1269
the defense could not with reasonable diligence have discovered 1270
prior to the taking of the admitted deposition. If the court 1271
orders the taking of another deposition under this provision, the 1272
deposition shall be taken in accordance with this division. If the 1273
admitted deposition was a videotaped deposition taken in 1274
accordance with division (B)(2) of this section, the new 1275
deposition shall be videotaped in accordance with that division. 1276
In other cases, the new deposition may be videotaped in accordance 1277
with that division. 1278

(2) If the prosecution requests that a deposition to be taken 1279
under division (B)(2) of this section be videotaped, the judge 1280
shall order that the deposition be videotaped in accordance with 1281
this division. If a judge issues an order that the deposition be 1282
videotaped, the judge shall exclude from the room in which the 1283
deposition is to be taken every person except the mentally 1284
retarded or developmentally disabled victim giving the testimony, 1285
the judge, one or more interpreters if needed, the attorneys for 1286

the prosecution and the defense, any person needed to operate the 1287
equipment to be used, one person chosen by the mentally retarded 1288
or developmentally disabled victim giving the deposition, and any 1289
person whose presence the judge determines would contribute to the 1290
welfare and well-being of the mentally retarded or developmentally 1291
disabled victim giving the deposition. The person chosen by the 1292
mentally retarded or developmentally disabled victim shall not be 1293
a witness in the proceeding and, both before and during the 1294
deposition, shall not discuss the testimony of the mentally 1295
retarded or developmentally disabled victim with any other witness 1296
in the proceeding. To the extent feasible, any person operating 1297
the recording equipment shall be restricted to a room adjacent to 1298
the room in which the deposition is being taken, or to a location 1299
in the room in which the deposition is being taken that is behind 1300
a screen or mirror, so that the person operating the recording 1301
equipment can see and hear, but cannot be seen or heard by, the 1302
mentally retarded or developmentally disabled victim giving the 1303
deposition during the deposition. 1304

The defendant shall be permitted to observe and hear the 1305
testimony of the mentally retarded or developmentally disabled 1306
victim giving the deposition on a monitor, shall be provided with 1307
an electronic means of immediate communication with the 1308
defendant's attorney during the testimony, and shall be restricted 1309
to a location from which the defendant cannot be seen or heard by 1310
the mentally retarded or developmentally disabled victim giving 1311
the deposition, except on a monitor provided for that purpose. The 1312
mentally retarded or developmentally disabled victim giving the 1313
deposition shall be provided with a monitor on which the victim 1314
can observe, during the testimony, the defendant. The judge, at 1315
the judge's discretion, may preside at the deposition by 1316
electronic means from outside the room in which the deposition is 1317
to be taken. If the judge presides by electronic means, the judge 1318

shall be provided with monitors on which the judge can see each 1319
person in the room in which the deposition is to be taken and with 1320
an electronic means of communication with each person, and each 1321
person in the room shall be provided with a monitor on which that 1322
person can see the judge and with an electronic means of 1323
communication with the judge. A deposition that is videotaped 1324
under this division shall be taken and filed in the manner 1325
described in division (B)(1) of this section and is admissible in 1326
the manner described in this division and division (C) of this 1327
section, and, if a deposition that is videotaped under this 1328
division is admitted as evidence at the proceeding, the mentally 1329
retarded or developmentally disabled victim shall not be required 1330
to testify in person at the proceeding. No deposition videotaped 1331
under this division shall be admitted as evidence at any 1332
proceeding unless division (C) of this section is satisfied 1333
relative to the deposition and all of the following apply relative 1334
to the recording: 1335

(a) The recording is both aural and visual and is recorded on 1336
film or videotape, or by other electronic means. 1337

(b) The recording is authenticated under the Rules of 1338
Evidence and the Rules of Criminal Procedure as a fair and 1339
accurate representation of what occurred, and the recording is not 1340
altered other than at the direction and under the supervision of 1341
the judge in the proceeding. 1342

(c) Each voice on the recording that is material to the 1343
testimony on the recording or the making of the recording, as 1344
determined by the judge, is identified. 1345

(d) Both the prosecution and the defendant are afforded an 1346
opportunity to view the recording before it is shown in the 1347
proceeding. 1348

(C)(1) At any proceeding in a prosecution in relation to 1349

which a deposition was taken under division (B) of this section, 1350
the deposition or a part of it is admissible in evidence upon 1351
motion of the prosecution if the testimony in the deposition or 1352
the part to be admitted is not excluded by the hearsay rule and if 1353
the deposition or the part to be admitted otherwise is admissible 1354
under the Rules of Evidence. For purposes of this division, 1355
testimony is not excluded by the hearsay rule if the testimony is 1356
not hearsay under Evidence Rule 801; the testimony is within an 1357
exception to the hearsay rule set forth in Evidence Rule 803; the 1358
mentally retarded or developmentally disabled victim who gave the 1359
testimony is unavailable as a witness, as defined in Evidence Rule 1360
804, and the testimony is admissible under that rule; or both of 1361
the following apply: 1362

(a) The defendant had an opportunity and similar motive at 1363
the time of the taking of the deposition to develop the testimony 1364
by direct, cross, or redirect examination. 1365

(b) The judge determines that there is reasonable cause to 1366
believe that, if the mentally retarded or developmentally disabled 1367
victim who gave the testimony in the deposition were to testify in 1368
person at the proceeding, the mentally retarded or developmentally 1369
disabled victim would experience serious emotional trauma as a 1370
result of the mentally retarded or developmentally disabled 1371
victim's participation at the proceeding. 1372

(2) Objections to receiving in evidence a deposition or a 1373
part of it under division (C) of this section shall be made as 1374
provided in civil actions. 1375

(3) The provisions of divisions (B) and (C) of this section 1376
are in addition to any other provisions of the Revised Code, the 1377
Rules of Criminal Procedure, or the Rules of Evidence that pertain 1378
to the taking or admission of depositions in a criminal proceeding 1379
and do not limit the admissibility under any of those other 1380

provisions of any deposition taken under division (B) of this 1381
section or otherwise taken. 1382

(D) In any proceeding in the prosecution of any charge of a 1383
violation listed in division (B)(1) of this section or an offense 1384
of violence and in which an alleged victim of the violation or 1385
offense was a mentally retarded or developmentally disabled 1386
person, the prosecution may file a motion with the judge 1387
requesting the judge to order the testimony of the mentally 1388
retarded or developmentally disabled victim to be taken in a room 1389
other than the room in which the proceeding is being conducted and 1390
be televised, by closed circuit equipment, into the room in which 1391
the proceeding is being conducted to be viewed by the jury, if 1392
applicable, the defendant, and any other persons who are not 1393
permitted in the room in which the testimony is to be taken but 1394
who would have been present during the testimony of the mentally 1395
retarded or developmentally disabled victim had it been given in 1396
the room in which the proceeding is being conducted. Except for 1397
good cause shown, the prosecution shall file a motion under this 1398
division at least seven days before the date of the proceeding. 1399
The judge may issue the order upon the motion of the prosecution 1400
filed under this section, if the judge determines that the 1401
mentally retarded or developmentally disabled victim is 1402
unavailable to testify in the room in which the proceeding is 1403
being conducted in the physical presence of the defendant for one 1404
or more of the reasons set forth in division (F) of this section. 1405
If a judge issues an order of that nature, the judge shall exclude 1406
from the room in which the testimony is to be taken every person 1407
except a person described in division (B)(2) of this section. The 1408
judge, at the judge's discretion, may preside during the giving of 1409
the testimony by electronic means from outside the room in which 1410
it is being given, subject to the limitations set forth in 1411
division (B)(2) of this section. To the extent feasible, any 1412

person operating the televising equipment shall be hidden from the 1413
sight and hearing of the mentally retarded or developmentally 1414
disabled victim giving the testimony, in a manner similar to that 1415
described in division (B)(2) of this section. The defendant shall 1416
be permitted to observe and hear the testimony of the mentally 1417
retarded or developmentally disabled victim giving the testimony 1418
on a monitor, shall be provided with an electronic means of 1419
immediate communication with the defendant's attorney during the 1420
testimony, and shall be restricted to a location from which the 1421
defendant cannot be seen or heard by the mentally retarded or 1422
developmentally disabled victim giving the testimony, except on a 1423
monitor provided for that purpose. The mentally retarded or 1424
developmentally disabled victim giving the testimony shall be 1425
provided with a monitor on which the mentally retarded or 1426
developmentally disabled victim can observe, during the testimony, 1427
the defendant. 1428

(E) In any proceeding in the prosecution of any charge of a 1429
violation listed in division (B)(1) of this section or an offense 1430
of violence and in which an alleged victim of the violation or 1431
offense was a mentally retarded or developmentally disabled 1432
victim, the prosecution may file a motion with the judge 1433
requesting the judge to order the testimony of the mentally 1434
retarded or developmentally disabled victim to be taken outside of 1435
the room in which the proceeding is being conducted and be 1436
recorded for showing in the room in which the proceeding is being 1437
conducted before the judge, the jury, if applicable, the 1438
defendant, and any other persons who would have been present 1439
during the testimony of the mentally retarded or developmentally 1440
disabled victim had it been given in the room in which the 1441
proceeding is being conducted. Except for good cause shown, the 1442
prosecution shall file a motion under this division at least seven 1443
days before the date of the proceeding. The judge may issue the 1444

order upon the motion of the prosecution filed under this 1445
division, if the judge determines that the mentally retarded or 1446
developmentally disabled victim is unavailable to testify in the 1447
room in which the proceeding is being conducted in the physical 1448
presence of the defendant, for one or more of the reasons set 1449
forth in division (F) of this section. If a judge issues an order 1450
of that nature, the judge shall exclude from the room in which the 1451
testimony is to be taken every person except a person described in 1452
division (B)(2) of this section. To the extent feasible, any 1453
person operating the recording equipment shall be hidden from the 1454
sight and hearing of the mentally retarded or developmentally 1455
disabled victim giving the testimony, in a manner similar to that 1456
described in division (B)(2) of this section. The defendant shall 1457
be permitted to observe and hear the testimony of the mentally 1458
retarded or developmentally disabled victim who is giving the 1459
testimony on a monitor, shall be provided with an electronic means 1460
of immediate communication with the defendant's attorney during 1461
the testimony, and shall be restricted to a location from which 1462
the defendant cannot be seen or heard by the mentally retarded or 1463
developmentally disabled victim giving the testimony, except on a 1464
monitor provided for that purpose. The mentally retarded or 1465
developmentally disabled victim giving the testimony shall be 1466
provided with a monitor on which the victim can observe, during 1467
the testimony, the defendant. No order for the taking of testimony 1468
by recording shall be issued under this division unless the 1469
provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of 1470
this section apply to the recording of the testimony. 1471

