

As Introduced

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

S. B. No. 4

Senators Spada, Amstutz, Goodman, Jacobson, Harris

A BILL

To amend sections 313.12, 2108.50, 2151.421, 2311.14, 1
2903.16, 5123.51, 5123.61, 5123.99, 5126.30, 2
5126.31, and 5126.33 and to enact sections 3
2152.821, 2903.341, 2945.482, 2945.491, 5123.084, 4
5123.511, and 5126.282 of the Revised Code to 5
implement the recommendations of the MR/DD Victims 6
of Crime Task Force. 7

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

Section 1. That sections 313.12, 2108.50, 2151.421, 2311.14, 8
2903.16, 5123.51, 5123.61, 5123.99, 5126.30, 5126.31, and 5126.33 9
be amended and sections 2152.821, 2903.341, 2945.482, 2945.491, 10
5123.084, 5123.511, and 5126.282 of the Revised Code be enacted to 11
read as follows: 12

Sec. 313.12. When any person dies as a result of criminal or 13
other violent means, by casualty, by suicide, or in any suspicious 14
or unusual manner, or when any person, including a child under two 15
years of age or a person with mental retardation or a 16
developmental disability, dies suddenly when in apparent good 17
health, the physician called in attendance, or any member of an 18
ambulance service, emergency squad, or law enforcement agency who 19
obtains knowledge thereof arising from ~~his~~ the person's duties, 20

shall immediately notify the office of the coroner of the known 21
facts concerning the time, place, manner, and circumstances of the 22
death, and any other information ~~which~~ that is required pursuant 23
to sections 313.01 to 313.22 of the Revised Code. In such cases, 24
if a request is made for cremation, the funeral director called in 25
attendance shall immediately notify the coroner. 26

Sec. 2108.50. (A) An autopsy or post-mortem examination may 27
be performed upon the body of a deceased person by a licensed 28
physician or surgeon if consent has been given in the order named 29
by one of the following persons of sound mind and eighteen years 30
of age or older in a written instrument executed by the person or 31
on the person's behalf at the person's express direction: 32

(1) The deceased person during the deceased person's 33
lifetime; 34

(2) The decedent's spouse; 35

(3) If there is no surviving spouse, if the address of the 36
surviving spouse is unknown or outside the United States, if the 37
surviving spouse is physically or mentally unable or incapable of 38
giving consent, or if the deceased person was separated and living 39
apart from such surviving spouse, then a person having the first 40
named degree of relationship in the following list in which a 41
relative of the deceased person survives and is physically and 42
mentally able and capable of giving consent may execute consent: 43

(a) Children; 44

(b) Parents; 45

(c) Brothers or sisters. 46

(4) If there are no surviving persons of any degree of 47
relationship listed in division (A)(3) of this section, any other 48
relative or person who assumes custody of the body for burial-i 49

(5) A person authorized by written instrument executed by the 50

deceased person to make arrangements for burial; *i* 51

(6) A person who, at the time of death of the deceased 52
person, was serving as guardian of the person for the deceased 53
person; *i* 54

(7) If the decedent had mental retardation or a developmental 55
disability, the department of mental retardation and developmental 56
disabilities or the county board of mental retardation and 57
developmental disabilities. 58

(B) Consent to an autopsy or post-mortem examination may be 59
revoked only by the person executing the consent and in the same 60
manner as required for execution of consent under this section. 61

(C) As used in this section, "written instrument" includes a 62
telegram or cablegram. 63

Sec. 2151.421. (A)(1)(a) No person described in division 64
(A)(1)(b) of this section who is acting in an official or 65
professional capacity and knows or suspects that a child under 66
eighteen years of age or a mentally retarded, developmentally 67
disabled, or physically impaired child under twenty-one years of 68
age has suffered or faces a threat of suffering any physical or 69
mental wound, injury, disability, or condition of a nature that 70
reasonably indicates abuse or neglect of the child, shall fail to 71
immediately report that knowledge or suspicion to the public 72
children services agency or a municipal or county peace officer in 73
the county in which the child resides or in which the abuse or 74
neglect is occurring or has occurred. 75

(b) Division (A)(1)(a) of this section applies to any person 76
who is an attorney; physician, including a hospital intern or 77
resident; dentist; podiatrist; chiropractor; practitioner of a 78
limited branch of medicine as specified in section 4731.15 of the 79
Revised Code; hospital administrator; employee of a hospital; 80

registered nurse; licensed practical nurse; visiting nurse; other 81
health care professional; an employee of an ambulatory health 82
facility as defined in section 5101.61 of the Revised Code; an 83
employee of a home health agency; an employee of an adult care 84
facility licensed under Chapter 3722. of the Revised Code; an 85
employee of a community mental health facility; a superintendent, 86
board member, or employee of a county board of mental retardation 87
and developmental disabilities; an administrator, board member, or 88
employee of a residential facility licensed under section 5123.19 89
of the Revised Code; an administrator, board member, or employee 90
of any other public or private provider of services to a person 91
with mental retardation or a developmental disability; any MR/DD 92
employee, as defined in section 5123.50 of the Revised Code; a 93
member of a citizen's advisory council established at an 94
institution or branch institution of the department of mental 95
retardation and developmental disabilities under section 5123.092 96
of the Revised Code; licensed psychologist; licensed school 97
psychologist; speech pathologist or audiologist; coroner; 98
administrator or employee of a child day-care center; 99
administrator or employee of a residential camp or child day camp; 100
administrator or employee of a certified child care agency or 101
other public or private children services agency; school teacher; 102
school employee; school authority; person engaged in social work 103
or the practice of professional counseling; a residents' rights 104
advocate as defined in section 3721.10 of the Revised Code; a 105
member of the clergy, rabbi, priest, or regularly ordained, 106
accredited, or licensed minister of an established and legally 107
cognizable church, denomination, or sect; peace officer, as 108
defined in section 2935.01 of the Revised Code; or a person 109
rendering spiritual treatment through prayer in accordance with 110
the tenets of a well-recognized religion. 111

(2) An attorney or a physician is not required to make a 112
report pursuant to division (A)(1) of this section concerning any 113

communication the attorney or physician receives from a client or 114
patient in an attorney-client or physician-patient relationship, 115
if, in accordance with division (A) or (B) of section 2317.02 of 116
the Revised Code, the attorney or physician could not testify with 117
respect to that communication in a civil or criminal proceeding, 118
except that the client or patient is deemed to have waived any 119
testimonial privilege under division (A) or (B) of section 2317.02 120
of the Revised Code with respect to that communication and the 121
attorney or physician shall make a report pursuant to division 122
(A)(1) of this section with respect to that communication, if all 123
of the following apply: 124

(a) The client or patient, at the time of the communication, 125
is either a child under eighteen years of age or a mentally 126
retarded, developmentally disabled, or physically impaired person 127
under twenty-one years of age. 128

(b) The attorney or physician knows or suspects, as a result 129
of the communication or any observations made during that 130
communication, that the client or patient has suffered or faces a 131
threat of suffering any physical or mental wound, injury, 132
disability, or condition of a nature that reasonably indicates 133
abuse or neglect of the client or patient. 134

(c) The attorney-client or physician-patient relationship 135
does not arise out of the client's or patient's attempt to have an 136
abortion without the notification of her parents, guardian, or 137
custodian in accordance with section 2151.85 of the Revised Code. 138

(B) Anyone, who knows or suspects that a child under eighteen 139
years of age or a mentally retarded, developmentally disabled, or 140
physically impaired person under twenty-one years of age has 141
suffered or faces a threat of suffering any physical or mental 142
wound, injury, disability, or other condition of a nature that 143
reasonably indicates abuse or neglect of the child, may report or 144
cause reports to be made of that knowledge or suspicion to the 145

public children services agency or to a municipal or county peace officer. 146
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(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain: 148
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(1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known; 152
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(2) The child's age and the nature and extent of the child's known or suspected injuries, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect; 155
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(3) Any other information that might be helpful in establishing the cause of the known or suspected injury, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect. 159
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Any person, who is required by division (A) of this section to report known or suspected child abuse or child neglect, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. 163
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(D)(1) Upon the receipt of a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency. 168
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(2) On receipt of a report pursuant to this division or division (A) or (B) of this section, the public children services agency shall comply with section 2151.422 of the Revised Code. 173
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(E) No township, municipal, or county peace officer shall 176
remove a child about whom a report is made pursuant to this 177
section from the child's parents, stepparents, or guardian or any 178
other persons having custody of the child without consultation 179
with the public children services agency, unless, in the judgment 180
of the officer, and, if the report was made by physician, the 181
physician, immediate removal is considered essential to protect 182
the child from further abuse or neglect. The agency that must be 183
consulted shall be the agency conducting the investigation of the 184
report as determined pursuant to section 2151.422 of the Revised 185
Code. 186

(F)(1) Except as provided in section 2151.422 of the Revised 187
Code, the public children services agency shall investigate, 188
within twenty-four hours, each report of known or suspected child 189
abuse or child neglect and of a known or suspected threat of child 190
abuse or child neglect that is referred to it under this section 191
to determine the circumstances surrounding the injuries, abuse, or 192
neglect or the threat of injury, abuse, or neglect, the cause of 193
the injuries, abuse, neglect, or threat, and the person or persons 194
responsible. The investigation shall be made in cooperation with 195
the law enforcement agency and in accordance with the memorandum 196
of understanding prepared under division (J) of this section. A 197
failure to make the investigation in accordance with the 198
memorandum is not grounds for, and shall not result in, the 199
dismissal of any charges or complaint arising from the report or 200
the suppression of any evidence obtained as a result of the report 201
and does not give, and shall not be construed as giving, any 202
rights or any grounds for appeal or post-conviction relief to any 203
person. The public children services agency shall report each case 204
to a central registry which the department of job and family 205
services shall maintain in order to determine whether prior 206
reports have been made in other counties concerning the child or 207

other principals in the case. The public children services agency 208
shall submit a report of its investigation, in writing, to the law 209
enforcement agency. 210

(2) The public children services agency shall make any 211
recommendations to the county prosecuting attorney or city 212
director of law that it considers necessary to protect any 213
children that are brought to its attention. 214

(G)(1)(a) Except as provided in division (H)(3) of this 215
section, anyone or any hospital, institution, school, health 216
department, or agency participating in the making of reports under 217
division (A) of this section, anyone or any hospital, institution, 218
school, health department, or agency participating in good faith 219
in the making of reports under division (B) of this section, and 220
anyone participating in good faith in a judicial proceeding 221
resulting from the reports, shall be immune from any civil or 222
criminal liability for injury, death, or loss to person or 223
property that otherwise might be incurred or imposed as a result 224
of the making of the reports or the participation in the judicial 225
proceeding. 226

