

## As Passed by the House

125th General Assembly

Regular Session

2003-2004

Am. Sub. S. B. No. 4

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

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

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### A B I L L

To amend sections 109.572, 313.12, 2108.50, 2151.421, 1  
2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 2  
5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 3  
5126.33 and to enact sections 107.31, 107.32, 4  
2108.521, 2152.821, 2903.341, 2930.061, 2945.482, 5  
2945.491, 5123.541, 5123.542, 5123.614, 5126.058, 6  
5126.331, 5126.332, and 5126.333 of the Revised 7  
Code to implement the recommendations of the MR/DD 8  
Victims of Crime Task Force, to make related 9  
changes in the law, and to establish provisions 10

regarding the possible closing of state 11  
institutional facilities for the purpose of 12  
expenditure reductions or budget cuts, and to 13  
amend the version of section 5123.50 of the 14  
Revised Code that is scheduled to take effect 15  
December 31, 2003, to continue the provisions of 16  
this act on and after that effective date. 17

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

**Section 1.** That sections 109.572, 313.12, 2108.50, 2151.421, 18  
2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 5123.61, 19  
5123.99, 5126.28, 5126.30, and 5126.33 be amended and sections 20  
107.31, 107.32, 2108.521, 2152.821, 2903.341, 2930.061, 2945.482, 21  
2945.491, 5123.541, 5123.542, 5123.614, 5126.058, 5126.331, 22  
5126.332, and 5126.333 of the Revised Code be enacted to read as 23  
follows: 24

**Sec. 107.31.** (A) As used in this section and section 107.32 25  
of the Revised Code: 26

(1) "State institutional facility" means any institution or 27  
other facility for the housing of any person that is under the 28  
physical or contractual control of the department of 29  
rehabilitation and correction, the department of youth services, 30  
the department of mental retardation and developmental 31  
disabilities, the department of mental health, or any other agency 32  
or department of state government. 33

(2) "Target state agency" means the agency of state 34  
government that the governor identifies in a notice provided under 35  
division (C)(1) of this section and that operates a state 36  
institutional facility or facilities the governor believes should 37  
be closed. 38

(B) Notwithstanding any other provision of law, the governor shall not order the closure of any state institutional facility, for the purpose of expenditure reductions or budget cuts, other than in accordance with this section. 39  
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(C) If the governor determines that necessary expenditure reductions and budget cuts cannot be made without closing one or more state institutional facilities, all of the following apply: 43  
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(1) The governor shall determine which state agency's institutional facility or facilities the governor believes should be closed, shall notify the general assembly and that agency of that determination, and shall specify in the notice the number of facilities of that agency that the governor believes should be closed and the anticipated savings to be obtained through that closure or those closures. 46  
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(2) Upon the governor's provision of the notice described in division (C)(1) of this section, a state facilities closure commission shall be created as described in division (D) of this section regarding the target state agency. Not later than seven days after the governor provides that notice, the officials with the duties to appoint members of the commission for the target state agency, as described in division (D) of this section, shall appoint the specified members of the commission, and, as soon as possible after the appointments, the director of budget and management shall call for the first meeting of the commission, for the purposes described in that division. Not later than thirty days after the governor provides the notice described in division (C)(1) of this section, the state facilities closure commission shall provide to the general assembly, the governor, and the target state agency a report that contains the commission's recommendation as to the state institutional facility or facilities of the target state agency that the governor may close. The anticipated savings to be obtained by the commission's 53  
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recommendation shall be approximately the same as the anticipated  
savings the governor specified in the governor's notice provided  
under division (C)(1) of this section, and, if the recommendation  
identifies more than one facility, it shall list them in order of  
the commission's preference for closure. A state facilities  
closure commission created for a particular target state agency  
shall make a report only regarding that target state agency and  
shall include no recommendations regarding any other state agency  
or department in its report.

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(3) Upon receipt of the report of the state facilities  
closure commission under division (C)(2) of this section for a  
target state agency, the governor shall review and consider the  
commission's recommendation. The governor shall do one of the  
following:

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(a) Follow the recommendation of the commission;

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(b) Close no state institutional facility;

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

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(D) A state facilities closure commission shall be created at  
the time and in the manner specified in division (C)(2) of this  
section. If more than one state agency or department is a target  
state agency, a separate state facilities closure commission shall  
be created for each such target state agency. Each commission  
consists of five members. One member shall be the director of the  
target state agency. One member shall be a private executive with  
expertise in facility utilization, jointly appointed by the  
speaker of the house of representatives and the president of the  
senate. The member appointed for expertise in facility utilization  
may not be a member of the general assembly, and may not have a  
state institutional facility of the target state agency in the

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county in which the member resides. One member shall be a member  
of the board of the Ohio civil service employees' association, as  
appointed by the governor. One member of the commission shall be a  
private executive with expertise in economics, jointly appointed  
by the speaker of the house of representatives and the president  
of the senate. The member appointed for expertise in economics may  
not be a member of the general assembly, and may not have a state  
institutional facility of the target state agency in the county in  
which the member resides. One member shall be a member of the law  
enforcement or health care community, appointed by the governor.