(F) For purposes of divisions (D) and (E) of this section, a 1472
judge may order the testimony of a mentally retarded or 1473
developmentally disabled victim to be taken outside the room in 1474
which the proceeding is being conducted if the judge determines 1475
that the mentally retarded or developmentally disabled victim is 1476

unavailable to testify in the room in the physical presence of the 1477
defendant due to one or more of the following: 1478

(1) The persistent refusal of the mentally retarded or 1479
developmentally disabled victim to testify despite judicial 1480
requests to do so; 1481

(2) The inability of the mentally retarded or developmentally 1482
disabled victim to communicate about the alleged violation or 1483
offense because of extreme fear, failure of memory, or another 1484
similar reason; 1485

(3) The substantial likelihood that the mentally retarded or 1486
developmentally disabled victim will suffer serious emotional 1487
trauma from so testifying. 1488

(G)(1) If a judge issues an order pursuant to division (D) or 1489
(E) of this section that requires the testimony of a mentally 1490
retarded or developmentally disabled victim in a criminal 1491
proceeding to be taken outside of the room in which the proceeding 1492
is being conducted, the order shall specifically identify the 1493
mentally retarded or developmentally disabled victim to whose 1494
testimony it applies, the order applies only during the testimony 1495
of the specified mentally retarded or developmentally disabled 1496
victim, and the mentally retarded or developmentally disabled 1497
victim giving the testimony shall not be required to testify at 1498
the proceeding other than in accordance with the order. 1499

(2) A judge who makes any determination regarding the 1500
admissibility of a deposition under divisions (B) and (C) of this 1501
section, the videotaping of a deposition under division (B)(2) of 1502
this section, or the taking of testimony outside of the room in 1503
which a proceeding is being conducted under division (D) or (E) of 1504
this section shall enter the determination and findings on the 1505
record in the proceeding. 1506

<u>Sec. 2945.491. (A) As used in this section:</u>	1507
<u>(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.</u>	1508 1509 1510
<u>(2) "Mentally retarded or developmentally disabled victim" includes a mentally retarded or developmentally disabled person who was a victim of a felony violation identified in division (B)(1) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B)(1) of this section or a felony offense of violence.</u>	1511 1512 1513 1514 1515 1516 1517
<u>(B)(1) At a trial on a charge of a felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the mentally retarded or developmentally disabled victim as evidence at the trial, in lieu of the mentally retarded or developmentally disabled victim appearing as a witness and testifying at trial, if all of the following apply:</u>	1518 1519 1520 1521 1522 1523 1524 1525 1526 1527 1528 1529
<u>(a) The videotape of the testimony was made at the preliminary hearing at which probable cause of the violation charged was found.</u>	1530 1531 1532
<u>(b) The videotape of the testimony was made in accordance with division (C) of section 2937.11 of the Revised Code.</u>	1533 1534
<u>(c) The testimony in the videotape is not excluded by the hearsay rule and otherwise is admissible under the Rules of</u>	1535 1536

Evidence. For purposes of this division, testimony is not excluded 1537
by the hearsay rule if the testimony is not hearsay under Evidence 1538
Rule 801, the testimony is within an exception to the hearsay rule 1539
set forth in Evidence Rule 803, the mentally retarded or 1540
developmentally disabled victim who gave the testimony is 1541
unavailable as a witness, as defined in Evidence Rule 804, and the 1542
testimony is admissible under that rule, or both of the following 1543
apply: 1544

(i) The accused had an opportunity and similar motive at the 1545
preliminary hearing to develop the testimony of the mentally 1546
retarded or developmentally disabled victim by direct, cross, or 1547
redirect examination. 1548

(ii) The court determines that there is reasonable cause to 1549
believe that if the mentally retarded or developmentally disabled 1550
victim who gave the testimony at the preliminary hearing were to 1551
testify in person at the trial, the mentally retarded or 1552
developmentally disabled victim would experience serious emotional 1553
trauma as a result of the victim's participation at the trial. 1554

(2) If a mentally retarded or developmentally disabled victim 1555
of an alleged felony violation of section 2903.16, 2903.34, 1556
2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 1557
2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an 1558
alleged felony offense of violence testifies at the preliminary 1559
hearing in the case, if the testimony of the mentally retarded or 1560
developmentally disabled victim at the preliminary hearing was 1561
videotaped pursuant to division (C) of section 2937.11 of the 1562
Revised Code, and if the defendant in the case files a written 1563
objection to the use, pursuant to division (B)(1) of this section, 1564
of the videotaped testimony at the trial, the court, immediately 1565
after the filing of the objection, shall hold a hearing to 1566
determine whether the videotaped testimony of the mentally 1567
retarded or developmentally disabled victim should be admissible 1568

at trial under division (B)(1) of this section and, if it is 1569
admissible, whether the mentally retarded or developmentally 1570
disabled victim should be required to provide limited additional 1571
testimony of the type described in this division. At the hearing 1572
held pursuant to this division, the defendant and the prosecutor 1573
in the case may present any evidence that is relevant to the 1574
issues to be determined at the hearing, but the mentally retarded 1575
or developmentally disabled victim shall not be required to 1576
testify at the hearing. 1577

After the hearing, the court shall not require the mentally 1578
retarded or developmentally disabled victim to testify at the 1579
trial, unless it determines that both of the following apply: 1580

(a) That the testimony of the mentally retarded or 1581
developmentally disabled victim at trial is necessary for one or 1582
more of the following reasons: 1583

(i) Evidence that was not available at the time of the 1584
testimony of the mentally retarded or developmentally disabled 1585
victim at the preliminary hearing has been discovered. 1586

(ii) The circumstances surrounding the case have changed 1587
sufficiently to necessitate that the mentally retarded or 1588
developmentally disabled victim testify at the trial. 1589

(b) That the testimony of the mentally retarded or 1590
developmentally disabled victim at the trial is necessary to 1591
protect the right of the defendant to a fair trial. 1592

The court shall enter its finding and the reasons for it in 1593
the journal. If the court requires the mentally retarded or 1594
developmentally disabled victim to testify at the trial, the 1595
testimony of the victim shall be limited to the new evidence and 1596
changed circumstances, and the mentally retarded or 1597
developmentally disabled victim shall not otherwise be required to 1598
testify at the trial. The required testimony of the mentally 1599

retarded or developmentally disabled victim may be given in person 1600
or, upon motion of the prosecution, may be taken by deposition in 1601
accordance with division (B) of section 2945.482 of the Revised 1602
Code provided the deposition is admitted as evidence under 1603
division (C) of that section, may be taken outside of the 1604
courtroom and televised into the courtroom in accordance with 1605
division (D) of that section, or may be taken outside of the 1606
courtroom and recorded for showing in the courtroom in accordance 1607
with division (E) of that section. 1608

(3) If videotaped testimony of a mentally retarded or 1609
developmentally disabled victim is admitted at trial in accordance 1610
with division (B)(1) of this section, the mentally retarded or 1611
developmentally disabled victim shall not be compelled in any way 1612
to appear as a witness at the trial, except as provided in 1613
division (B)(2) of this section. 1614

(C) An order issued pursuant to division (B) of this section 1615
shall specifically identify the mentally retarded or 1616
developmentally disabled victim concerning whose testimony it 1617
pertains. The order shall apply only during the testimony of the 1618
mentally retarded or developmentally disabled victim it 1619
specifically identifies. 1620

Sec. 5120.173. Any person who is required to report suspected 1621
abuse or neglect of a child under eighteen years of age pursuant 1622
to division (A) of section 2151.421 of the Revised Code, ~~and~~ any 1623
person who is permitted to report or cause a report to be made of 1624
suspected abuse or neglect of a child under eighteen years of age 1625
pursuant to division (B) of that section, any person who is 1626
required to report suspected abuse or neglect of a person with 1627
mental retardation or a developmental disability pursuant to 1628
division (C) of section 5123.61 of the Revised Code, and any 1629
person who is permitted to report suspected abuse or neglect of a 1630

person with mental retardation or a developmental disability 1631
pursuant to division (F) of that section and who makes or causes 1632
the report to be made, shall direct that report to the state 1633
highway patrol if the child or the person with mental retardation 1634
or a developmental disability is an inmate in the custody of a 1635
state correctional institution. If the state highway patrol 1636
determines after receipt of the report that it is probable that 1637
abuse or neglect of the inmate occurred, the patrol shall report 1638
its findings to the department of rehabilitation and correction, 1639
to the court that sentenced the inmate for the offense for which 1640
the inmate is in the custody of the department, and to the 1641
chairman and vice-chairman of the correctional institution 1642
inspection committee established by section 103.71 of the Revised 1643
Code. 1644

Sec. 5123.032. (A) As used in this section, "developmental 1645
center" means any institution or facility of the department of 1646
mental retardation and developmental disabilities that, on or 1647
after the effective date of this section, is named, designated, or 1648
referred to as a developmental center. 1649

(B) Notwithstanding any other provision of law, on and after 1650
the effective date of this section, any closure of a developmental 1651
center shall be subject to, and in accordance with, this section. 1652
Notwithstanding any other provision of law, if the governor 1653
announced on or after January 1, 2003, and prior to the effective 1654
date of this section the intended closure of a developmental 1655
center and if the closure identified in the announcement has not 1656
occurred prior to the effective date of this section, the closure 1657
identified in the announcement shall be subject to the criteria 1658
set forth in this section as if the announcement had been made on 1659
or after the effective date of this amendment. 1660