(b) Notwithstanding section 4731.22 of the Revised Code, the 227
physician-patient privilege shall not be a ground for excluding 228
evidence regarding a child's injuries, abuse, or neglect, or the 229
cause of the injuries, abuse, or neglect in any judicial 230
proceeding resulting from a report submitted pursuant to this 231
section. 232

(2) In any civil or criminal action or proceeding in which it 233
is alleged and proved that participation in the making of a report 234
under this section was not in good faith or participation in a 235
judicial proceeding resulting from a report made under this 236
section was not in good faith, the court shall award the 237
prevailing party reasonable attorney's fees and costs and, if a 238
civil action or proceeding is voluntarily dismissed, may award 239

reasonable attorney's fees and costs to the party against whom the 240
civil action or proceeding is brought. 241

(H)(1) Except as provided in divisions (H)(4), (M), and (N) 242
of this section, a report made under this section is confidential. 243
The information provided in a report made pursuant to this section 244
and the name of the person who made the report shall not be 245
released for use, and shall not be used, as evidence in any civil 246
action or proceeding brought against the person who made the 247
report. In a criminal proceeding, the report is admissible in 248
evidence in accordance with the Rules of Evidence and is subject 249
to discovery in accordance with the Rules of Criminal Procedure. 250

(2) No person shall permit or encourage the unauthorized 251
dissemination of the contents of any report made under this 252
section. 253

(3) A person who knowingly makes or causes another person to 254
make a false report under division (B) of this section that 255
alleges that any person has committed an act or omission that 256
resulted in a child being an abused child or a neglected child is 257
guilty of a violation of section 2921.14 of the Revised Code. 258

(4) If a report is made pursuant to division (A) or (B) of 259
this section and the child who is the subject of the report dies 260
for any reason at any time after the report is made, but before 261
the child attains eighteen years of age, the public children 262
services agency or municipal or county peace officer to which the 263
report was made or referred, on the request of the child fatality 264
review board, shall submit a summary sheet of information 265
providing a summary of the report to the review board of the 266
county in which the deceased child resided at the time of death. 267
On the request of the review board, the agency or peace officer 268
may, at its discretion, make the report available to the review 269
board. 270

(5) A public children services agency shall advise a person 271
alleged to have inflicted abuse or neglect on a child who is the 272
subject of a report made pursuant to this section in writing of 273
the disposition of the investigation. The agency shall not provide 274
to the person any information that identifies the person who made 275
the report, statements of witnesses, or police or other 276
investigative reports. 277

(I) Any report that is required by this section shall result 278
in protective services and emergency supportive services being 279
made available by the public children services agency on behalf of 280
the children about whom the report is made, in an effort to 281
prevent further neglect or abuse, to enhance their welfare, and, 282
whenever possible, to preserve the family unit intact. The agency 283
required to provide the services shall be the agency conducting 284
the investigation of the report pursuant to section 2151.422 of 285
the Revised Code. 286

(J)(1) Each public children services agency shall prepare a 287
memorandum of understanding that is signed by all of the 288
following: 289

(a) If there is only one juvenile judge in the county, the 290
juvenile judge of the county or the juvenile judge's 291
representative; 292

(b) If there is more than one juvenile judge in the county, a 293
juvenile judge or the juvenile judges' representative selected by 294
the juvenile judges or, if they are unable to do so for any 295
reason, the juvenile judge who is senior in point of service or 296
the senior juvenile judge's representative; 297

(c) The county peace officer; 298

(d) All chief municipal peace officers within the county; 299

(e) Other law enforcement officers handling child abuse and 300

neglect cases in the county; 301

(f) The prosecuting attorney of the county; 302

(g) If the public children services agency is not the county 303
department of job and family services, the county department of 304
job and family services. 305

(2) A memorandum of understanding shall set forth the normal 306
operating procedure to be employed by all concerned officials in 307
the execution of their respective responsibilities under this 308
section and division (C) of section 2919.21, division (B)(1) of 309
section 2919.22, division (B) of section 2919.23, and section 310
2919.24 of the Revised Code and shall have as two of its primary 311
goals the elimination of all unnecessary interviews of children 312
who are the subject of reports made pursuant to division (A) or 313
(B) of this section and, when feasible, providing for only one 314
interview of a child who is the subject of any report made 315
pursuant to division (A) or (B) of this section. A failure to 316
follow the procedure set forth in the memorandum by the concerned 317
officials is not grounds for, and shall not result in, the 318
dismissal of any charges or complaint arising from any reported 319
case of abuse or neglect or the suppression of any evidence 320
obtained as a result of any reported child abuse or child neglect 321
and does not give, and shall not be construed as giving, any 322
rights or any grounds for appeal or post-conviction relief to any 323
person. 324

(3) A memorandum of understanding shall include all of the 325
following: 326

(a) The roles and responsibilities for handling emergency and 327
nonemergency cases of abuse and neglect; 328

(b) Standards and procedures to be used in handling and 329
coordinating investigations of reported cases of child abuse and 330
reported cases of child neglect, methods to be used in 331

interviewing the child who is the subject of the report and who 332
allegedly was abused or neglected, and standards and procedures 333
addressing the categories of persons who may interview the child 334
who is the subject of the report and who allegedly was abused or 335
neglected. 336

(K)(1) Except as provided in division (K)(4) of this section, 337
a person who is required to make a report pursuant to division (A) 338
of this section may make a reasonable number of requests of the 339
public children services agency that receives or is referred the 340
report to be provided with the following information: 341

(a) Whether the agency has initiated an investigation of the 342
report; 343

(b) Whether the agency is continuing to investigate the 344
report; 345

(c) Whether the agency is otherwise involved with the child 346
who is the subject of the report; 347

(d) The general status of the health and safety of the child 348
who is the subject of the report; 349

(e) Whether the report has resulted in the filing of a 350
complaint in juvenile court or of criminal charges in another 351
court. 352

(2) A person may request the information specified in 353
division (K)(1) of this section only if, at the time the report is 354
made, the person's name, address, and telephone number are 355
provided to the person who receives the report. 356

When a municipal or county peace officer or employee of a 357
public children services agency receives a report pursuant to 358
division (A) or (B) of this section the recipient of the report 359
shall inform the person of the right to request the information 360
described in division (K)(1) of this section. The recipient of the 361

report shall include in the initial child abuse or child neglect 362
report that the person making the report was so informed and, if 363
provided at the time of the making of the report, shall include 364
the person's name, address, and telephone number in the report. 365

Each request is subject to verification of the identity of 366
the person making the report. If that person's identity is 367
verified, the agency shall provide the person with the information 368
described in division (K)(1) of this section a reasonable number 369
of times, except that the agency shall not disclose any 370
confidential information regarding the child who is the subject of 371
the report other than the information described in those 372
divisions. 373

(3) A request made pursuant to division (K)(1) of this 374
section is not a substitute for any report required to be made 375
pursuant to division (A) of this section. 376

(4) If an agency other than the agency that received or was 377
referred the report is conducting the investigation of the report 378
pursuant to section 2151.422 of the Revised Code, the agency 379
conducting the investigation shall comply with the requirements of 380
division (K) of this section. 381

(L) The director of job and family services shall adopt rules 382
in accordance with Chapter 119. of the Revised Code to implement 383
this section. The department of job and family services may enter 384
into a plan of cooperation with any other governmental entity to 385
aid in ensuring that children are protected from abuse and 386
neglect. The department shall make recommendations to the attorney 387
general that the department determines are necessary to protect 388
children from child abuse and child neglect. 389

(M) No later than the end of the day following the day on 390
which a public children services agency receives a report of 391
alleged child abuse or child neglect, or a report of an alleged 392

threat of child abuse or child neglect, that allegedly occurred in 393
or involved an out-of-home care entity, the agency shall provide 394
written notice of the allegations contained in and the person 395
named as the alleged perpetrator in the report to the 396
administrator, director, or other chief administrative officer of 397
the out-of-home care entity that is the subject of the report 398
unless the administrator, director, or other chief administrative 399
officer is named as an alleged perpetrator in the report. If the 400
administrator, director, or other chief administrative officer of 401
an out-of-home care entity is named as an alleged perpetrator in a 402
report of alleged child abuse or child neglect, or a report of an 403
alleged threat of child abuse or child neglect, that allegedly 404
occurred in or involved the out-of-home care entity, the agency 405
shall provide the written notice to the owner or governing board 406
of the out-of-home care entity that is the subject of the report. 407
The agency shall not provide witness statements or police or other 408
investigative reports. 409

(N) No later than three days after the day on which a public 410
children services agency that conducted the investigation as 411
determined pursuant to section 2151.422 of the Revised Code makes 412
a disposition of an investigation involving a report of alleged 413
child abuse or child neglect, or a report of an alleged threat of 414
child abuse or child neglect, that allegedly occurred in or 415
involved an out-of-home care entity, the agency shall send written 416
notice of the disposition of the investigation to the 417
administrator, director, or other chief administrative officer and 418
the owner or governing board of the out-of-home care entity. The 419
agency shall not provide witness statements or police or other 420
investigative reports. 421

Sec. 2152.821. (A)(1) As used in this section, "functionally 422
impaired person" means any person who has a physical or mental 423
impairment that prevents the person from providing for the 424

person's own care or protection or whose infirmities caused by 425
aging prevent the person from providing for the person's own care 426
or protection. 427

(2) As used in this section, "victim" includes any of the 428
following persons: 429

(a) A functionally impaired person who was a victim of a 430
violation identified in division (B)(1) of this section or an act 431
that would be an offense of violence if committed by an adult; 432

(b) A functionally impaired person against whom was directed 433
any conduct that constitutes, or that is an element of, a 434
violation identified in division (B)(1) of this section or an act 435
that would be an offense of violence if committed by an adult. 436

(B)(1) In any proceeding in juvenile court involving a 437
complaint, indictment, or information in which a child is charged 438
with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 439
2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 440
2907.322, or 2907.323 of the Revised Code or an act that would be 441
an offense of violence if committed by an adult and in which an 442
alleged victim of the violation or act was a functionally impaired 443
person, the juvenile judge, upon motion of the prosecution, shall 444
order that the testimony of the functionally impaired victim be 445
taken by deposition. The prosecution also may request that the 446
deposition be videotaped in accordance with division (B)(2) of 447
this section. The judge shall notify the functionally impaired 448
victim whose deposition is to be taken, the prosecution, and the 449
attorney for the child who is charged with the violation or act of 450
the date, time, and place for taking the deposition. The notice 451
shall identify the functionally impaired victim who is to be 452
examined and shall indicate whether a request that the deposition 453
be videotaped has been made. The child who is charged with the 454
violation or act shall have the right to attend the deposition and 455
the right to be represented by counsel. Depositions shall be taken 456

in the manner provided in civil cases, except that the judge in 457
the proceeding shall preside at the taking of the deposition and 458
shall rule at that time on any objections of the prosecution or 459
the attorney for the child charged with the violation or act. The 460
prosecution and the attorney for the child charged with the 461
violation or act shall have the right, as at an adjudication 462
hearing, to full examination and cross-examination of the 463
functionally impaired victim whose deposition is to be taken. 464