(C) Notwithstanding any other provision of law, on and after 1661

the effective date of this section, at least ten days prior to 1662
making any official, public announcement that the governor intends 1663
to close one or more developmental centers, the governor shall 1664
notify the general assembly in writing that the governor intends 1665
to close one or more developmental centers. The notice shall 1666
identify by name each developmental center that the governor 1667
intends to close or, if the governor has not determined any 1668
specific developmental center to close, shall state the governor's 1669
general intent to close one or more developmental centers. When 1670
the governor notifies the general assembly as required by this 1671
division, the legislative service commission promptly shall 1672
conduct an independent study of the developmental centers of the 1673
department of mental retardation and developmental disabilities 1674
and of the department's operation of the centers, and the study 1675
shall address relevant criteria and factors, including, but not 1676
limited to, all of the following: 1677

(1) The manner in which the closure of developmental centers 1678
in general would affect the safety, health, well-being, and 1679
lifestyle of the centers' residents and their family members and 1680
would affect public safety and, if the governor's notice 1681
identifies by name one or more developmental centers that the 1682
governor intends to close, the manner in which the closure of each 1683
center so identified would affect the safety, health, well-being, 1684
and lifestyle of the center's residents and their family members 1685
and would affect public safety; 1686

(2) The availability of alternate facilities; 1687

(3) The cost effectiveness of the facilities identified for 1688
closure; 1689

(4) A comparison of the cost of residing at a facility 1690
identified for closure and the cost of new living arrangements; 1691

(5) The geographic factors associated with each facility and 1692

<u>its proximity to other similar facilities;</u>	1693
<u>(6) The impact of collective bargaining on facility operations;</u>	1694
<u>(7) The utilization and maximization of resources;</u>	1695
<u>(8) Continuity of the staff and ability to serve the facility population;</u>	1696
<u>(9) Continuing costs following closure of a facility;</u>	1697
<u>(10) The impact of the closure on the local economy;</u>	1698
<u>(11) Alternatives and opportunities for consolidation with other facilities;</u>	1699
<u>(12) How the closing of a facility identified for closure relates to the department's plans for the future of developmental centers in this state;</u>	1700
<u>(13) The effect of the closure of developmental centers in general upon the state's fiscal resources and fiscal status and, if the governor's notice identifies by name one or more developmental centers that the governor intends to close, the effect of the closure of each center so identified upon the state's fiscal resources and fiscal status.</u>	1701
<u>(D) The legislative service commission shall complete the study required by division (C) of this section, and prepare a report that contains its findings, not later than ninety days after the governor makes the official, public announcement that the governor intends to close one or more developmental centers as described in division (C) of this section. The commission shall provide a copy of the report to each member of the general assembly who requests a copy of the report.</u>	1702
<u>Not later than the date on which the legislative service commission is required to complete the report under this division, the mental retardation and developmental disabilities</u>	1703
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developmental center closure commission is hereby created as 1723
described in division (E) of this section. The officials with the 1724
duties to appoint members of the closure commission, as described 1725
in division (E) of this section, shall appoint the specified 1726
members of the closure commission, and, as soon as possible after 1727
the appointments, the closure commission shall meet for the 1728
purposes described in that division. Upon completion of the report 1729
and the creation of the closure commission under this division, 1730
the legislative service commission promptly shall provide a copy 1731
of the report to the closure commission and shall present the 1732
report as described in division (E) of this section. 1733

(E)(1) A mental retardation and developmental disabilities 1734
developmental center closure commission shall be created at the 1735
time and in the manner specified in division (D) of this section. 1736
The closure commission consists of five members. One member shall 1737
be the director of the department of mental retardation and 1738
developmental disabilities. One member shall be a private 1739
executive with expertise in facility utilization, jointly 1740
appointed by the speaker of the house of representatives and the 1741
president of the senate. The member appointed for expertise in 1742
facility utilization may not be a member of the general assembly 1743
and may not have a developmental center identified for closure by 1744
the governor in the county in which the member resides. One member 1745
shall be a member of the board of the Ohio civil service 1746
employees' association, appointed by the governor. One member 1747
shall be a private executive with expertise in economics, jointly 1748
appointed by the speaker of the house of representatives and the 1749
president of the senate. The member appointed for expertise in 1750
economics may not be a member of the general assembly and may not 1751
have a developmental center identified for closure by the governor 1752
in the county in which the member resides. One member shall be a 1753
member of the law enforcement or health care community, appointed 1754

by the governor. The officials with the duties to appoint members 1755
of the closure commission shall make the appointments, and the 1756
closure commission shall meet, within the time periods specified 1757
in division (D) of this section. The members of the closure 1758
commission shall serve without compensation. At the closure 1759
commission's first meeting, the members shall organize and appoint 1760
a chairperson and vice-chairperson. 1761

The closure commission shall meet as often as is necessary 1762
for the purpose of making the recommendations to the governor that 1763
are described in this division. The closure commission's meetings 1764
shall be open to the public, and the closure commission shall 1765
accept public testimony. The legislative service commission shall 1766
appear before the closure commission and present the report the 1767
legislative service commission prepared under division (D) of this 1768
section. The closure commission shall meet for the purpose of 1769
making recommendations to the governor, which recommendations may 1770
include all of the following: 1771

(a) Whether any developmental center should be closed; 1772

(b) If the recommendation described in division (E)(1)(a) of 1773
this section is that one or more developmental centers should be 1774
closed, which center or centers should be closed; 1775

(c) If the governor's notice described in division (C) of 1776
this section identifies by name one or more developmental centers 1777
that the governor intends to close, whether the center or centers 1778
so identified should be closed. 1779

(2) The mental retardation and developmental disabilities 1780
developmental center closure commission, not later than ninety 1781
days after it receives the report of the legislative service 1782
commission under division (D) of this section, shall prepare a 1783
report containing its recommendations to the governor. The closure 1784
commission shall send a copy of the report to the governor and to 1785

each member of the general assembly who requests a copy of the 1786
report. Upon receipt of the closure commission's report, the 1787
governor shall review and consider the commission's 1788
recommendation. The governor shall do one of the following: 1789

(a) Follow the recommendation of the commission; 1790

(b) Close no developmental center; 1791

(c) Take other action that the governor determines is 1792
necessary for the purpose of expenditure reductions or budget cuts 1793
and state the reasons for the action. 1794

The governor's decision is final. Upon the governor's making 1795
of the decision, the closure commission shall cease to exist. 1796
Another closure commission shall be created under this section 1797
each time the governor subsequently makes an official, public 1798
announcement that the governor intends to close one or more 1799
developmental centers. 1800

Sec. 5123.081. (A) As used in this section: 1801

(1) "Applicant" means a person who is under final 1802
consideration for appointment to or employment with the department 1803
of mental retardation and developmental disabilities, including, 1804
but not limited to, a person who is being transferred to the 1805
department and an employee who is being recalled or reemployed 1806
after a layoff. 1807

(2) "Criminal records check" has the same meaning as in 1808
section 109.572 of the Revised Code. 1809

(3) "Minor drug possession offense" has the same meaning as 1810
in section 2925.01 of the Revised Code. 1811

(B) The director of mental retardation and developmental 1812
disabilities shall request the superintendent of the bureau of 1813
criminal identification and investigation to conduct a criminal 1814

records check with respect to each applicant, except that the 1815
director is not required to request a criminal records check for 1816
an employee of the department who is being considered for a 1817
different position or is returning after a leave of absence or 1818
seasonal break in employment, as long as the director has no 1819
reason to believe that the employee has committed any of the 1820
offenses listed or described in division (E) of this section. 1821

If the applicant does not present proof that the applicant 1822
has been a resident of this state for the five-year period 1823
immediately prior to the date upon which the criminal records 1824
check is requested, the director shall request that the 1825
superintendent of the bureau obtain information from the federal 1826
bureau of investigation as a part of the criminal records check 1827
for the applicant. If the applicant presents proof that the 1828
applicant has been a resident of this state for that five-year 1829
period, the director may request that the superintendent of the 1830
bureau include information from the federal bureau of 1831
investigation in the criminal records check. For purposes of this 1832
division, an applicant may provide proof of residency in this 1833
state by presenting, with a notarized statement asserting that the 1834
applicant has been a resident of this state for that five-year 1835
period, a valid driver's license, notification of registration as 1836
an elector, a copy of an officially filed federal or state tax 1837
form identifying the applicant's permanent residence, or any other 1838
document the director considers acceptable. 1839

(C) The director shall provide to each applicant a copy of 1840
the form prescribed pursuant to division (C)(1) of section 109.572 1841
of the Revised Code, provide to each applicant a standard 1842
impression sheet to obtain fingerprint impressions prescribed 1843
pursuant to division (C)(2) of section 109.572 of the Revised 1844
Code, obtain the completed form and impression sheet from each 1845
applicant, and forward the completed form and impression sheet to 1846

the superintendent of the bureau of criminal identification and 1847
investigation at the time the criminal records check is requested. 1848

Any applicant who receives pursuant to this division a copy 1849
of the form prescribed pursuant to division (C)(1) of section 1850
109.572 of the Revised Code and a copy of an impression sheet 1851
prescribed pursuant to division (C)(2) of that section and who is 1852
requested to complete the form and provide a set of fingerprint 1853
impressions shall complete the form or provide all the information 1854
necessary to complete the form and shall provide the material with 1855
the impressions of the applicant's fingerprints. If an applicant, 1856
upon request, fails to provide the information necessary to 1857
complete the form or fails to provide impressions of the 1858
applicant's fingerprints, the director shall not employ the 1859
applicant. 1860

(D) The director may request any other state or federal 1861
agency to supply the director with a written report regarding the 1862
criminal record of each applicant. With regard to an applicant who 1863
becomes a department employee, if the employee holds an 1864
occupational or professional license or other credentials, the 1865
director may request that the state or federal agency that 1866
regulates the employee's occupation or profession supply the 1867
director with a written report of any information pertaining to 1868
the employee's criminal record that the agency obtains in the 1869
course of conducting an investigation or in the process of 1870
renewing the employee's license or other credentials. 1871

(E) Except as provided in division (K)(2) of this section and 1872
in rules adopted by the director in accordance with division (M) 1873
of this section, the director shall not employ a person to fill a 1874
position with the department who has been convicted of or pleaded 1875
guilty to any of the following: 1876