If a deposition taken under this division is intended to be 465
offered as evidence in the proceeding, it shall be filed in the 466
juvenile court in which the action is pending and is admissible in 467
the manner described in division (C) of this section. If a 468
deposition of a functionally impaired victim taken under this 469
division is admitted as evidence at the proceeding under division 470
(C) of this section, the functionally impaired victim shall not be 471
required to testify in person at the proceeding. 472

At any time before the conclusion of the proceeding, the 473
attorney for the child charged with the violation or act may file 474
a motion with the judge requesting that another deposition of the 475
functionally impaired victim be taken because new evidence 476
material to the defense of the child charged has been discovered 477
that the attorney for the child charged could not with reasonable 478
diligence have discovered prior to the taking of the admitted 479
deposition. Any motion requesting another deposition shall be 480
accompanied by supporting affidavits. Upon the filing of the 481
motion and affidavits, the court may order that additional 482
testimony of the functionally impaired victim relative to the new 483
evidence be taken by another deposition. If the court orders the 484
taking of another deposition under this provision, the deposition 485
shall be taken in accordance with this division. If the admitted 486
deposition was a videotaped deposition taken in accordance with 487
division (B)(2) of this section, the new deposition also shall be 488

videotaped in accordance with that division. In other cases, the 489
new deposition may be videotaped in accordance with that division. 490

(2) If the prosecution requests that a deposition to be taken 491
under division (B)(1) of this section be videotaped, the juvenile 492
judge shall order that the deposition be videotaped in accordance 493
with this division. If a juvenile judge issues an order to video 494
tape the deposition, the judge shall exclude from the room in 495
which the deposition is to be taken every person except the 496
functionally impaired victim giving the testimony, the judge, one 497
or more interpreters if needed, the attorneys for the prosecution 498
and the child who is charged with the violation or act, any person 499
needed to operate the equipment to be used, one person chosen by 500
the functionally impaired victim giving the deposition, and any 501
person whose presence the judge determines would contribute to the 502
welfare and well-being of the functionally impaired victim giving 503
the deposition. The person chosen by the functionally impaired 504
victim shall not be a witness in the proceeding and, both before 505
and during the deposition, shall not discuss the testimony of the 506
victim with any other witness in the proceeding. To the extent 507
feasible, any person operating the recording equipment shall be 508
restricted to a room adjacent to the room in which the deposition 509
is being taken, or to a location in the room in which the 510
deposition is being taken that is behind a screen or mirror so 511
that the person operating the recording equipment can see and 512
hear, but cannot be seen or heard by, the functionally impaired 513
victim giving the deposition during the deposition. 514

The child who is charged with the violation or act shall be 515
permitted to observe and hear the testimony of the functionally 516
impaired victim giving the deposition on a monitor, shall be 517
provided with an electronic means of immediate communication with 518
the attorney of the child who is charged with the violation or act 519
during the testimony, and shall be restricted to a location from 520

which the child who is charged with the violation or act cannot be 521
seen or heard by the functionally impaired victim giving the 522
deposition, except on a monitor provided for that purpose. The 523
functionally impaired victim giving the deposition shall be 524
provided with a monitor on which the functionally impaired victim 525
can observe, while giving testimony, the child who is charged with 526
the violation or act. The judge, at the judge's discretion, may 527
preside at the deposition by electronic means from outside the 528
room in which the deposition is to be taken; if the judge presides 529
by electronic means, the judge shall be provided with monitors on 530
which the judge can see each person in the room in which the 531
deposition is to be taken and with an electronic means of 532
communication with each person in that room, and each person in 533
the room shall be provided with a monitor on which that person can 534
see the judge and with an electronic means of communication with 535
the judge. A deposition that is videotaped under this division 536
shall be taken and filed in the manner described in division 537
(B)(1) of this section and is admissible in the manner described 538
in this division and division (C) of this section. If a deposition 539
that is videotaped under this division is admitted as evidence at 540
the proceeding, the functionally impaired victim shall not be 541
required to testify in person at the proceeding. No deposition 542
videotaped under this division shall be admitted as evidence at 543
any proceeding unless division (C) of this section is satisfied 544
relative to the deposition and all of the following apply relative 545
to the recording: 546

(a) The recording is both aural and visual and is recorded on 547
film or videotape, or by other electronic means. 548

(b) The recording is authenticated under the Rules of 549
Evidence and the Rules of Criminal Procedure as a fair and 550
accurate representation of what occurred, and the recording is not 551
altered other than at the direction and under the supervision of 552

the judge in the proceeding. 553

(c) Each voice on the recording that is material to the 554
testimony on the recording or the making of the recording, as 555
determined by the judge, is identified. 556

(d) Both the prosecution and the child who is charged with 557
the violation or act are afforded an opportunity to view the 558
recording before it is shown in the proceeding. 559

(C)(1) At any proceeding in relation to which a deposition 560
was taken under division (B) of this section, the deposition or a 561
part of it is admissible in evidence upon motion of the 562
prosecution if the testimony in the deposition or the part to be 563
admitted is not excluded by the hearsay rule and if the deposition 564
or the part to be admitted otherwise is admissible under the Rules 565
of Evidence. For purposes of this division, testimony is not 566
excluded by the hearsay rule if the testimony is not hearsay under 567
Evidence Rule 801; the testimony is within an exception to the 568
hearsay rule set forth in Evidence Rule 803; the functionally 569
impaired victim who gave the testimony is unavailable as a 570
witness, as defined in Evidence Rule 804, and the testimony is 571
admissible under that rule; or both of the following apply: 572

(a) The child who is charged with the violation or act had an 573
opportunity and similar motive at the time of the taking of the 574
deposition to develop the testimony by direct, cross, or redirect 575
examination. 576

(b) The judge determines that there is reasonable cause to 577
believe that, if the functionally impaired victim who gave the 578
testimony in the deposition were to testify in person at the 579
proceeding, the functionally impaired victim would experience 580
serious emotional trauma as a result of the functionally impaired 581
victim's participation at the proceeding. 582

(2) Objections to receiving in evidence a deposition or a 583

part of it under division (C) of this section shall be made as 584
provided in civil actions. 585

(3) The provisions of divisions (B) and (C) of this section 586
are in addition to any other provisions of the Revised Code, the 587
Rules of Juvenile Procedure, the Rules of Criminal Procedure, or 588
the Rules of Evidence that pertain to the taking or admission of 589
depositions in a juvenile court proceeding and do not limit the 590
admissibility under any of those other provisions of any 591
deposition taken under division (A) of this section or otherwise 592
taken. 593

(D) In any proceeding in juvenile court involving a 594
complaint, indictment, or information in which a child is charged 595
with a violation listed in division (B)(1) of this section or an 596
act that would be an offense of violence if committed by an adult 597
and in which an alleged victim of the violation or offense was a 598
functionally impaired person, the prosecution may file a motion 599
with the juvenile judge requesting the judge to order the 600
testimony of the functionally impaired victim to be taken in a 601
room other than the room in which the proceeding is being 602
conducted and be televised, by closed circuit equipment, into the 603
room in which the proceeding is being conducted to be viewed by 604
the child who is charged with the violation or act and any other 605
persons who are not permitted in the room in which the testimony 606
is to be taken but who would have been present during the 607
testimony of the functionally impaired victim had it been given in 608
the room in which the proceeding is being conducted. Except for 609
good cause shown, the prosecution shall file a motion under this 610
division at least seven days before the date of the proceeding. 611
The juvenile judge may issue the order upon the motion of the 612
prosecution filed under this division, if the judge determines 613
that the functionally impaired victim is unavailable to testify in 614
the room in which the proceeding is being conducted in the 615

physical presence of the child charged with the violation or act 616
for one or more of the reasons set forth in division (F) of this 617
section. If a juvenile judge issues an order of that nature, the 618
judge shall exclude from the room in which the testimony is to be 619
taken every person except a person described in division (B)(2) of 620
this section. The judge, at the judge's discretion, may preside 621
during the giving of the testimony by electronic means from 622
outside the room in which it is being given, subject to the 623
limitations set forth in division (B)(2) of this section. To the 624
extent feasible, any person operating the televising equipment 625
shall be hidden from the sight and hearing of the functionally 626
impaired victim giving the testimony, in a manner similar to that 627
described in division (B)(2) of this section. The child who is 628
charged with the violation or act shall be permitted to observe 629
and hear the testimony of the functionally impaired victim giving 630
the testimony on a monitor, shall be provided with an electronic 631
means of immediate communication with the attorney of the child 632
who is charged with the violation or act during the testimony, and 633
shall be restricted to a location from which the child who is 634
charged with the violation or act cannot be seen or heard by the 635
functionally impaired victim giving the testimony, except on a 636
monitor provided for that purpose. The functionally impaired 637
victim giving the testimony shall be provided with a monitor on 638
which the functionally impaired victim can observe, while giving 639
testimony, the child who is charged with the violation or act. 640

(E) In any proceeding in juvenile court involving a 641
complaint, indictment, or information in which a child is charged 642
with a violation listed in division (B)(1) of this section or an 643
act that would be an offense of violence if committed by an adult 644
and in which an alleged victim of the violation or offense was a 645
functionally impaired person, the prosecution may file a motion 646
with the juvenile judge requesting the judge to order the 647
testimony of the functionally impaired victim to be taken outside 648

of the room in which the proceeding is being conducted and be 649
recorded for showing in the room in which the proceeding is being 650
conducted before the judge, the child who is charged with the 651
violation or act, and any other persons who would have been 652
present during the testimony of the child victim had it been given 653
in the room in which the proceeding is being conducted. Except for 654
good cause shown, the prosecution shall file a motion under this 655
division at least seven days before the date of the proceeding. 656
The juvenile judge may issue the order upon the motion of the 657
prosecution filed under this division, if the judge determines 658
that the functionally impaired victim is unavailable to testify in 659
the room in which the proceeding is being conducted in the 660
physical presence of the child charged with the violation or act, 661
due to one or more of the reasons set forth in division (F) of 662
this section. If a juvenile judge issues an order of that nature, 663
the judge shall exclude from the room in which the testimony is to 664
be taken every person except a person described in division (B)(2) 665
of this section. To the extent feasible, any person operating the 666
recording equipment shall be hidden from the sight and hearing of 667
the functionally impaired victim giving the testimony, in a manner 668
similar to that described in division (B)(2) of this section. The 669
child who is charged with the violation or act shall be permitted 670
to observe and hear the testimony of the functionally impaired 671
victim giving the testimony on a monitor, shall be provided with 672
an electronic means of immediate communication with the attorney 673
of the child who is charged with the violation or act during the 674
testimony, and shall be restricted to a location from which the 675
child who is charged with the violation or act cannot be seen or 676
heard by the functionally impaired victim giving the testimony, 677
except on a monitor provided for that purpose. The functionally 678
impaired victim giving the testimony shall be provided with a 679
monitor on which the functionally impaired victim can observe, 680
while giving testimony, the child who is charged with the 681

violation or act. No order for the taking of testimony by 682
recording shall be issued under this division unless the 683
provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of 684
this section apply to the recording of the testimony. 685