(1) A violation of section 2903.01, 2903.02, 2903.03, 1877
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 1878

2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 1879
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 1880
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 1881
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 1882
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 1883
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 1884
section 2905.04 of the Revised Code as it existed prior to July 1, 1885
1996, a violation of section 2919.23 of the Revised Code that 1886
would have been a violation of section 2905.04 of the Revised Code 1887
as it existed prior to July 1, 1996, had the violation occurred 1888
prior to that date, a violation of section 2925.11 of the Revised 1889
Code that is not a minor drug possession offense, or felonious 1890
sexual penetration in violation of former section 2907.12 of the 1891
Revised Code; 1892

(2) A felony contained in the Revised Code that is not listed 1893
in this division, if the felony bears a direct and substantial 1894
relationship to the duties and responsibilities of the position 1895
being filled; 1896

(3) Any offense contained in the Revised Code constituting a 1897
misdemeanor of the first degree on the first offense and a felony 1898
on a subsequent offense, if the offense bears a direct and 1899
substantial relationship to the position being filled and the 1900
nature of the services being provided by the department; 1901

(4) A violation of an existing or former municipal ordinance 1902
or law of this state, any other state, or the United States, if 1903
the offense is substantially equivalent to any of the offenses 1904
listed or described in division (E)(1), (2), or (3) of this 1905
section. 1906

(F) Prior to employing an applicant, the director shall 1907
require the applicant to submit a statement with the applicant's 1908
signature attesting that the applicant has not been convicted of 1909
or pleaded guilty to any of the offenses listed or described in 1910

division (E) of this section. The director also shall require the 1911
applicant to sign an agreement under which the applicant agrees to 1912
notify the director within fourteen calendar days if, while 1913
employed with the department, the applicant is ever formally 1914
charged with, convicted of, or pleads guilty to any of the 1915
offenses listed or described in division (E) of this section. The 1916
agreement shall inform the applicant that failure to report formal 1917
charges, a conviction, or a guilty plea may result in being 1918
dismissed from employment. 1919

(G) The director shall pay to the bureau of criminal 1920
identification and investigation the fee prescribed pursuant to 1921
division (C)(3) of section 109.572 of the Revised Code for each 1922
criminal records check requested and conducted pursuant to this 1923
section. 1924

(H)(1) Any report obtained pursuant to this section is not a 1925
public record for purposes of section 149.43 of the Revised Code 1926
and shall not be made available to any person, other than the 1927
applicant who is the subject of the records check or criminal 1928
records check or the applicant's representative, the department or 1929
its representative, a county board of mental retardation and 1930
developmental disabilities, and any court, hearing officer, or 1931
other necessary individual involved in a case dealing with the 1932
denial of employment to the applicant or the denial, suspension, 1933
or revocation of a certificate or evidence of registration under 1934
section 5123.082 of the Revised Code. 1935

(2) An individual for whom the director has obtained reports 1936
under this section may submit a written request to the director to 1937
have copies of the reports sent to any state agency, entity of 1938
local government, or private entity. The individual shall specify 1939
in the request the agencies or entities to which the copies are to 1940
be sent. On receiving the request, the director shall send copies 1941
of the reports to the agencies or entities specified. 1942

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

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

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

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

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

offenses listed or described in division (E) of this section.	1974
(L) The director may charge an applicant a fee for costs the director incurs in obtaining reports, abstracts, or fingerprint impressions under this section. A fee charged under this division shall not exceed the amount of the fees the director pays under divisions (G) and (I) of this section. If a fee is charged under this division, the director shall notify the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the director will not consider the applicant for employment.	1975 1976 1977 1978 1979 1980 1981 1982 1983
(M) The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section, including rules specifying circumstances under which the director may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (E) of this section but who meets standards in regard to rehabilitation set by the director.	1984 1985 1986 1987 1988 1989
Sec. 5123.50. As used in this section and sections 5123.51 and , 5123.52, <u>and 5123.541</u> of the Revised Code:	1990 1991
(A) "Abuse" means all of the following:	1992
(1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;	1993 1994
(2) Sexual abuse;	1995
(3) Verbal abuse.	1996
(B) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including violations of Chapter 2911. or 2913. of the Revised Code.	1997 1998 1999 2000
(C) "MR/DD employee" means all of the following:	2001
(1) An employee of the department of mental retardation and	2002

developmental disabilities;	2003
(2) An employee of a county board of mental retardation and developmental disabilities;	2004 2005
(3) An employee in a position that includes providing specialized services to an individual with mental retardation or a <u>another</u> developmental disability.	2006 2007 2008
(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.	2009 2010 2011 2012
(E) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.	2013 2014
(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code.	2015 2016 2017
(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.	2018 2019 2020 2021 2022 2023 2024
(H) "Verbal abuse" means purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual.	2025 2026
<u>(I) "Sexual conduct," "sexual contact," and "spouse" have the same meanings as in section 2907.01 of the Revised Code.</u>	2027 2028
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	2029 2030 2031 2032

individual with mental retardation or a developmental disability 2033
or misappropriation of an individual's property that includes an 2034
allegation that an MR/DD employee committed or was responsible for 2035
the abuse, neglect, or misappropriation. The department shall 2036
review a report it receives from a public children services agency 2037
only after the agency completes its investigation pursuant to 2038
section 2151.421 of the Revised Code. On receipt of a notice under 2039
section 2930.061 or 5123.541 of the Revised Code, the department 2040
shall review the notice. 2041

(B) The department shall do both of the following: 2042
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(1) Investigate the allegation or adopt the findings of an 2044
investigation or review of the allegation conducted by another 2045
person or government entity and determine whether there is a 2046
reasonable basis for the allegation; 2047

(2) If the department determines that there is a reasonable 2048
basis for the allegation, conduct an adjudication pursuant to 2049
Chapter 119. of the Revised Code. 2050

(C)(1) The department shall appoint an independent hearing 2051
officer to conduct any hearing conducted pursuant to division 2052
(B)(2) of this section, except that, if the hearing is regarding 2053
an employee of the department who is represented by a union, the 2054
department and a representative of the union shall jointly select 2055
the hearing officer. 2056

(2) ~~No~~ (a) Except as provided in division (C)(2)(b) of this 2057
section, no hearing shall be conducted under division (B)(2) of 2058
this section until any criminal proceeding or collective 2059
bargaining arbitration concerning the same allegation has 2060
concluded. 2061

(b) The department may conduct a hearing pursuant to division 2062

<u>(B)(2) of this section before a criminal proceeding concerning the</u>	2063
<u>same allegation is concluded if both of the following are the</u>	2064
<u>case:</u>	2065
<u>(i) The department notifies the prosecutor responsible for</u>	2066
<u>the criminal proceeding that the department proposes to conduct a</u>	2067
<u>hearing.</u>	2068
<u>(ii) The prosecutor consents to the hearing.</u>	2069
(3) In conducting a hearing pursuant to division (B)(2) of	2070
this section, the hearing officer shall do both <u>all</u> of the	2071
following:	2072
(a) Determine whether there is clear and convincing evidence	2073
that the MR/DD employee has done any of the following:	2074
(i) <u>Misappropriated the property of an individual one or more</u>	2075
<u>individuals with mental retardation or a developmental disability</u>	2076
<u>that has a value, either separately or taken together, of one</u>	2077
<u>hundred dollars or more;</u>	2078
<u>(ii) Misappropriated property of an individual with mental</u>	2079
<u>retardation or a developmental disability that is designed to be</u>	2080
<u>used as a check, draft, negotiable instrument, credit card, charge</u>	2081
<u>card, or device for initiating an electronic fund transfer at a</u>	2082
<u>point of sale terminal, automated teller machine, or cash</u>	2083
<u>dispensing machine;</u>	2084
(ii) <u>(iii)</u> <u>Knowingly abused or neglected such an individual;</u>	2085
(iii) <u>(iv)</u> <u>Recklessly abused or neglected such an individual,</u>	2086
<u>with resulting physical harm;</u>	2087
(iv) <u>(v)</u> <u>Negligently abused or neglected such an individual,</u>	2088
<u>with resulting serious physical harm;</u>	2089
<u>(vi) Recklessly neglected such an individual, creating a</u>	2090
<u>substantial risk of serious physical harm;</u>	2091

(vii) Engaged in sexual conduct or had sexual contact with an individual with mental retardation or another developmental disability who was not the MR/DD employee's spouse and for whom the MR/DD employee was employed or under a contract to provide care; 2092
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(viii) Unreasonably failed to make a report pursuant to division (C) of section 5123.61 of the Revised Code when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual with mental retardation or a developmental disability. 2097
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(b) Give weight to the decision in any collective bargaining arbitration regarding the same allegation; 2102
2103

(c) Give weight to any relevant facts presented at the hearing. 2104
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(D)(1) Unless the director of mental retardation and developmental disabilities determines that there are extenuating circumstances and except as provided in ~~divisions (D)(4) and~~ division (E) of this section, the director shall include in the registry established under section 5123.52 of the Revised Code the name of an MR/DD employee if the director, after considering all of the factors listed in division (C)(3) of this section, finds that there is clear and convincing evidence that ~~the~~ an MR/DD employee has done one or more of the things described in division (C)(3)(a) of this section the director shall include the name of the employee in the registry established under section 5123.52 of the Revised Code. 2106
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(2) Extenuating circumstances the director must consider include the use of physical force by an MR/DD employee that was necessary as self-defense. 2118
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(3) If the director includes an MR/DD employee in the registry established under section 5123.52 of the Revised Code, 2121
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the director shall notify the employee, the person or government 2123
entity that employs or contracts with the employee, the individual 2124
with mental retardation or a developmental disability who was the 2125
subject of the report and that individual's legal guardian, if 2126
any, the attorney general, and the prosecuting attorney or other 2127
law enforcement agency. If the MR/DD employee holds a license, 2128
certificate, registration, or other authorization to engage in a 2129
profession issued pursuant to Title XLVII of the Revised Code, the 2130
director shall notify the appropriate agency, board, department, 2131
or other entity responsible for regulating the employee's 2132
professional practice. 2133