(F) For purposes of divisions (D) and (E) of this section, a 686
juvenile judge may order the testimony of a functionally impaired 687
victim to be taken outside of the room in which a proceeding is 688
being conducted if the judge determines that the functionally 689
impaired victim is unavailable to testify in the room in the 690
physical presence of the child charged with the violation or act 691
due to one or more of the following circumstances: 692

(1) The persistent refusal of the functionally impaired 693
victim to testify despite judicial requests to do so; 694

(2) The inability of the functionally impaired victim to 695
communicate about the alleged violation or offense because of 696
extreme fear, failure of memory, or another similar reason; 697

(3) The substantial likelihood that the functionally impaired 698
victim will suffer serious emotional trauma from so testifying. 699

(G)(1) If a juvenile judge issues an order pursuant to 700
division (D) or (E) of this section that requires the testimony of 701
a functionally impaired victim in a juvenile court proceeding to 702
be taken outside of the room in which the proceeding is being 703
conducted, the order shall specifically identify the functionally 704
impaired victim to whose testimony it applies, the order applies 705
only during the testimony of the specified functionally impaired 706
victim, and the functionally impaired victim giving the testimony 707
shall not be required to testify at the proceeding other than in 708
accordance with the order. The authority of a judge to close the 709
taking of a deposition under division (B)(2) of this section or a 710
proceeding under division (D) or (E) of this section is in 711
addition to the authority of a judge to close a hearing pursuant 712

to section 2151.35 of the Revised Code. 713

(2) A juvenile judge who makes any determination regarding 714
the admissibility of a deposition under divisions (B) and (C) of 715
this section, the videotaping of a deposition under division 716
(B)(2) of this section, or the taking of testimony outside of the 717
room in which a proceeding is being conducted under division (D) 718
or (E) of this section shall enter the determination and findings 719
on the record in the proceeding. 720

Sec. 2311.14. (A)(1) Whenever because of a hearing, speech, 721
or other impairment a party to or witness in a legal proceeding 722
cannot readily understand or communicate, the court shall appoint 723
a qualified interpreter to assist such person. 724

(2) This section is not limited to a person who speaks a 725
language other than English. It also applies to the language and 726
descriptions of any person, such as a person with mental 727
retardation or a developmental disability, who cannot be 728
reasonably understood, or who cannot understand questioning, 729
without the aid of an interpreter. The interpreter may aid the 730
parties in formulating methods of questioning the person with 731
mental retardation or a developmental disability and in 732
interpreting the answers of the person. 733

(B) Before entering upon ~~his~~ official duties, the interpreter 734
shall take an oath that ~~he~~ the interpreter will make a true 735
interpretation of the proceedings to the party or witness, and 736
that ~~he~~ the interpreter will truly repeat the statements made by 737
such party or witness to the court, to the best of ~~his~~ the 738
interpreter's ability. 739

(C) The court shall determine a reasonable fee for all such 740
interpreter service which shall be paid out of the same funds as 741
witness fees. 742

Sec. 2903.16. (A) No caretaker shall knowingly fail to 743
provide a functionally impaired person under the caretaker's care 744
with any treatment, care, goods, or service that is necessary to 745
maintain the health or safety of the functionally impaired person 746
when this failure results in physical harm or serious physical 747
harm to the functionally impaired person. 748

(B) No caretaker shall recklessly fail to provide a 749
functionally impaired person under the caretaker's care with any 750
treatment, care, goods, or service that is necessary to maintain 751
the health or safety of the functionally impaired person when this 752
failure results in serious physical harm to the functionally 753
impaired person. 754

(C) No caretaker shall create a substantial risk to the 755
health or safety of a functionally impaired person under the 756
caretaker's care. 757

(D)(1) Whoever violates division (A) of this section is 758
guilty of knowingly failing to provide for a functionally impaired 759
person, a misdemeanor of the first degree. If the functionally 760
impaired person under the offender's care suffers serious physical 761
harm as a result of the violation of this section, a violation of 762
division (A) of this section is a felony of the fourth degree. 763

(2) Whoever violates division (B) of this section is guilty 764
of recklessly failing to provide for a functionally impaired 765
person, a misdemeanor of the second degree. If the functionally 766
impaired person under the offender's care suffers serious physical 767
harm as a result of the violation of this section, a violation of 768
division (B) of this section is a felony of the fourth degree. 769

(3) Whoever violates division (C) of this section is guilty 770
of endangering a functionally impaired person, a misdemeanor of 771
the first degree. The offender shall be eligible to be included in 772

the MR/DD employee registry established under section 5123.52 of 773
the Revised Code. 774

Sec. 2903.341. (A) No person who owns, operates, or 775
administers, or who is an agent or employee of, a care facility 776
shall create a substantial risk to the health or safety of a 777
functionally impaired person under the person's care. 778

(B)(1) A person who relies upon treatment by spiritual means 779
through prayer alone, in accordance with the tenets of a 780
recognized religious denomination, shall not be considered 781
endangered under division (A) of this section for that reason 782
alone. 783

(2) It is an affirmative defense to a charge of patient 784
endangerment under this section that the actor's conduct was 785
committed in good faith solely because the actor was ordered to 786
commit the conduct by a person with supervisory authority over the 787
actor. 788

(C) Whoever violates division (A) of this section is guilty 789
of patient endangerment, a misdemeanor of the first degree. If the 790
offender previously has been convicted of, or pleaded guilty to, a 791
violation of this section, patient endangerment is a felony of the 792
fifth degree. 793

Sec. 2945.482. (A)(1) As used in this section, "functionally 794
impaired person" means any person who has a physical or mental 795
impairment that prevents the person from providing for the 796
person's own care or protection or whose infirmities caused by 797
aging prevent the person from providing for the person's own care 798
or protection. 799

(2) As used in this section, "victim" includes a functionally 800
impaired person who was a victim of a violation identified in 801
division (B)(1) of this section or an offense of violence or 802

against whom was directed any conduct that constitutes, or that is 803
an element of, a violation identified in division (B)(1) of this 804
section or an offense of violence. 805

(B)(1) In any proceeding in the prosecution of a charge of a 806
violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 807
2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 808
2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an 809
offense of violence and in which an alleged victim of the 810
violation or offense was a functionally impaired person, the judge 811
of the court in which the prosecution is being conducted, upon 812
motion of an attorney for the prosecution, shall order that the 813
testimony of the functionally impaired person be taken by 814
deposition. The prosecution also may request that the deposition 815
be videotaped in accordance with division (B)(2) of this section. 816
The judge shall notify the functionally impaired victim whose 817
deposition is to be taken, the prosecution, and the defense of the 818
date, time, and place for taking the deposition. The notice shall 819
identify the functionally impaired victim who is to be examined 820
and shall indicate whether a request that the deposition be 821
videotaped has been made. The defendant shall have the right to 822
attend the deposition and the right to be represented by counsel. 823
Depositions shall be taken in the manner provided in civil cases, 824
except that the judge shall preside at the taking of the 825
deposition and shall rule at the time on any objections of the 826
prosecution or the attorney for the defense. The prosecution and 827
the attorney for the defense shall have the right, as at trial, to 828
full examination and cross-examination of the child victim whose 829
deposition is to be taken. If a deposition taken under this 830
division is intended to be offered as evidence in the proceeding, 831
it shall be filed in the court in which the action is pending and 832
is admissible in the manner described in division (C) of this 833
section. 834

If a deposition of a functionally impaired victim taken under this division is admitted as evidence at the proceeding under division (C) of this section, the functionally impaired victim shall not be required to testify in person at the proceeding. 835
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At any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the functionally impaired victim be taken because new evidence material to the defense has been discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division. 839
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(2) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the functionally impaired victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to operate the equipment to be used, one person chosen by the functionally impaired victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the functionally impaired victim giving the deposition. The person chosen by the functionally impaired victim shall not be a witness in the proceeding and, both before and during the deposition, shall not 852
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discuss the testimony of the functionally impaired victim with any 867
other witness in the proceeding. To the extent feasible, any 868
person operating the recording equipment shall be restricted to a 869
room adjacent to the room in which the deposition is being taken, 870
or to a location in the room in which the deposition is being 871
taken that is behind a screen or mirror, so that the person 872
operating the recording equipment can see and hear, but cannot be 873
seen or heard by, the functionally impaired victim giving the 874
deposition during the deposition. 875

The defendant shall be permitted to observe and hear the 876
testimony of the functionally impaired victim giving the 877
deposition on a monitor, shall be provided with an electronic 878
means of immediate communication with the defendant's attorney 879
during the testimony, and shall be restricted to a location from 880
which the defendant cannot be seen or heard by the functionally 881
impaired victim giving the deposition, except on a monitor 882
provided for that purpose. The functionally impaired victim giving 883
the deposition shall be provided with a monitor on which the 884
victim can observe, during the testimony, the defendant. The 885
judge, at the judge's discretion, may preside at the deposition by 886
electronic means from outside the room in which the deposition is 887
to be taken. If the judge presides by electronic means, the judge 888
shall be provided with monitors on which the judge can see each 889
person in the room in which the deposition is to be taken and with 890
an electronic means of communication with each person, and each 891
person in the room shall be provided with a monitor on which that 892
person can see the judge and with an electronic means of 893
communication with the judge. A deposition that is videotaped 894
under this division shall be taken and filed in the manner 895
described in division (B)(1) of this section and is admissible in 896
the manner described in this division and division (C) of this 897
section, and, if a deposition that is videotaped under this 898
division is admitted as evidence at the proceeding, the 899

functionally impaired victim shall not be required to testify in 900
person at the proceeding. No deposition videotaped under this 901
division shall be admitted as evidence at any proceeding unless 902
division (C) of this section is satisfied relative to the 903
deposition and all of the following apply relative to the 904
recording: 905

(a) The recording is both aural and visual and is recorded on 906
film or videotape, or by other electronic means. 907

(b) The recording is authenticated under the Rules of 908
Evidence and the Rules of Criminal Procedure as a fair and 909
accurate representation of what occurred, and the recording is not 910
altered other than at the direction and under the supervision of 911
the judge in the proceeding. 912

(c) Each voice on the recording that is material to the 913
testimony on the recording or the making of the recording, as 914
determined by the judge, is identified. 915

(d) Both the prosecution and the defendant are afforded an 916
opportunity to view the recording before it is shown in the 917
proceeding. 918