(4) ~~The director shall not include in the registry an~~ 2134
~~individual who has been found not guilty by a court or jury of an~~ 2135
~~offense arising from the same facts~~ If an individual whose name 2136
appears on the registry is involved in a court proceeding or 2137
arbitration arising from the same facts as the allegation 2138
resulting in the individual's placement on the registry, the 2139
disposition of the proceeding or arbitration shall be noted in the 2140
registry next to the individual's name. 2141

(E) In the case of an allegation concerning an employee of 2142
the department, after the hearing conducted pursuant to division 2143
(B)(2) of this section, the director of health or that director's 2144
designee shall review the decision of the hearing officer to 2145
determine whether the standard described in division (C)~~(2)~~(3) of 2146
this section has been met. If the director or designee determines 2147
that the standard has been met and that no extenuating 2148
circumstances exist, the director or designee shall notify the 2149
director of mental retardation and developmental disabilities that 2150
the MR/DD employee is to be included in the registry established 2151
under section 5123.52 of the Revised Code. If the director of 2152
mental retardation and developmental disabilities receives such 2153
notification, the director shall include the MR/DD employee in the 2154

registry, ~~unless division (D)(4) of this section applies,~~ and 2155
shall provide the notification described in division (D)(3) of 2156
this section. 2157

(F) If the department is required by Chapter 119. of the 2158
Revised Code to give notice of an opportunity for a hearing and 2159
the MR/DD employee subject to the notice does not timely request a 2160
hearing in accordance with section 119.07 of the Revised Code, the 2161
department is not required to hold a hearing. 2162

(G) Files and records of investigations conducted pursuant to 2163
this section are not public records as defined in section 149.43 2164
of the Revised Code, but, on request, the department shall provide 2165
copies of those files and records to the attorney general, a 2166
prosecuting attorney, or a law enforcement agency. 2167

Sec. 5123.541. (A) No MR/DD employee shall engage in any 2168
sexual conduct or have any sexual contact with an individual with 2169
mental retardation or another developmental disability for whom 2170
the MR/DD employee is employed or under a contract to provide care 2171
unless the individual is the MR/DD employee's spouse. 2172

(B) Any MR/DD employee who violates division (A) of this 2173
section shall be eligible to be included in the registry regarding 2174
misappropriation, abuse, neglect, or other specified misconduct by 2175
MR/DD employees established under section 5123.52 of the Revised 2176
Code, in addition to any other sanction or penalty authorized or 2177
required by law. 2178

(C)(1) Any person listed in division (C)(2) of section 2179
5123.61 of the Revised Code who has reason to believe that an 2180
MR/DD employee has violated division (A) of this section shall 2181
immediately report that belief to the department of mental 2182
retardation and developmental disabilities. 2183

(2) Any person who has reason to believe that an MR/DD 2184

employee has violated division (A) of this section may report that 2185
belief to the department of mental retardation and developmental 2186
disabilities. 2187

Sec. 5123.542. (A) Each of the following shall annually 2188
provide a written notice to each of its MR/DD employees explaining 2189
the conduct for which an MR/DD employee may be included in the 2190
registry established under section 5123.52 of the Revised Code: 2191

(1) The department of mental retardation and developmental 2192
disabilities; 2193

(2) Each county board of mental retardation and developmental 2194
disabilities; 2195

(3) Each contracting entity, as defined in section 5126.281 2196
of the Revised Code; 2197

(4) Each owner, operator, or administrator of a residential 2198
facility, as defined in section 5123.19 of the Revised Code; 2199

(5) Each owner, operator, or administrator of a program 2200
certified by the department to provide supported living. 2201

(B) The notice described in division (A) of this section 2202
shall be in a form and provided in a manner prescribed by the 2203
department of mental retardation and developmental disabilities. 2204
The form shall be the same for all persons and entities required 2205
to provide notice under division (A) of this section. 2206

(C) The fact that an MR/DD employee does not receive the 2207
notice required by this section does not exempt the employee from 2208
inclusion in the registry established under section 5123.52 of the 2209
Revised Code. 2210

Sec. 5123.61. (A) As used in this section: 2211

(1) "Law enforcement agency" means the state highway patrol, 2212

the police department of a municipal corporation, or a county sheriff. 2213
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(2) "Abuse" has the same meaning as in section 5123.50 of the Revised Code, except that it includes a misappropriation, as defined in that section. 2215
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(3) "Neglect" has the same meaning as in section 5123.50 of the Revised Code. 2218
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(B) The department of mental retardation and developmental disabilities shall establish a registry office for the purpose of maintaining reports of abuse, neglect, and other major unusual incidents made to the department under this section and reports received from county boards of mental retardation and developmental disabilities under section 5126.31 of the Revised Code. The department shall establish committees to review reports of abuse, neglect, and other major unusual incidents. 2220
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(C)(1) Any person listed in division (C)(2) of this section, having reason to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, shall immediately report or cause reports to be made of such information to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or to the county board of mental retardation and developmental disabilities, ~~except that if.~~ If the report concerns a resident of a facility operated by the department of mental retardation and developmental disabilities the report shall be made either to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of mental retardation and developmental disabilities, the report immediately shall be 2228
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made to the department and to the county board. 2245

(2) All of the following persons are required to make a 2246
report under division (C)(1) of this section: 2247

(a) Any physician, including a hospital intern or resident, 2248
any dentist, podiatrist, chiropractor, practitioner of a limited 2249
branch of medicine as specified in section 4731.15 of the Revised 2250
Code, hospital administrator or employee of a hospital, nurse 2251
licensed under Chapter 4723. of the Revised Code, employee of an 2252
ambulatory health facility as defined in section 5101.61 of the 2253
Revised Code, employee of a home health agency, employee of an 2254
adult care facility licensed under Chapter 3722. of the Revised 2255
Code, or employee of a community mental health facility; 2256

(b) Any school teacher or school authority, social worker, 2257
psychologist, attorney, peace officer, coroner, ~~clergyman~~, or 2258
residents' rights advocate as defined in section 3721.10 of the 2259
Revised Code; 2260

(c) A superintendent, board member, or employee of a county 2261
board of mental retardation and developmental disabilities; an 2262
administrator, board member, or employee of a residential facility 2263
licensed under section 5123.19 of the Revised Code; an 2264
administrator, board member, or employee of any other public or 2265
private provider of services to a person with mental retardation 2266
or a developmental disability, or any MR/DD employee, as defined 2267
in section 5123.50 of the Revised Code; 2268

(d) A member of a citizen's advisory council established at 2269
an institution or branch institution of the department of mental 2270
retardation and developmental disabilities under section 5123.092 2271
of the Revised Code; 2272

(e) A clergyman who is employed in a position that includes 2273
providing specialized services to an individual with mental 2274
retardation or another developmental disability, while acting in 2275

an official or professional capacity in that position, or a person 2276
who is employed in a position that includes providing specialized 2277
services to an individual with mental retardation or another 2278
developmental disability and who, while acting in an official or 2279
professional capacity, renders spiritual treatment through prayer 2280
in accordance with the tenets of an organized religion. 2281

(3)(a) The reporting requirements of this division do not 2282
apply to members of the legal rights service commission or to 2283
employees of the legal rights service. 2284

(b) An attorney or physician is not required to make a report 2285
pursuant to division (C)(1) of this section concerning any 2286
communication the attorney or physician receives from a client or 2287
patient in an attorney-client or physician-patient relationship, 2288
if, in accordance with division (A) or (B) of section 2317.02 of 2289
the Revised Code, the attorney or physician could not testify with 2290
respect to that communication in a civil or criminal proceeding, 2291
except that the client or patient is deemed to have waived any 2292
testimonial privilege under division (A) or (B) of section 2317.02 2293
of the Revised Code with respect to that communication and the 2294
attorney or physician shall make a report pursuant to division 2295
(C)(1) of this section, if both of the following apply: 2296

(i) The client or patient, at the time of the communication, 2297
is a person with mental retardation or a developmental disability. 2298

(ii) The attorney or physician knows or suspects, as a result 2299
of the communication or any observations made during that 2300
communication, that the client or patient has suffered or faces a 2301
substantial risk of suffering any wound, injury, disability, or 2302
condition of a nature that reasonably indicates abuse or neglect 2303
of the client or patient. 2304

(4) Any person who fails to make a report required under 2305
division (C) of this section and who is an MR/DD employee, as 2306

defined in section 5123.50 of the Revised Code, shall be eligible 2307
to be included in the registry regarding misappropriation, abuse, 2308
neglect, or other specified misconduct by MR/DD employees 2309
established under section 5123.52 of the Revised Code. 2310

(D) The reports required under division (C) of this section 2311
shall be made forthwith by telephone or in person and shall be 2312
followed by a written report. The reports shall contain the 2313
following: 2314

(1) The names and addresses of the person with mental 2315
retardation or a developmental disability and the person's 2316
custodian, if known; 2317

(2) The age of the person with mental retardation or a 2318
developmental disability; 2319

(3) Any other information that would assist in the 2320
investigation of the report. 2321

(E) When a physician performing services as a member of the 2322
staff of a hospital or similar institution has reason to believe 2323
that a person with mental retardation or a developmental 2324
disability has suffered injury, abuse, or physical neglect, the 2325
physician shall notify the person in charge of the institution or 2326
that person's designated delegate, who shall make the necessary 2327
reports. 2328

(F) Any person having reasonable cause to believe that a 2329
person with mental retardation or a developmental disability has 2330
suffered or faces a substantial risk of suffering abuse or neglect 2331
may report ~~the belief,~~ or cause a report to be made, of that 2332
belief to the entity specified in this division. Except as 2333
provided in section 5120.173 of the Revised Code or as otherwise 2334
provided in this division, the person making the report shall make 2335
it to a law enforcement agency or the county board of mental 2336
retardation and developmental disabilities, ~~or, if.~~ If the person 2337

is a resident of a facility operated by the department of mental 2338
retardation and developmental disabilities, the report shall be 2339
made to a law enforcement agency or to the department. If the 2340
report concerns any act or omission of an employee of a county 2341
board of mental retardation and developmental disabilities, the 2342
report immediately shall be made to the department and to the 2343
county board. 2344