(C)(1) At any proceeding in a prosecution in relation to 919
which a deposition was taken under division (B) of this section, 920
the deposition or a part of it is admissible in evidence upon 921
motion of the prosecution if the testimony in the deposition or 922
the part to be admitted is not excluded by the hearsay rule and if 923
the deposition or the part to be admitted otherwise is admissible 924
under the Rules of Evidence. For purposes of this division, 925
testimony is not excluded by the hearsay rule if the testimony is 926
not hearsay under Evidence Rule 801; the testimony is within an 927
exception to the hearsay rule set forth in Evidence Rule 803; the 928
functionally impaired victim who gave the testimony is unavailable 929
as a witness, as defined in Evidence Rule 804, and the testimony 930

is admissible under that rule; or both of the following apply: 931

(a) The defendant had an opportunity and similar motive at 932
the time of the taking of the deposition to develop the testimony 933
by direct, cross, or redirect examination. 934

(b) The judge determines that there is reasonable cause to 935
believe that, if the functionally impaired victim who gave the 936
testimony in the deposition were to testify in person at the 937
proceeding, the functionally impaired victim would experience 938
serious emotional trauma as a result of the functionally impaired 939
victim's participation at the proceeding. 940

(2) Objections to receiving in evidence a deposition or a 941
part of it under division (C) of this section shall be made as 942
provided in civil actions. 943

(3) The provisions of divisions (B) and (C) of this section 944
are in addition to any other provisions of the Revised Code, the 945
Rules of Criminal Procedure, or the Rules of Evidence that pertain 946
to the taking or admission of depositions in a criminal proceeding 947
and do not limit the admissibility under any of those other 948
provisions of any deposition taken under division (B) of this 949
section or otherwise taken. 950

(D) In any proceeding in the prosecution of any charge of a 951
violation listed in division (B)(1) of this section or an offense 952
of violence and in which an alleged victim of the violation or 953
offense was a functionally impaired person, the prosecution may 954
file a motion with the judge requesting the judge to order the 955
testimony of the functionally impaired victim to be taken in a 956
room other than the room in which the proceeding is being 957
conducted and be televised, by closed circuit equipment, into the 958
room in which the proceeding is being conducted to be viewed by 959
the jury, if applicable, the defendant, and any other persons who 960
are not permitted in the room in which the testimony is to be 961

taken but who would have been present during the testimony of the 962
functionally impaired victim had it been given in the room in 963
which the proceeding is being conducted. Except for good cause 964
shown, the prosecution shall file a motion under this division at 965
least seven days before the date of the proceeding. The judge may 966
issue the order upon the motion of the prosecution filed under 967
this section, if the judge determines that the functionally 968
impaired victim is unavailable to testify in the room in which the 969
proceeding is being conducted in the physical presence of the 970
defendant for one or more of the reasons set forth in division (F) 971
of this section. If a judge issues an order of that nature, the 972
judge shall exclude from the room in which the testimony is to be 973
taken every person except a person described in division (B)(2) of 974
this section. The judge, at the judge's discretion, may preside 975
during the giving of the testimony by electronic means from 976
outside the room in which it is being given, subject to the 977
limitations set forth in division (B)(2) of this section. To the 978
extent feasible, any person operating the televising equipment 979
shall be hidden from the sight and hearing of the functionally 980
impaired victim giving the testimony, in a manner similar to that 981
described in division (B)(2) of this section. The defendant shall 982
be permitted to observe and hear the testimony of the functionally 983
impaired victim giving the testimony on a monitor, shall be 984
provided with an electronic means of immediate communication with 985
the defendant's attorney during the testimony, and shall be 986
restricted to a location from which the defendant cannot be seen 987
or heard by the functionally impaired victim giving the testimony, 988
except on a monitor provided for that purpose. The functionally 989
impaired victim giving the testimony shall be provided with a 990
monitor on which the functionally impaired victim can observe, 991
during the testimony, the defendant. 992

(E) In any proceeding in the prosecution of any charge of a 993
violation listed in division (B)(1) of this section or an offense 994

of violence and in which an alleged victim of the violation or 995
offense was a functionally impaired victim, the prosecution may 996
file a motion with the judge requesting the judge to order the 997
testimony of the functionally impaired victim to be taken outside 998
of the room in which the proceeding is being conducted and be 999
recorded for showing in the room in which the proceeding is being 1000
conducted before the judge, the jury, if applicable, the 1001
defendant, and any other persons who would have been present 1002
during the testimony of the functionally impaired victim had it 1003
been given in the room in which the proceeding is being conducted. 1004
Except for good cause shown, the prosecution shall file a motion 1005
under this division at least seven days before the date of the 1006
proceeding. The judge may issue the order upon the motion of the 1007
prosecution filed under this division, if the judge determines 1008
that the functionally impaired victim is unavailable to testify in 1009
the room in which the proceeding is being conducted in the 1010
physical presence of the defendant, for one or more of the reasons 1011
set forth in division (F) of this section. If a judge issues an 1012
order of that nature, the judge shall exclude from the room in 1013
which the testimony is to be taken every person except a person 1014
described in division (B)(2) of this section. To the extent 1015
feasible, any person operating the recording equipment shall be 1016
hidden from the sight and hearing of the functionally impaired 1017
victim giving the testimony, in a manner similar to that described 1018
in division (B)(2) of this section. The defendant shall be 1019
permitted to observe and hear the testimony of the functionally 1020
impaired victim who is giving the testimony on a monitor, shall be 1021
provided with an electronic means of immediate communication with 1022
the defendant's attorney during the testimony, and shall be 1023
restricted to a location from which the defendant cannot be seen 1024
or heard by the functionally impaired victim giving the testimony, 1025
except on a monitor provided for that purpose. The functionally 1026
impaired victim giving the testimony shall be provided with a 1027

monitor on which the victim can observe, during the testimony, the 1028
defendant. No order for the taking of testimony by recording shall 1029
be issued under this division unless the provisions set forth in 1030
divisions (B)(2)(a), (b), (c), and (d) of this section apply to 1031
the recording of the testimony. 1032

(F) For purposes of divisions (D) and (E) of this section, a 1033
judge may order the testimony of a functionally impaired victim to 1034
be taken outside the room in which the proceeding is being 1035
conducted if the judge determines that the functionally impaired 1036
victim is unavailable to testify in the room in the physical 1037
presence of the defendant due to one or more of the following: 1038

(1) The persistent refusal of the functionally impaired 1039
victim to testify despite judicial requests to do so; 1040

(2) The inability of the functionally impaired victim to 1041
communicate about the alleged violation or offense because of 1042
extreme fear, failure of memory, or another similar reason; 1043

(3) The substantial likelihood that the functionally impaired 1044
victim will suffer serious emotional trauma from so testifying. 1045

(G)(1) If a judge issues an order pursuant to division (D) or 1046
(E) of this section that requires the testimony of a functionally 1047
impaired victim in a criminal proceeding to be taken outside of 1048
the room in which the proceeding is being conducted, the order 1049
shall specifically identify the functionally impaired victim to 1050
whose testimony it applies, the order applies only during the 1051
testimony of the specified functionally impaired victim, and the 1052
functionally impaired victim giving the testimony shall not be 1053
required to testify at the proceeding other than in accordance 1054
with the order. 1055

(2) A judge who makes any determination regarding the 1056
admissibility of a deposition under divisions (B) and (C) of this 1057
section, the videotaping of a deposition under division (B)(2) of 1058

this section, or the taking of testimony outside of the room in 1059
which a proceeding is being conducted under division (D) or (E) of 1060
this section shall enter the determination and findings on the 1061
record in the proceeding. 1062

Sec. 2945.491. (A)(1) As used in this section, "functionally 1063
impaired person" means any person who has a physical or mental 1064
impairment that prevents the person from providing for the 1065
person's own care or protection or whose infirmities caused by 1066
aging prevent the person from providing for the person's own care 1067
or protection. 1068

(2) As used in this section, "victim" includes a functionally 1069
impaired person who was a victim of a felony violation identified 1070
in division (B)(1) of this section or a felony offense of violence 1071
or against whom was directed any conduct that constitutes, or that 1072
is an element of, a felony violation identified in division (B)(1) 1073
of this section or a felony offense of violence. 1074

(3) Testimony taken at an examination or a preliminary 1075
hearing at which the defendant is present, or at a former trial of 1076
the cause, or taken by deposition at the instance of the defendant 1077
or the state, may be used whenever the witness giving the 1078
testimony dies or cannot for any reason be produced at the trial 1079
or whenever the witness has, since giving that testimony, become 1080
incapacitated to testify. If the former testimony is contained 1081
within an authenticated transcript of the testimony, it shall be 1082
proven by the transcript or by other testimony. 1083

(B)(1) At a trial on a charge of a felony violation of 1084
section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 1085
2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 1086
2907.323 of the Revised Code or an offense of violence and in 1087
which an alleged victim of the violation or offense was a 1088
functionally impaired person, the court, upon motion of the 1089

prosecutor in the case, may admit videotaped preliminary hearing testimony of the functionally impaired victim as evidence at the trial, in lieu of the functionally impaired victim appearing as a witness and testifying at trial, if all of the following apply: 1090
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(a) The videotape of the testimony was made at the preliminary hearing at which probable cause of the violation charged was found. 1094
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(b) The videotape of the testimony was made in accordance with division (C) of section 2937.11 of the Revised Code. 1097
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(c) The testimony in the videotape is not excluded by the hearsay rule and otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801, the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803, the functionally impaired 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: 1099
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(i) The accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the functionally impaired victim by direct, cross, or redirect examination. 1108
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(ii) The court determines that there is reasonable cause to believe that if the functionally impaired victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the functionally impaired victim would experience serious emotional trauma as a result of the victim's participation at the trial. 1111
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(2) If a functionally impaired victim of an alleged felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an alleged felony offense of 1117
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violence testifies at the preliminary hearing in the case, if the 1121
testimony of the functionally impaired victim at the preliminary 1122
hearing was videotaped pursuant to division (C) of section 2937.11 1123
of the Revised Code, and if the defendant in the case files a 1124
written objection to the use, pursuant to division (B)(1) of this 1125
section, of the videotaped testimony at the trial, the court, 1126
immediately after the filing of the objection, shall hold a 1127
hearing to determine whether the videotaped testimony of the 1128
functionally impaired victim should be admissible at trial under 1129
division (B)(1) of this section and, if it is admissible, whether 1130
the functionally impaired victim should be required to provide 1131
limited additional testimony of the type described in this 1132
division. At the hearing held pursuant to this division, the 1133
defendant and the prosecutor in the case may present any evidence 1134
that is relevant to the issues to be determined at the hearing, 1135
but the functionally impaired victim shall not be required to 1136
testify at the hearing. 1137

After the hearing, the court shall not require the 1138
functionally impaired victim to testify at the trial, unless it 1139
determines that both of the following apply: 1140

(a) That the testimony of the functionally impaired victim at 1141
trial is necessary for one or more of the following reasons: 1142

(i) Evidence that was not available at the time of the 1143
testimony of the functionally impaired victim at the preliminary 1144
hearing has been discovered. 1145

(ii) The circumstances surrounding the case have changed 1146
sufficiently to necessitate that the functionally impaired victim 1147
testify at the trial. 1148

(b) That the testimony of the functionally impaired victim at 1149
the trial is necessary to protect the right of the defendant to a 1150
fair trial. 1151

The court shall enter its finding and the reasons for it in the journal. If the court requires the functionally impaired victim to testify at the trial, the testimony of the victim shall be limited to the new evidence and changed circumstances, and the functionally impaired victim shall not otherwise be required to testify at the trial. The required testimony of the functionally impaired victim may be given in person or, upon motion of the prosecution, may be taken by deposition in accordance with division (B) of section 2945.482 of the Revised Code provided the deposition is admitted as evidence under division (C) of that section, may be taken outside of the courtroom and televised into the courtroom in accordance with division (D) of that section, or may be taken outside of the courtroom and recorded for showing in the courtroom in accordance with division (E) of that section.

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

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

Sec. 5123.084. (A) As used in this section, "sexual conduct" and "sexual contact" have the same meanings as in section 2907.01 of the Revised Code.

(B) Prior to employing an applicant, the director of mental retardation and developmental disabilities shall require the applicant to sign an agreement under which the applicant agrees to not engage in any sexual conduct or sexual contact with an

individual with mental retardation or a developmental disability 1183
in the applicant's care. The agreement shall inform the applicant 1184
that the failure to comply with the agreement may result in the 1185
placement of the individual on the MR/DD employee registry 1186
established under section 5123.52 of the Revised Code. 1187

Sec. 5123.51. (A) In addition to any other action required by 1188
sections 5123.61 and 5126.31 of the Revised Code, the department 1189
of mental retardation and developmental disabilities shall review 1190
each report the department receives of abuse or neglect of an 1191
individual with mental retardation or a developmental disability 1192
or misappropriation of an individual's property that includes an 1193
allegation that an MR/DD employee committed or was responsible for 1194
the abuse, neglect, or misappropriation. The department shall 1195
review a report it receives from a public children services agency 1196
only after the agency completes its investigation pursuant to 1197
section 2151.421 of the Revised Code. The department shall review 1198
a report it recovers from a prosecutor pursuant to section 1199
5123.511 of the Revised Code when the person who is the subject of 1200
the report is charged. 1201

(B) The department shall do both of the following: 1202

(1) Investigate the allegation or adopt the findings of an 1203
investigation or review of the allegation conducted by another 1204
person or government entity and determine whether there is a 1205
reasonable basis for the allegation; 1206

(2) If the department determines that there is a reasonable 1207
basis for the allegation, conduct an adjudication pursuant to 1208
Chapter 119. of the Revised Code. 1209

(C)(1) The department shall appoint an independent hearing 1210
officer to conduct any hearing conducted pursuant to division 1211
(B)(2) of this section, except that, if the hearing is regarding 1212
an employee of the department who is represented by a union, the 1213

department and a representative of the union shall jointly select the hearing officer. 1214
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~~(2) No hearing shall be conducted under division (B)(2) of this section until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded.~~ 1216
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~~(3)~~ In conducting a hearing pursuant to division (B)(2) of this section, the hearing officer shall do both of the following: 1220
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(a) Determine whether there is clear and convincing evidence that the MR/DD employee has done any of the following: 1222
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(i) Misappropriated the property of an individual with mental retardation or a developmental disability; 1224
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(ii) Knowingly abused or neglected such an individual; 1226

(iii) Recklessly abused or neglected such an individual, with resulting physical harm; 1227
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(iv) Negligently abused or neglected such an individual, with resulting serious physical harm; 1229
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(v) Created a substantial risk to the health and safety of such an individual in their care; 1231
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(vi) Engaged in a sexual relationship with such an individual in their care; 1233
1234

(vii) Failed to make a report pursuant to division (C) of section 5123.61 of the Revised Code. 1235
1236

(b) Give weight to the decision in any collective bargaining arbitration regarding the same allegation. 1237
1238

(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 1239
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registry established under section 5123.52 of the Revised Code the 1243
name of an MR/DD employee if the director finds that there is 1244
clear and convincing evidence that the employee has done one or 1245
more of the things described in division (C)~~(3)~~(2)(a) of this 1246
section. 1247

(2) Extenuating circumstances the director must consider 1248
include the use of physical force by an MR/DD employee that was 1249
necessary as self-defense. 1250

(3) If the director includes an MR/DD employee in the 1251
registry established under section 5123.52 of the Revised Code, 1252
the director shall notify the employee, the person or government 1253
entity that employs or contracts with the employee, the individual 1254
with mental retardation or a developmental disability who was the 1255
subject of the report and that individual's legal guardian, if 1256
any, the attorney general, and the prosecuting attorney or other 1257
law enforcement agency. If the MR/DD employee holds a license, 1258
certificate, registration, or other authorization to engage in a 1259
profession issued pursuant to Title XLVII of the Revised Code, the 1260
director shall notify the appropriate agency, board, department, 1261
or other entity responsible for regulating the employee's 1262
professional practice. 1263

~~(4) The director shall not include in the registry an 1264
individual who has been found not guilty by a court or jury of an 1265
offense arising from the same facts. 1266~~

(E) In the case of an allegation concerning an employee of 1267
the department, after the hearing conducted pursuant to division 1268
(B)(2) of this section, the director of health or that director's 1269
designee shall review the decision of the hearing officer to 1270
determine whether the standard described in division (C)(2) of 1271
this section has been met. If the director or designee determines 1272
that the standard has been met and that no extenuating 1273
circumstances exist, the director or designee shall notify the 1274

director of mental retardation and developmental disabilities that 1275
the MR/DD employee is to be included in the registry established 1276
under section 5123.52 of the Revised Code. If the director of 1277
mental retardation and developmental disabilities receives such 1278
notification, the director shall include the MR/DD employee in the 1279
registry, ~~unless division (D)(4) of this section applies,~~ and 1280
shall provide the notification described in division (D)(3) of 1281
this section. 1282

(F) If the department is required by Chapter 119. of the 1283
Revised Code to give notice of an opportunity for a hearing and if 1284
the MR/DD employee subject to the notice does not timely request a 1285
hearing in accordance with section 119.07 of the Revised Code, the 1286
department is not required to hold a hearing. Unless the director 1287
of mental retardation and developmental disabilities determines 1288
that there are extenuating circumstances, the director shall 1289
include in the registry established under section 5123.52 of the 1290
Revised Code the name of the MR/DD employee if the director finds 1291
that there is clear and convincing evidence that the employee has 1292
done one or more of the things described in division (C)(2)(a) of 1293
this section. 1294

(G) Files and records of investigations conducted pursuant to 1295
this section are not public records as defined in section 149.43 1296
of the Revised Code, but, on request, the department shall provide 1297
copies of those files and records to the attorney general, a 1298
prosecuting attorney, or a law enforcement agency. 1299

Sec. 5123.511. (A) As used in this section, "prosecutor" 1300
includes the county prosecuting attorney and any assistant 1301
prosecutor designated to assist the county prosecuting attorney, 1302
and, in the case of courts inferior to courts of common pleas, 1303
includes the village solicitor, city director of law, or similar 1304
chief legal officer of a municipal corporation, any assistants of 1305

the chief legal officer of a municipal corporation, or any 1306
attorney designated by the prosecuting attorney of the county to 1307
appear for the prosecution of a given case. 1308

(B) The prosecutor in any case against a person involving a 1309
victim that the prosecutor knows or reasonably should know has 1310
mental retardation or a developmental disability shall send 1311
written notice upon the filing of charges against a person to the 1312
department of mental retardation and developmental disabilities. 1313
The written notice shall specifically identify the person charged. 1314

Sec. 5123.61. (A) As used in this section: 1315

(1) "Law enforcement agency" means the state highway patrol, 1316
the police department of a municipal corporation, or a county 1317
sheriff. 1318

(2) "Abuse" has the same meaning as in section 5123.50 of the 1319
Revised Code, except that it includes a misappropriation, as 1320
defined in that section. 1321

(3) "Neglect" has the same meaning as in section 5123.50 of 1322
the Revised Code. 1323

(B) The department of mental retardation and developmental 1324
disabilities shall establish a registry office for the purpose of 1325
maintaining reports of abuse, neglect, and other major unusual 1326
incidents made to the department under this section and reports 1327
received from county boards of mental retardation and 1328
developmental disabilities under section 5126.31 of the Revised 1329
Code. The department shall establish committees to review reports 1330
of abuse, neglect, and other major unusual incidents. 1331

(C)(1) Any person listed in division (C)(2) of this section, 1332
having reason to believe that a person with mental retardation or 1333
a developmental disability has suffered or faces the threat of 1334
suffering any wound, injury, disability, or condition of such a 1335

nature as to reasonably indicate abuse or neglect of that person, 1336
shall immediately report or cause reports to be made of such 1337
information to a law enforcement agency or to the county board of 1338
mental retardation and developmental disabilities, except that if 1339
the report concerns a resident of a facility operated by the 1340
department of mental retardation and developmental disabilities 1341
the report shall be made either to a law enforcement agency or to 1342
the department. 1343

(2) All of the following persons are required to make a 1344
report under division (C)(1) of this section: 1345

(a) Any physician, including a hospital intern or resident, 1346
any dentist, podiatrist, chiropractor, practitioner of a limited 1347
branch of medicine as specified in section 4731.15 of the Revised 1348
Code, hospital administrator or employee of a hospital, nurse 1349
licensed under Chapter 4723. of the Revised Code, employee of an 1350
ambulatory health facility as defined in section 5101.61 of the 1351
Revised Code, employee of a home health agency, employee of an 1352
adult care facility licensed under Chapter 3722. of the Revised 1353
Code, or employee of a community mental health facility; 1354

(b) Any school teacher or school authority, social worker, 1355
psychologist, attorney, peace officer, coroner, clergyman, or 1356
residents' rights advocate as defined in section 3721.10 of the 1357
Revised Code; 1358

(c) A superintendent, board member, or employee of a county 1359
board of mental retardation and developmental disabilities; an 1360
administrator, board member, or employee of a residential facility 1361
licensed under section 5123.19 of the Revised Code; an 1362
administrator, board member, or employee of any other public or 1363
private provider of services to a person with mental retardation 1364
or a developmental disability, or any MR/DD employee, as defined 1365
in section 5123.50 of the Revised Code; 1366

(d) A member of a citizen's advisory council established at 1367
an institution or branch institution of the department of mental 1368
retardation and developmental disabilities under section 5123.092 1369
of the Revised Code; 1370

(e) A person who, while acting in an official or professional 1371
capacity, renders spiritual treatment through prayer in accordance 1372
with the tenets of an organized religion. 1373