(G)(1) Upon the receipt of a report concerning the possible 2345
abuse or neglect of a person with mental retardation or a 2346
developmental disability, the law enforcement agency shall inform 2347
the county board of mental retardation and developmental 2348
disabilities or, if the person is a resident of a facility 2349
operated by the department of mental retardation and developmental 2350
disabilities, the director of the department or the director's 2351
designee. 2352

(2) On receipt of a report under this section that includes 2353
an allegation of action or inaction that may constitute a crime 2354
under federal law or the law of this state, the department of 2355
mental retardation and developmental disabilities shall notify the 2356
law enforcement agency. 2357

(3) When a county board of mental retardation and 2358
developmental disabilities receives a report under this section 2359
that includes an allegation of action or inaction that may 2360
constitute a crime under federal law or the law of this state, the 2361
superintendent of the board or an individual the superintendent 2362
designates under division (H) of this section shall notify the law 2363
enforcement agency. The superintendent or individual shall notify 2364
the department of mental retardation and developmental 2365
disabilities when it receives any report under this section. 2366

(4) When a county board of mental retardation and 2367
developmental disabilities receives a report under this section 2368
and believes that the degree of risk to the person is such that 2369

the report is an emergency, the superintendent of the board or an 2370
employee of the board the superintendent designates shall attempt 2371
a face-to-face contact with the person with mental retardation or 2372
a developmental disability who allegedly is the victim within one 2373
hour of the board's receipt of the report. 2374

(H) The superintendent of the board may designate an 2375
individual to be responsible for notifying the law enforcement 2376
agency and the department when the county board receives a report 2377
under this section. 2378

(I) An adult with mental retardation or a developmental 2379
disability about whom a report is made may be removed from the 2380
adult's place of residence only by law enforcement officers who 2381
consider that the adult's immediate removal is essential to 2382
protect the adult from further injury or abuse or in accordance 2383
with the order of a court made pursuant to section 5126.33 of the 2384
Revised Code. 2385

(J) A law enforcement agency shall investigate each report of 2386
abuse or neglect it receives under this section. In addition, the 2387
department, in cooperation with law enforcement officials, shall 2388
investigate each report regarding a resident of a facility 2389
operated by the department to determine the circumstances 2390
surrounding the injury, the cause of the injury, and the person 2391
responsible. The investigation shall be in accordance with the 2392
memorandum of understanding prepared under section 5126.058 of the 2393
Revised Code. The department shall determine, with the registry 2394
office which shall be maintained by the department, whether prior 2395
reports have been made concerning ~~and~~ an adult with mental 2396
retardation or a developmental disability or other principals in 2397
the case. If the department finds that the report involves action 2398
or inaction that may constitute a crime under federal law or the 2399
law of this state, it shall submit a report of its investigation, 2400
in writing, to the law enforcement agency. If the person with 2401

mental retardation or a developmental disability is an adult, with 2402
the consent of the adult, the department shall provide such 2403
protective services as are necessary to protect the adult. The law 2404
enforcement agency shall make a written report of its findings to 2405
the department. 2406

If the person is an adult and is not a resident of a facility 2407
operated by the department, the county board of mental retardation 2408
and developmental disabilities shall review the report of abuse or 2409
neglect in accordance with sections 5126.30 to 5126.33 of the 2410
Revised Code and the law enforcement agency shall make the written 2411
report of its findings to the county board. 2412

(K) Any person or any hospital, institution, school, health 2413
department, or agency participating in the making of reports 2414
pursuant to this section, any person participating as a witness in 2415
an administrative or judicial proceeding resulting from the 2416
reports, or any person or governmental entity that discharges 2417
responsibilities under sections 5126.31 to 5126.33 of the Revised 2418
Code shall be immune from any civil or criminal liability that 2419
might otherwise be incurred or imposed as a result of such actions 2420
except liability for perjury, unless the person or governmental 2421
entity has acted in bad faith or with malicious purpose. 2422

(L) No employer or any person with the authority to do so 2423
shall discharge, demote, transfer, prepare a negative work 2424
performance evaluation, reduce pay or benefits, terminate work 2425
privileges, or take any other action detrimental to an employee or 2426
retaliate against an employee as a result of the employee's having 2427
made a report under this section. This division does not preclude 2428
an employer or person with authority from taking action with 2429
regard to an employee who has made a report under this section if 2430
there is another reasonable basis for the action. 2431

(M) Reports made under this section are not public records as 2432
defined in section 149.43 of the Revised Code. Information 2433

contained in the reports on request shall be made available to the 2434
person who is the subject of the report, to the person's legal 2435
counsel, and to agencies authorized to receive information in the 2436
report by the department or by a county board of mental 2437
retardation and developmental disabilities. 2438

(N) Notwithstanding section 4731.22 of the Revised Code, the 2439
physician-patient privilege shall not be a ground for excluding 2440
evidence regarding the injuries or physical neglect of a person 2441
with mental retardation or a developmental disability or the cause 2442
thereof in any judicial proceeding resulting from a report 2443
submitted pursuant to this section. 2444

Sec. 5123.614. (A) Subject to division (B) of this section, 2445
on receipt of a report of a major unusual incident made pursuant 2446
to section 5123.61 or 5126.31 of the Revised Code or rules adopted 2447
under section 5123.612 of the Revised Code, the department of 2448
mental retardation and developmental disabilities may do either of 2449
the following: 2450

(1) Conduct an independent review or investigation of the 2451
incident; 2452

(2) Request that an independent review or investigation of 2453
the incident be conducted by a county board of mental retardation 2454
and developmental disabilities that is not implicated in the 2455
report, a regional council of government, or any other entity 2456
authorized to conduct such investigations. 2457

(B) If a report described in division (A) of this section 2458
concerning the health or safety of a person with mental 2459
retardation or a developmental disability involves an allegation 2460
that an employee of a county board of mental retardation and 2461
developmental disabilities has created a substantial risk of 2462
serious physical harm to a person with mental retardation or a 2463
developmental disability, the department shall do one of the 2464

<u>following:</u>	2465
<u>(1) Conduct an independent investigation regarding the</u>	2466
<u>incident;</u>	2467
<u>(2) Request that an independent review or investigation of</u>	2468
<u>the incident be conducted by a county board of mental retardation</u>	2469
<u>and developmental disabilities that is not implicated in the</u>	2470
<u>report, a regional council of government, or any other entity</u>	2471
<u>authorized to conduct such investigations.</u>	2472
Sec. 5123.99. (A) Whoever violates section 5123.20 of the	2473
Revised Code is guilty of a misdemeanor of the first degree.	2474
(B) Whoever violates division (C), (E), or (G)(3) of section	2475
5123.61 of the Revised Code shall be fined not more than five	2476
hundred dollars <u>is guilty of a misdemeanor of the fourth degree</u>	2477
<u>or, if the abuse or neglect constitutes a felony, a misdemeanor of</u>	2478
<u>the second degree. In addition to any other sanction or penalty</u>	2479
<u>authorized or required by law, if a person who is convicted of or</u>	2480
<u>pleads guilty to a violation of division (C), (E), or (G)(3) of</u>	2481
<u>section 5123.61 of the Revised Code is an MR/DD employee, as</u>	2482
<u>defined in section 5123.50 of the Revised Code, the offender shall</u>	2483
<u>be eligible to be included in the registry regarding</u>	2484
<u>misappropriation, abuse, neglect, or other specified misconduct by</u>	2485
<u>MR/DD employees established under section 5123.52 of the Revised</u>	2486
<u>Code.</u>	2487
(C) Whoever violates division (A) of section 5123.604 of the	2488
Revised Code is guilty of a misdemeanor of the second degree.	2489
(D) Whoever violates division (B) of section 5123.604 of the	2490
Revised Code shall be fined not more than one thousand dollars.	2491
Each violation constitutes a separate offense.	2492
Sec. 5126.058. (A) <u>Each county board of mental retardation</u>	2493

and developmental disabilities shall prepare a memorandum of 2494
understanding that is developed by all of the following and that 2495
is signed by the persons identified in divisions (A)(3) to (8) of 2496
this section: 2497

(1) If there is only one probate judge in the county, the 2498
probate judge of the county or the probate judge's representative; 2499

(2) If there is more than one probate judge in the county, a 2500
probate judge or the probate judge's representative selected by 2501
the probate judges or, if they are unable to do so for any reason, 2502
the probate judge who is senior in point of service or the senior 2503
probate judge's representative; 2504

(3) The county peace officer; 2505

(4) All chief municipal peace officers within the county; 2506

(5) Other law enforcement officers handling abuse, neglect, 2507
and exploitation of mentally retarded and developmentally disabled 2508
persons in the county; 2509

(6) The prosecuting attorney of the county; 2510

(7) The public children services agency; 2511

(8) The coroner of the county. 2512

(B) A memorandum of understanding shall set forth the normal 2513
operating procedure to be employed by all concerned officials in 2514
the execution of their respective responsibilities under this 2515
section and sections 313.12, 2151.421, 2903.16, 5126.31, and 2516
5126.33 of the Revised Code and shall have as its primary goal the 2517
elimination of all unnecessary interviews of persons who are the 2518
subject of reports made pursuant to this section. A failure to 2519
follow the procedure set forth in the memorandum by the concerned 2520
officials is not grounds for, and shall not result in, the 2521
dismissal of any charge or complaint arising from any reported 2522

case of abuse, neglect, or exploitation or the suppression of any 2523
evidence obtained as a result of any reported abuse, neglect, or 2524
exploitation and does not give any rights or grounds for appeal or 2525
post-conviction relief to any person. 2526

(C) A memorandum of understanding shall include, but is not 2527
limited to, all of the following: 2528

(1) The roles and responsibilities for handling emergency and 2529
nonemergency cases of abuse, neglect, or exploitation; 2530

(2) The roles and responsibilities for handling and 2531
coordinating investigations of reported cases of abuse, neglect, 2532
or exploitation and methods to be used in interviewing the person 2533
who is the subject of the report and who allegedly was abused, 2534
neglected, or exploited; 2535

(3) The roles and responsibilities for addressing the 2536
categories of persons who may interview the person who is the 2537
subject of the report and who allegedly was abused, neglected, or 2538
exploited; 2539