(3) The reporting requirements of this division do not apply 1374
to members of the legal rights service commission or to employees 1375
of the legal rights service. 1376

(4) Any person who fails to make report under division (C) of 1377
this section shall be eligible to be included in the MR/DD 1378
employee registry established under section 5123.52 of the Revised 1379
Code. 1380

(D) The reports required under division (C) of this section 1381
shall be made forthwith by telephone or in person and shall be 1382
followed by a written report. The reports shall contain the 1383
following: 1384

(1) The names and addresses of the person with mental 1385
retardation or a developmental disability and the person's 1386
custodian, if known; 1387

(2) The age of the person with mental retardation or a 1388
developmental disability; 1389

(3) Any other information that would assist in the 1390
investigation of the report. 1391

(E) When a physician performing services as a member of the 1392
staff of a hospital or similar institution has reason to believe 1393
that a person with mental retardation or a developmental 1394
disability has suffered injury, abuse, or physical neglect, the 1395
physician shall notify the person in charge of the institution or 1396

that person's designated delegate, who shall make the necessary reports. 1397
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(F) Any person having reasonable cause to believe that a person with mental retardation or a developmental disability has suffered abuse or neglect may report the belief, or cause a report to be made, to a law enforcement agency or the county board of mental retardation and developmental disabilities, or, if the person is a resident of a facility operated by the department of mental retardation and developmental disabilities, to a law enforcement agency or to the department. 1399
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(G)(1) Upon the receipt of a report concerning the possible abuse or neglect of a person with mental retardation or a developmental disability, the law enforcement agency shall inform the county board of mental retardation and developmental disabilities or, if the person is a resident of a facility operated by the department of mental retardation and developmental disabilities, the director of the department or the director's designee. 1407
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(2) On receipt of a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the department of mental retardation and developmental disabilities shall notify the law enforcement agency. 1415
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(3) When a county board of mental retardation and developmental disabilities receives a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the superintendent of the board or an individual the superintendent designates under division (H) of this section shall notify the law enforcement agency. The superintendent or individual shall notify the department of mental retardation and developmental disabilities when it receives any report under this section. 1420
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(H) The superintendent of the board may designate an 1429
individual to be responsible for notifying the law enforcement 1430
agency and the department when the county board receives a report 1431
under this section. 1432

(I) An adult with mental retardation or a developmental 1433
disability about whom a report is made may be removed from the 1434
adult's place of residence only by law enforcement officers who 1435
consider that the adult's immediate removal is essential to 1436
protect the adult from further injury or abuse or in accordance 1437
with the order of a court made pursuant to section 5126.33 of the 1438
Revised Code. 1439

(J) A law enforcement agency shall investigate each report of 1440
abuse or neglect it receives under this section. In addition, the 1441
department, in cooperation with law enforcement officials, shall 1442
investigate each report regarding a resident of a facility 1443
operated by the department to determine the circumstances 1444
surrounding the injury, the cause of the injury, and the person 1445
responsible. The investigation shall be in accordance with the 1446
memorandum of understanding prepared under division (P) of this 1447
section. The department shall determine, with the registry office 1448
which shall be maintained by the department, whether prior reports 1449
have been made concerning ~~and~~ an adult with mental retardation or 1450
a developmental disability or other principals in the case. If the 1451
department finds that the report involves action or inaction that 1452
may constitute a crime under federal law or the law of this state, 1453
it shall submit a report of its investigation, in writing, to the 1454
law enforcement agency. If the person with mental retardation or a 1455
developmental disability is an adult, with the consent of the 1456
adult, the department shall provide such protective services as 1457
are necessary to protect the adult. The law enforcement agency 1458
shall make a written report of its findings to the department. 1459

If the person is an adult and is not a resident of a facility 1460

operated by the department, the county board of mental retardation 1461
and developmental disabilities shall review the report of abuse or 1462
neglect in accordance with sections 5126.30 to 5126.33 of the 1463
Revised Code and the law enforcement agency shall make the written 1464
report of its findings to the county board. 1465

(K) Any person or any hospital, institution, school, health 1466
department, or agency participating in the making of reports 1467
pursuant to this section, any person participating as a witness in 1468
an administrative or judicial proceeding resulting from the 1469
reports, or any person or governmental entity that discharges 1470
responsibilities under sections 5126.31 to 5126.33 of the Revised 1471
Code shall be immune from any civil or criminal liability that 1472
might otherwise be incurred or imposed as a result of such actions 1473
except liability for perjury, unless the person or governmental 1474
entity has acted in bad faith or with malicious purpose. 1475

(L) No employer or any person with the authority to do so 1476
shall discharge, demote, transfer, prepare a negative work 1477
performance evaluation, reduce pay or benefits, terminate work 1478
privileges, or take any other action detrimental to an employee or 1479
retaliate against an employee as a result of the employee's having 1480
made a report under this section. This division does not preclude 1481
an employer or person with authority from taking action with 1482
regard to an employee who has made a report under this section if 1483
there is another reasonable basis for the action. 1484

(M) Reports made under this section are not public records as 1485
defined in section 149.43 of the Revised Code. Information 1486
contained in the reports on request shall be made available to the 1487
person who is the subject of the report, to the person's legal 1488
counsel, and to agencies authorized to receive information in the 1489
report by the department or by a county board of mental 1490
retardation and developmental disabilities. 1491

(N) Notwithstanding section 4731.22 of the Revised Code, the 1492

physician-patient privilege shall not be a ground for excluding 1493
evidence regarding the injuries or physical neglect of a person 1494
with mental retardation or a developmental disability or the cause 1495
thereof in any judicial proceeding resulting from a report 1496
submitted pursuant to this section. 1497

(O) Any person listed in division (C)(2) of this section who 1498
discovers or suspects that a child under eighteen years of age or 1499
a mentally retarded, developmentally disabled, or physically 1500
impaired child under twenty-one years of age has suffered or faces 1501
a threat of suffering any physical or mental wound, injury, 1502
disability, or condition of a nature that reasonably indicates 1503
abuse or neglect of the child, shall immediately report that 1504
knowledge or suspicion to the public children services agency or a 1505
municipal or county peace officer in the county in which the child 1506
resides or in which the abuse or neglect is occurring or has 1507
occurred. 1508

(P)(1) Each county board of mental retardation and 1509
developmental disabilities shall prepare a memorandum of 1510
understanding that is signed by all of the following: 1511

(a) If there is only one probate judge in the county, the 1512
probate judge of the county or the probate judge's representative; 1513

(b) If there is more than one probate judge in the county, a 1514
probate judge or the probate judge's representative selected by 1515
the probate judges or, if they are unable to do so for any reason, 1516
the probate judge who is senior in point of service or the senior 1517
probate judge's representative; 1518

(c) The county peace officer; 1519

(d) All chief municipal peace officers within the county; 1520

(e) Other law enforcement officers handling abuse, neglect, 1521
and exploitation of mentally retarded and developmentally disabled 1522
persons in the county; 1523

- (f) The prosecuting attorney of the county; 1524
- (g) The public children services agency, if the mentally 1525
retarded or developmentally disabled person is a child; 1526
- (h) The coroner of the county. 1527
- (2) A memorandum of understanding shall set forth the normal 1528
operating procedure to be employed by all concerned officials in 1529
the execution of their respective responsibilities under this 1530
section and sections 313.12, 2151.421, 2903.16, 5126.31, and 1531
5126.33 of the Revised Code and shall have as two of its primary 1532
goals the elimination of all unnecessary interviews of persons who 1533
are the subject of reports made pursuant to this section and, when 1534
feasible, providing for only one interview of a person who is the 1535
subject of any report made pursuant to this section. A failure to 1536
follow the procedure set forth in the memorandum by the concerned 1537
officials is not grounds for, and shall not result in, the 1538
dismissal of any charge or complaint arising from any reported 1539
case of abuse, neglect, or exploitation or the suppression of any 1540
evidence obtained as a result of any reported abuse, neglect, or 1541
exploitation and does not give any rights or grounds for appeal or 1542
post-conviction relief to any person. 1543
- (3) A memorandum of understanding shall include, but is not 1544
limited to, all of the following: 1545
- (a) The roles and responsibilities for handling emergency and 1546
nonemergency cases of abuse, neglect, or exploitation; 1547
- (b) Standards and procedures to be used in handling and 1548
coordinating investigations of reported cases of abuse, neglect, 1549
or exploitation and methods to be used in interviewing the person 1550
who is the subject of the report and who allegedly was abused, 1551
neglected, or exploited; 1552
- (c) Standards and procedures addressing the categories of 1553

persons who may interview the person who is the subject of the 1554
report and who allegedly was abused, neglected, or exploited; 1555

(d) Standards and procedures to be used in providing victim 1556
services to mentally retarded and developmentally disabled persons 1557
pursuant to Chapter 2930. of the Revised Code; 1558

(e) Standards and procedures for the filing of criminal 1559
charges against persons alleged to have abused, neglected, or 1560
exploited mentally retarded or developmentally disabled persons. 1561

(4) A memorandum of understanding may be signed by victim 1562
advocates, municipal court judges, municipal prosecutors, and any 1563
other person whose participation furthers the goals of a 1564
memorandum of understanding, as set forth in this section. 1565

Sec. 5123.99. (A) Whoever violates section 5123.20 of the 1566
Revised Code is guilty of a misdemeanor of the first degree. 1567

(B) Whoever violates division (C), (E), ~~or~~ (G)(3), or (O) of 1568
section 5123.61 of the Revised Code ~~shall be fined not more than~~ 1569
~~five hundred dollars~~ is guilty of a misdemeanor of the fourth 1570
degree or, if the abuse or neglect constitutes a felony, a 1571
misdemeanor of the second degree. Whoever violates division (C), 1572
(E), (G)(3), or (O) of section 5123.61 of the Revised Code shall 1573
be eligible to be included in the MR/DD employee registry 1574
established by section 5123.52 of the Revised Code. 1575

(C) Whoever violates division (A) of section 5123.604 of the 1576
Revised Code is guilty of a misdemeanor of the second degree. 1577

(D) Whoever violates division (B) of section 5123.604 of the 1578
Revised Code shall be fined not more than one thousand dollars. 1579
Each violation constitutes a separate offense. 1580

Sec. 5126.282. (A) As used in this section, "sexual conduct" 1581
and "sexual contact" have the same meanings as in section 2907.01 1582