(4) The roles and responsibilities for providing victim 2540
services to mentally retarded and developmentally disabled persons 2541
pursuant to Chapter 2930. of the Revised Code; 2542

(5) The roles and responsibilities for the filing of criminal 2543
charges against persons alleged to have abused, neglected, or 2544
exploited mentally retarded or developmentally disabled persons. 2545

(D) A memorandum of understanding may be signed by victim 2546
advocates, municipal court judges, municipal prosecutors, and any 2547
other person whose participation furthers the goals of a 2548
memorandum of understanding, as set forth in this section. 2549

Sec. 5126.28. (A) As used in this section: 2550

(1) "Applicant" means a person who is under final 2551

consideration for appointment or employment in a position with a 2552
county board of mental retardation and developmental disabilities, 2553
including, but not limited to, a person who is being transferred 2554
to the county board and an employee who is being recalled or 2555
reemployed after a layoff. 2556

(2) "Criminal records check" has the same meaning as in 2557
section 109.572 of the Revised Code. 2558

(3) "Minor drug possession offense" has the same meaning as 2559
in section 2925.01 of the Revised Code. 2560

(B) The superintendent of a county board of mental 2561
retardation and developmental disabilities shall request the 2562
superintendent of the bureau of criminal identification and 2563
investigation to conduct a criminal records check with respect to 2564
any applicant who has applied to the board for employment in any 2565
position, except that a county board superintendent is not 2566
required to request a criminal records check for an employee of 2567
the board who is being considered for a different position or is 2568
returning after a leave of absence or seasonal break in 2569
employment, as long as the superintendent has no reason to believe 2570
that the employee has committed any of the offenses listed or 2571
described in division (E) of this section. 2572

If the applicant does not present proof that the applicant 2573
has been a resident of this state for the five-year period 2574
immediately prior to the date upon which the criminal records 2575
check is requested, the county board superintendent shall request 2576
that the superintendent of the bureau obtain information from the 2577
federal bureau of investigation as a part of the criminal records 2578
check for the applicant. If the applicant presents proof that the 2579
applicant has been a resident of this state for that five-year 2580
period, the county board superintendent may request that the 2581
superintendent of the bureau include information from the federal 2582
bureau of investigation in the criminal records check. For 2583

purposes of this division, an applicant may provide proof of 2584
residency in this state by presenting, with a notarized statement 2585
asserting that the applicant has been a resident of this state for 2586
that five-year period, a valid driver's license, notification of 2587
registration as an elector, a copy of an officially filed federal 2588
or state tax form identifying the applicant's permanent residence, 2589
or any other document the superintendent considers acceptable. 2590

(C) The county board superintendent shall provide to each 2591
applicant a copy of the form prescribed pursuant to division 2592
(C)(1) of section 109.572 of the Revised Code, provide to each 2593
applicant a standard impression sheet to obtain fingerprint 2594
impressions prescribed pursuant to division (C)(2) of section 2595
109.572 of the Revised Code, obtain the completed form and 2596
impression sheet from each applicant, and forward the completed 2597
form and impression sheet to the superintendent of the bureau of 2598
criminal identification and investigation at the time the criminal 2599
records check is requested. 2600

Any applicant who receives pursuant to this division a copy 2601
of the form prescribed pursuant to division (C)(1) of section 2602
109.572 of the Revised Code and a copy of an impression sheet 2603
prescribed pursuant to division (C)(2) of that section and who is 2604
requested to complete the form and provide a set of fingerprint 2605
impressions shall complete the form or provide all the information 2606
necessary to complete the form and shall provide the impression 2607
sheet with the impressions of the applicant's fingerprints. If an 2608
applicant, upon request, fails to provide the information 2609
necessary to complete the form or fails to provide impressions of 2610
the applicant's fingerprints, the county board superintendent 2611
shall not employ that applicant. 2612

(D) A county board superintendent may request any other state 2613
or federal agency to supply the board with a written report 2614
regarding the criminal record of each applicant. With regard to an 2615

applicant who becomes a board employee, if the employee holds an 2616
occupational or professional license or other credentials, the 2617
superintendent may request that the state or federal agency that 2618
regulates the employee's occupation or profession supply the board 2619
with a written report of any information pertaining to the 2620
employee's criminal record that the agency obtains in the course 2621
of conducting an investigation or in the process of renewing the 2622
employee's license or other credentials. 2623

(E) Except as provided in division (K)(2) of this section and 2624
in rules adopted by the department of mental retardation and 2625
developmental disabilities in accordance with division (M) of this 2626
section, no county board of mental retardation and developmental 2627
disabilities shall employ a person to fill a position with the 2628
board who has been convicted of or pleaded guilty to any of the 2629
following: 2630

(1) A violation of section 2903.01, 2903.02, 2903.03, 2631
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2632
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2633
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2634
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2635
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2636
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2637
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 2638
section 2905.04 of the Revised Code as it existed prior to July 1, 2639
1996, a violation of section 2919.23 of the Revised Code that 2640
would have been a violation of section 2905.04 of the Revised Code 2641
as it existed prior to July 1, 1996, had the violation occurred 2642
prior to that date, a violation of section 2925.11 of the Revised 2643
Code that is not a minor drug possession offense, or felonious 2644
sexual penetration in violation of former section 2907.12 of the 2645
Revised Code; 2646

(2) A felony contained in the Revised Code that is not listed 2647

in this division, if the felony bears a direct and substantial 2648
relationship to the duties and responsibilities of the position 2649
being filled; 2650

(3) Any offense contained in the Revised Code constituting a 2651
misdemeanor of the first degree on the first offense and a felony 2652
on a subsequent offense, if the offense bears a direct and 2653
substantial relationship to the position being filled and the 2654
nature of the services being provided by the county board; 2655

(4) A violation of an existing or former municipal ordinance 2656
or law of this state, any other state, or the United States, if 2657
the offense is substantially equivalent to any of the offenses 2658
listed or described in division (E)(1), (2), or (3) of this 2659
section. 2660

(F) Prior to employing an applicant, the county board 2661
superintendent shall require the applicant to submit a statement 2662
with the applicant's signature attesting that the applicant has 2663
not been convicted of or pleaded guilty to any of the offenses 2664
listed or described in division (E) of this section. The 2665
superintendent also shall require the applicant to sign an 2666
agreement under which the applicant agrees to notify the 2667
superintendent within fourteen calendar days if, while employed by 2668
the board, the applicant is ever formally charged with, convicted 2669
of, or pleads guilty to any of the offenses listed or described in 2670
division (E) of this section. The agreement shall inform the 2671
applicant that failure to report formal charges, a conviction, or 2672
a guilty plea may result in being dismissed from employment. 2673

(G) A county board of mental retardation and developmental 2674
disabilities shall pay to the bureau of criminal identification 2675
and investigation the fee prescribed pursuant to division (C)(3) 2676
of section 109.572 of the Revised Code for each criminal records 2677
check requested and conducted pursuant to this section. 2678

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

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

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

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

operate the board's vehicles for any other purpose. For each 2711
abstract provided under this section, the board shall pay the 2712
amount specified in section 4509.05 of the Revised Code. 2713

(J) The county board superintendent shall provide each 2714
applicant with a copy of any report or abstract obtained about the 2715
applicant under this section. At the request of the director of 2716
mental retardation and developmental disabilities, the 2717
superintendent also shall provide the director with a copy of a 2718
report or abstract obtained under this section. 2719

(K)(1) The county board superintendent shall inform each 2720
person, at the time of the person's initial application for 2721
employment, that the person is required to provide a set of 2722
impressions of the person's fingerprints and that a criminal 2723
records check is required to be conducted and satisfactorily 2724
completed in accordance with section 109.572 of the Revised Code 2725
if the person comes under final consideration for appointment or 2726
employment as a precondition to employment in a position. 2727

(2) A board may employ an applicant pending receipt of 2728
reports requested under this section. The board shall terminate 2729
employment of any such applicant if it is determined from the 2730
reports that the applicant failed to inform the county board that 2731
the applicant had been convicted of or pleaded guilty to any of 2732
the offenses listed or described in division (E) of this section. 2733

(L) The board may charge an applicant a fee for costs it 2734
incurs in obtaining reports, abstracts, or fingerprint impressions 2735
under this section. A fee charged under this division shall not 2736
exceed the amount of the fees the board pays under divisions (G) 2737
and (I) of this section. If a fee is charged under this division, 2738
the board shall notify the applicant of the amount of the fee at 2739
the time of the applicant's initial application for employment and 2740
that, unless the fee is paid, the board will not consider the 2741
applicant for employment. 2742

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

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

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

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

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

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

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

(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, 2773
or Friday, except when that day is a holiday as defined in section 2774
1.14 of the Revised Code. 2775

~~(F)~~(G) "Incapacitated" means lacking understanding or 2776
capacity, with or without the assistance of a caretaker, to make 2777
and carry out decisions regarding food, clothing, shelter, health 2778
care, or other necessities, but does not include mere refusal to 2779
consent to the provision of services. 2780

(H) "Emergency protective services" means protective services 2781
furnished to a person with mental retardation or a developmental 2782
disability to prevent immediate physical harm. 2783

(I) "Protective services" means services provided by the 2784
county board of mental retardation and developmental disabilities 2785
to an adult with mental retardation or a developmental disability 2786
for the prevention, correction, or discontinuance of an act of as 2787
well as conditions resulting from abuse, neglect, or exploitation. 2788

(J) "Protective service plan" means an individualized plan 2789
developed by the county board of mental retardation and 2790
developmental disabilities to prevent the further abuse, neglect, 2791
or exploitation of an adult with mental retardation or a 2792
developmental disability. 2793

(K) "Substantial risk" has the same meaning as in section 2794
2901.01 of the Revised Code. 2795

(L) "Party" means all of the following: 2796

(1) An adult who is the subject of a probate proceeding under 2797
sections 5126.30 to 5126.33 of the Revised Code; 2798

(2) A caretaker, unless otherwise ordered by the probate 2799
court; 2800

(3) Any other person designated as a party by the probate 2801
court including but not limited to, the adult's spouse, custodian, 2802

guardian, or parent. 2803

(M) "Board" has the same meaning as in section 5126.02 of the Revised Code. 2804
2805

Sec. 5126.33. (A) A county board of mental retardation and 2806
developmental disabilities may file a complaint with the probate 2807
court of the county in which an adult with mental retardation or a 2808
developmental disability resides for an order authorizing the 2809
board to arrange services described in division (C) of section 2810
5126.31 of the Revised Code for that adult if the adult is 2811
eligible to receive services or support under section 5126.041 of 2812
the Revised Code and the board has been unable to secure consent. 2813
The complaint shall include: 2814

(1) The name, age, and address of the adult; 2815

(2) Facts describing the nature of the abuse ~~or~~, neglect, or 2816
exploitation and supporting the board's belief that services are 2817
needed; 2818

(3) The types of services proposed by the board, as set forth 2819
in the ~~individualized protective~~ service plan ~~prepared pursuant to~~ 2820
described in division (J) of section 5126.31 5126.30 of the 2821
Revised Code and filed with the complaint; 2822

(4) Facts showing the board's attempts to obtain the consent 2823
of the adult or the adult's guardian to the services. 2824

(B) The board shall give the adult notice of the filing of 2825
the complaint and in simple and clear language shall inform the 2826
adult of the adult's rights in the hearing under division (C) of 2827
this section and explain the consequences of a court order. This 2828
notice shall be personally served upon ~~the adult~~ all parties, and 2829
also shall be given to ~~the adult's caretaker~~, the adult's legal 2830
counsel, if any, and the legal rights service. The notice shall be 2831
given at least twenty-four hours prior to the hearing, although 2832

the court may waive this requirement upon a showing that there is 2833
a substantial risk that the adult will suffer immediate physical 2834
harm in the twenty-four hour period and that the board has made 2835
reasonable attempts to give the notice required by this division. 2836

(C) Upon the filing of a complaint for an order under this 2837
section, the court shall hold a hearing at least twenty-four hours 2838
and no later than seventy-two hours after the notice under 2839
division (B) of this section has been given unless the court has 2840
waived the notice. ~~The adult~~ All parties shall have the right to 2841
be present at the hearing, present evidence, and examine and 2842
cross-examine witnesses. The Ohio Rules of Evidence shall apply to 2843
a hearing conducted pursuant to this division. The adult shall be 2844
represented by counsel unless the court finds that the adult has 2845
made a voluntary, informed, and knowing waiver of the right to 2846
counsel. If the adult is indigent, the court shall appoint counsel 2847
to represent the adult. The board shall be represented by the 2848
county prosecutor or an attorney designated by the board. 2849

(D)(1) The court shall issue an order authorizing the board 2850
to arrange the protective services if it finds, on the basis of 2851
clear and convincing evidence, all of the following: 2852

(a) The adult has been abused ~~or~~, neglected, or exploited; 2853

(b) The adult is incapacitated; 2854

(c) There is a substantial risk to the adult of immediate 2855
physical harm or death; 2856

(d) The adult is in need of the services; 2857

(e) No person authorized by law or court order to give 2858
consent for the adult is available or willing to consent to the 2859
services. 2860

(2) The board shall develop a detailed protective service 2861
plan describing the services that the board will provide, or 2862

arrange for the provision of, to the adult to prevent further 2863
abuse, neglect, or exploitation. The board shall submit the plan 2864
to the court for approval. The protective service plan may be 2865
changed only by court order. 2866

(3) In formulating the order, the court shall consider the 2867
individual protective service plan and shall specifically 2868
designate the services that are necessary to deal with the abuse 2869
~~or,~~ neglect, or exploitation or condition resulting from abuse ~~or,~~ 2870
neglect, or exploitation and that are available locally, and 2871
authorize the board to arrange for these services only. The court 2872
shall limit the provision of these services to a period not 2873
exceeding ~~fourteen days~~ six months, renewable for an additional 2874
~~fourteen-day~~ six-month period on a showing by the board that 2875
continuation of the order is necessary. 2876

(E) If the court finds that all other options for meeting the 2877
adult's needs have been exhausted, it may order that the adult be 2878
removed from the adult's place of residence and placed in another 2879
residential setting. Before issuing that order, the court shall 2880
consider the adult's choice of residence and shall determine that 2881
the new residential setting is the least restrictive alternative 2882
available for meeting the adult's needs and is a place where the 2883
adult can obtain the necessary requirements for daily living in 2884
safety. The court shall not order an adult to a hospital or public 2885
hospital as defined in section 5122.01 or a state institution as 2886
defined in section 5123.01 of the Revised Code. 2887

(F) The court shall not authorize a change in an adult's 2888
placement ordered under division (E) of this section unless it 2889
finds compelling reasons to justify a change. The parties to whom 2890
notice was given in division (B) of this section shall be given 2891
notice of a proposed change at least five working days prior to 2892
the change. 2893

(G) The adult, the board, or any other person who received 2894

notice of the petition may file a motion for modification of the court order at any time.

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

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

(a) A temporary protection order;

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

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

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

(2) The court may grant an ex parte order pursuant to this division on its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it if it appears to the court that the best interest and the welfare of the adult require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an ex parte order, to the extent possible, shall give notice of its intent or of the request to all parties, the adult's legal counsel, if any,

and the legal rights service. If the court issues an ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court shall give written notice of the hearing to all parties to the action.

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

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

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

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

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

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

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

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

(3) Remove the adult from the place where the abuse, neglect,

or exploitation occurred. 2955

(C) A court shall not issue an order under this section to 2956
remove an adult from a place described in division (B)(2) or (3) 2957
of this section until the court is satisfied that reasonable 2958
efforts have been made to notify the adult and any person with 2959
whom the adult resides of the proposed removal and the reasons for 2960
it, except that, the court may issue an order prior to giving the 2961
notice if one of the following is the case: 2962

(1) Notification could jeopardize the physical or emotional 2963
safety of the adult. 2964

(2) The notification could result in the adult being removed 2965
from the court's jurisdiction. 2966

(D) An order issued under this section shall be in effect for 2967
not longer than twenty-four hours, except that if the day 2968
following the day on which the order is issued is a weekend-day or 2969
legal holiday, the order shall remain in effect until the next 2970
business day. 2971

(E)(1) Except as provided in division (E)(2) of this section, 2972
not later than twenty-four hours after an order is issued under 2973
this section, the county board or employee that provided notice to 2974
the probate court shall file a complaint with the court in 2975
accordance with division (A) of section 5126.33 of the Revised 2976
Code. 2977

(2) If the day following the day on which the order was 2978
issued is a weekend-day or a holiday, the county board or employee 2979
shall file the complaint with the probate court on the next 2980
business day. 2981

(3) Except as provided in section 5126.332 of the Revised 2982
Code, proceedings on the complaint filed pursuant to this division 2983
shall be conducted in accordance with section 5126.33 of the 2984

<u>Revised Code.</u>	2985
<u>Sec. 5126.332. (A) If an order is issued pursuant to section</u>	2986
<u>5126.331 of the Revised Code, the court shall hold a hearing not</u>	2987
<u>later than twenty-four hours after the issuance to determine</u>	2988
<u>whether there is probable cause for the order, except that if the</u>	2989
<u>day following the day on which the order is issued is a</u>	2990
<u>weekend-day or legal holiday, the court shall hold the hearing on</u>	2991
<u>the next business day.</u>	2992
<u>(B) At the hearing, the court:</u>	2993
<u>(1) Shall consider the adult's choice of residence and</u>	2994
<u>determine whether protective services are the least restrictive</u>	2995
<u>alternative available for meeting the adult's needs;</u>	2996
<u>(2) May issue temporary orders to protect the adult from</u>	2997
<u>immediate physical harm, including, but not limited to, temporary</u>	2998
<u>protection orders, evaluations, and orders requiring a party to</u>	2999
<u>vacate the adult's place of residence or legal settlement;</u>	3000
<u>(3) May order emergency protective services.</u>	3001
<u>(C) A temporary order issued pursuant to division (B)(2) of</u>	3002
<u>this section is effective for thirty days. The court may renew the</u>	3003
<u>order for an additional thirty-day period.</u>	3004
<u>Sec. 5126.333. Any person who has reason to believe that</u>	3005
<u>there is a substantial risk to an adult with mental retardation or</u>	3006
<u>a developmental disability of immediate physical harm or death and</u>	3007
<u>that the responsible county board of mental retardation and</u>	3008
<u>developmental disabilities has failed to seek an order pursuant to</u>	3009
<u>section 5126.33 or 5126.331 of the Revised Code may notify the</u>	3010
<u>department of mental retardation and developmental disabilities.</u>	3011
<u>Within twenty-four hours of receipt of such notice, the department</u>	3012
<u>shall cause an investigation to be conducted regarding the notice.</u>	3013

The department shall provide assistance to the county board to provide for the health and safety of the adult as permitted by law. 3014
3015
3016

Section 2. That existing sections 109.572, 313.12, 2108.50, 3017
2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 3018
5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 of the Revised 3019
Code are hereby repealed. 3020

Section 3. The Department of Mental Retardation and 3021
Developmental Disabilities shall adopt rules pursuant to Chapter 3022
119. of the Revised Code that provide standards for the 3023
substantiation by the Department and by county boards of mental 3024
retardation of reports of abuse or neglect filed under section 3025
5123.61 of the Revised Code. 3026

Section 4. Section 109.572 of the Revised Code is presented 3027
in this act as a composite of the section as amended by both Sub. 3028
H.B. 448 and Sub. H.B. 538 of the 123rd General Assembly. Section 3029
2151.421 of the Revised Code is presented in this act as a 3030
composite of the section as amended by Am. Sub. H.B. 374, Sub. 3031
H.B. 510, and Am. Sub. S.B. 221 all of the 124th General Assembly. 3032
Section 5126.28 of the Revised Code is presented in this act as a 3033
composite of the section as amended by both Sub. H.B. 538 and Sub. 3034
S.B. 171 of the 123rd General Assembly. The General Assembly, 3035
applying the principle stated in division (B) of section 1.52 of 3036
the Revised Code that amendments are to be harmonized if 3037
reasonably capable of simultaneous operation, finds that the 3038
composites are the resulting versions of the sections in effect 3039
prior to the effective date of the sections as presented in this 3040
act. 3041