<u>of the Revised Code.</u>	1583
<u>(B) Prior to employing an applicant, the superintendent of a county board of mental retardation and developmental disabilities shall require the applicant to sign an agreement under which the applicant agrees to not engage in any sexual conduct or sexual contact with an individual with mental retardation or a developmental disability in the applicant's care. The agreement shall inform the applicant that the failure to comply with the agreement may result in the placement of the individual on the MR/DD employee registry established under section 5123.52 of the Revised Code.</u>	1584 1585 1586 1587 1588 1589 1590 1591 1592 1593
Sec. 5126.30. As used in sections 5126.30 to 5126.33 of the Revised Code:	1594 1595
(A) "Adult" means a person eighteen years of age or older with mental retardation or a developmental disability.	1596 1597
(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.	1598 1599 1600 1601 1602
(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.	1603 1604 1605
(D) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.	1606 1607
(E) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday, except when that day is a holiday as defined in section 1.14 of the Revised Code.	1608 1609 1610
(F) "Incapacitated" means lacking understanding or capacity, with or without the assistance of a caretaker, to make and carry	1611 1612

out decisions regarding food, clothing, shelter, health care, or 1613
other necessities, but does not include mere refusal to consent to 1614
the provision of services. 1615

(G) "Emergency protective services" means protective services 1616
furnished to a person with mental retardation or a developmental 1617
disability to prevent immediate physical harm. 1618

(H) "Exploitation" means the unlawful or improper act of a 1619
caretaker using an adult or an adult's resources for monetary or 1620
personal benefit, profit, or gain, including misappropriation of 1621
an adult's resources. 1622

(I) "Protective services" means services provided by the 1623
county board of mental retardation and developmental disabilities 1624
to an adult with mental retardation or a developmental disability 1625
for the prevention, correction, or discontinuance of an act of as 1626
well as conditions resulting from abuse, neglect, or exploitation. 1627

(J) "Protective service plan" means an individualized plan 1628
developed by the county board of mental retardation and 1629
developmental disabilities to prevent the further abuse, neglect, 1630
or exploitation of an adult with mental retardation or a 1631
developmental disability. 1632

(K) "Substantial risk" means a strong possibility, as 1633
contrasted with a remote possibility, that a certain result may 1634
occur or that certain circumstances may exist. 1635

Sec. 5126.31. (A) A county board of mental retardation and 1636
developmental disabilities shall review reports of abuse and 1637
neglect made under section 5123.61 of the Revised Code and reports 1638
referred to it under section 5101.611 of the Revised Code to 1639
determine whether the person who is the subject of the report is 1640
an adult with mental retardation or a developmental disability in 1641
need of services to deal with the abuse or neglect. The board 1642

shall give notice of each report to the registry office of the 1643
department of mental retardation and developmental disabilities 1644
established pursuant to section 5123.61 of the Revised Code on the 1645
first working day after receipt of the report. If the report 1646
alleges that there is a substantial risk to the adult of immediate 1647
physical harm or death, the board shall initiate review within 1648
twenty-four hours of its receipt of the report. If the board 1649
determines that the person is sixty years of age or older but does 1650
not have mental retardation or a developmental disability, it 1651
shall refer the case to the county department of job and family 1652
services. If the board determines that the person is an adult with 1653
mental retardation or a developmental disability, it shall 1654
continue its review of the case. 1655

(B) For each review over which the board retains 1656
responsibility under division (A) of this section, it shall do all 1657
of the following: 1658

(1) Give both written and oral notice of the purpose of the 1659
review to the adult and, if any, to the adult's legal counsel or 1660
caretaker, in simple and clear language; 1661

(2) Visit the adult, in the adult's residence if possible, 1662
and explain the notice given under division (B)(1) of this 1663
section; 1664

(3) Request from the registry office any prior reports 1665
concerning the adult or other principals in the case; 1666

(4) Consult, if feasible, with the person who made the report 1667
under section 5101.61 or 5123.61 of the Revised Code and with any 1668
agencies or persons who have information about the alleged abuse 1669
or neglect; 1670

(5) Cooperate fully with the law enforcement agency 1671
responsible for investigating the report and for filing any 1672
resulting criminal charges and, on request, turn over evidence to 1673

the agency; 1674

(6) Determine whether the adult needs services, and prepare a 1675
written report stating reasons for the determination. No adult 1676
shall be determined to be abused, neglected, or in need of 1677
services for the sole reason that, in lieu of medical treatment, 1678
the adult relies on or is being furnished spiritual treatment 1679
through prayer alone in accordance with the tenets and practices 1680
of a church or religious denomination of which the adult is a 1681
member or adherent. 1682

(C) The board shall arrange for the provision of services for 1683
the prevention, correction or discontinuance of abuse or neglect 1684
or of a condition resulting from abuse or neglect for any adult 1685
who has been determined to need the services and consents to 1686
receive them. These services may include, but are not limited to, 1687
service and support administration, fiscal management, medical, 1688
mental health, home health care, homemaker, legal, and residential 1689
services and the provision of temporary accommodations and 1690
necessities such as food and clothing. The services do not include 1691
acting as a guardian, trustee, or protector as defined in section 1692
5123.55 of the Revised Code. If the provision of residential 1693
services would require expenditures by the department of mental 1694
retardation and developmental disabilities, the board shall obtain 1695
the approval of the department prior to arranging the residential 1696
services. 1697

To arrange services, the board shall: 1698

(1) Develop an individualized protective service plan 1699
identifying the types of services required for the adult, the 1700
goals for the services, and the persons or agencies that will 1701
provide them; 1702

(2) In accordance with rules established by the director of 1703
mental retardation and developmental disabilities, obtain the 1704

consent of the adult or the adult's guardian to the provision of 1705
any of these services and obtain the signature of the adult or 1706
guardian on the individual service plan. An adult who has been 1707
found incompetent under Chapter 2111. of the Revised Code may 1708
consent to services. If the board is unable to obtain consent, it 1709
may seek, if the adult is incapacitated, a court order pursuant to 1710
section 5126.33 of the Revised Code authorizing the board to 1711
arrange these services. 1712

(D) The board shall ensure that the adult receives the 1713
services arranged by the board from the provider and shall have 1714
the services terminated if the adult withdraws consent. 1715

(E) On completion of a review, the board shall submit a 1716
written report to the registry office established under section 1717
5123.61 of the Revised Code. If the report includes a finding that 1718
a person with mental retardation or a developmental disability is 1719
a victim of action or inaction that may constitute a crime under 1720
federal law or the law of this state, the board shall submit the 1721
report to the law enforcement agency responsible for investigating 1722
the report. Reports prepared under this section are not public 1723
records as defined in section 149.43 of the Revised Code. 1724

(F) The board shall provide comprehensive formal training for 1725
employees and other persons authorized to implement the 1726
requirements of this section. 1727

Sec. 5126.33. (A) A county board of mental retardation and 1728
developmental disabilities may file a complaint with the probate 1729
court of the county in which an adult with mental retardation or a 1730
developmental disability resides for an order authorizing the 1731
board to arrange protective services described in division (C) of 1732
section 5126.31 of the Revised Code for that adult if the board 1733
has been unable to secure consent. The complaint shall include: 1734

(1) The name, age, and address of the adult; 1735

(2) Facts describing the nature of the abuse or neglect and supporting the board's belief that services are needed;

(3) The types of services proposed by the board, as set forth in the individualized protective service plan prepared pursuant to section 5126.31 of the Revised Code and filed with the complaint;

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

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

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

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

(a) The adult has been abused or neglected;

(b) The adult is incapacitated;

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

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

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

(2) The board shall develop a detailed protective service plan describing the services that the board will provide to the adult to prevent further abuse, neglect, or exploitation. The board shall submit the plan to the court for approval. The protective service plan may be changed by court order.

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

(E) If the court finds that all other options for meeting the adult's needs have been exhausted, it may order that the adult be removed from the adult's place of residence and placed in another residential setting. Before issuing that order, the court shall consider the adult's choice of residence and shall determine that

the new residential setting is the least restrictive alternative 1797
available for meeting the adult's needs and is a place where the 1798
adult can obtain the necessary requirements for daily living in 1799
safety. The court shall not order an adult to a hospital or public 1800
hospital as defined in section 5122.01 or a state institution as 1801
defined in section 5123.01 of the Revised Code. 1802

(F) The court shall not authorize a change in an adult's 1803
placement ordered under division (E) of this section unless it 1804
finds compelling reasons to justify a change. The parties to whom 1805
notice was given in division (B) of this section shall be given 1806
notice of a proposed change at least five working days prior to 1807
the change. 1808

(G) The adult, the board, or any other person who received 1809
notice of the petition may file a motion for modification of the 1810
court order at any time. 1811

(H) The county board shall pay court costs incurred in 1812
proceedings brought pursuant to this section. The adult shall not 1813
be required to pay for court-ordered services. 1814

(I) Upon the filing of a complaint for an order under this 1815
section, a probate judge may grant by telephone an ex parte 1816
emergency order authorizing the county board of mental retardation 1817
and developmental disabilities to provide emergency protective 1818
services to an adult or to remove the adult from the adult's place 1819
of residence or legal settlement or the place where the abuse, 1820
neglect, or exploitation occurred, if there is reasonable cause to 1821
believe that the adult is mentally retarded or developmentally 1822
disabled or is incapacitated, and there is a substantial risk to 1823
the adult of immediate physical harm or death. 1824

(J) If a judge or referee pursuant to division (I) of this 1825
section issues an ex parte emergency order to remove the adult 1826
from the adult's place of residence or legal settlement or the 1827

place where the abuse, neglect, or exploitation occurred, the 1828
court shall hold a hearing to determine whether there is probable 1829
cause for the emergency order. The hearing shall be held before 1830
the end of the next business day after the day on which the 1831
emergency order is issued, except that it shall not be held later 1832
than seventy-two hours after the emergency order is issued. 1833

(K)(1) After the filing of a complaint for an order under 1834
this section, the court, prior to the final disposition, may enter 1835
any temporary order that the court finds necessary to protect the 1836
adult with mental retardation or a developmental disability from 1837
abuse, neglect, or exploitation including, but not limited to, the 1838
following: 1839

(a) A temporary protection order; 1840

(b) An order requiring the evaluation of the adult; 1841

(c) An order requiring a party to vacate the adult's place of 1842
residence or legal settlement. 1843

(2) The court may grant an ex parte order pursuant to this 1844
division upon its own motion or if a party files a written motion 1845
or makes an oral motion requesting the issuance of the order and 1846
stating the reasons for it if it appears to the court that the 1847
best interest and the welfare of the adult require that the court 1848
issue the order immediately. The court, if acting on its own 1849
motion, or the person requesting the granting of an ex parte 1850
order, to the extent possible, shall give notice of its intent or 1851
of the request to the adult, the adult's caretaker, the adult's 1852
legal counsel, if any, and the legal rights service. If the court 1853
issues an ex parte order, the court shall hold a hearing to review 1854
the order within seventy-two hours after it is issued or before 1855
the end of the next day after the day on which it is issued, 1856
whichever occurs first. The court shall give written notice of the 1857
hearing to all parties to the action. 1858

Section 2. That existing sections 313.12, 2108.50, 2151.421, 1859
2311.14, 2903.16, 5123.51, 5123.61, 5123.99, 5126.30, 5126.31, and 1860
5126.33 of the Revised Code are hereby repealed. 1861