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The legislative service commission shall appoint a member of  
the commissions' fiscal staff to provide assistance to the state  
facilities closure commission. The officials with the duties to  
appoint members of the commission shall make the appointments, and  
the commission shall meet, within the time periods specified in  
division (C)(2) of this section. The members of the commission  
shall serve without compensation. At the commission's first  
meeting, the members shall organize, and appoint a chairperson and  
vice-chairperson.

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The commission shall determine which state institutional  
facility or facilities under the control of the target state  
agency for which the commission was created should be closed. In  
making this determination, the commission shall, at a minimum,  
consider the following factors:

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(1) Whether there is a need to reduce the number of  
facilities;

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(2) The availability of alternate facilities;

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(3) The cost effectiveness of the facilities;

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

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<u>(5) The impact of collective bargaining on facility operations;</u>	133 134
<u>(6) The utilization and maximization of resources;</u>	135
<u>(7) Continuity of the staff and ability to serve the facility population;</u>	136 137
<u>(8) Continuing costs following closure of a facility;</u>	138
<u>(9) The social and economic impact of the closure on the region;</u>	139 140
<u>(10) Alternatives and opportunities for consolidation with other facilities.</u>	141 142
<u>The commission shall meet as often as necessary to make its determination, may take testimony and consider all relevant information, and shall prepare and provide in accordance with division (C)(2) of this section a report containing its recommendations. Upon providing the report regarding the target state agency, the commission shall cease to exist, provided that another commission shall be created for the same state agency if the agency is made a target state agency in another report provided under division (C)(1) of this section and provided that another commission shall be created for a different state agency if that other agency is made a target state agency in a report provided under that division.</u>	143 144 145 146 147 148 149 150 151 152 153 154
<u>Sec. 107.32. Notwithstanding any other provision of law, if the closure of the particular facility is authorized under section 107.31 of the Revised Code, the governor may terminate any contract entered into under section 9.06 of the Revised Code for the private operation and management of any correctional facility under the control of the department of rehabilitation and correction, including, but not limited to the initial intensive program prison established pursuant to section 5120.033 of the</u>	155 156 157 158 159 160 161 162

Revised Code as it existed prior to the effective date of this 163  
section, and terminate the operation of, and close that facility. 164  
If the governor terminates a contract for the private operation 165  
and management of a facility, and terminates the operation of, and 166  
closes, the facility as described in this section, inmates in the 167  
facility shall be transferred to another correctional facility 168  
under the control of the department. If the initial intensive 169  
program prison is closed, divisions (G)(2)(a) and (b) of section 170  
2929.13 of the Revised Code have no effect while the facility is 171  
closed. 172

**Sec. 109.572.** (A)(1) Upon receipt of a request pursuant to 173  
section 2151.86, 3301.32, 3301.541, 3319.39, 5104.012, 5104.013, 174  
or 5153.111 of the Revised Code, a completed form prescribed 175  
pursuant to division (C)(1) of this section, and a set of 176  
fingerprint impressions obtained in the manner described in 177  
division (C)(2) of this section, the superintendent of the bureau 178  
of criminal identification and investigation shall conduct a 179  
criminal records check in the manner described in division (B) of 180  
this section to determine whether any information exists that 181  
indicates that the person who is the subject of the request 182  
previously has been convicted of or pleaded guilty to any of the 183  
following: 184

(a) A violation of section 2903.01, 2903.02, 2903.03, 185  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 186  
2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 187  
2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 188  
2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 189  
2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 190  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 191  
2925.06, or 3716.11 of the Revised Code, felonious sexual 192  
penetration in violation of former section 2907.12 of the Revised 193

Code, a violation of section 2905.04 of the Revised Code as it 194  
existed prior to July 1, 1996, a violation of section 2919.23 of 195  
the Revised Code that would have been a violation of section 196  
2905.04 of the Revised Code as it existed prior to July 1, 1996, 197  
had the violation been committed prior to that date, or a 198  
violation of section 2925.11 of the Revised Code that is not a 199  
minor drug possession offense; 200

(b) A violation of an existing or former law of this state, 201  
any other state, or the United States that is substantially 202  
equivalent to any of the offenses listed in division (A)(1)(a) of 203  
this section. 204

(2) On receipt of a request pursuant to section 5123.081 of 205  
the Revised Code with respect to an applicant for employment in 206  
any position with the department of mental retardation and 207  
developmental disabilities, pursuant to section 5126.28 of the 208  
Revised Code with respect to an applicant for employment in any 209  
position with a county board of mental retardation and 210  
developmental disabilities, or pursuant to section 5126.281 of the 211  
Revised Code with respect to an applicant for employment in a 212  
direct services position with an entity contracting with a county 213  
board for employment, a completed form prescribed pursuant to 214  
division (C)(1) of this section, and a set of fingerprint 215  
impressions obtained in the manner described in division (C)(2) of 216  
this section, the superintendent of the bureau of criminal 217  
identification and investigation shall conduct a criminal records 218  
check. The superintendent shall conduct the criminal records check 219  
in the manner described in division (B) of this section to 220  
determine whether any information exists that indicates that the 221  
person who is the subject of the request has been convicted of or 222  
pleaded guilty to any of the following: 223

(a) A violation of section 2903.01, 2903.02, 2903.03, 224  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 225



2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 226  
2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 227  
2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 228  
2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 229  
2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 230  
2925.03, or 3716.11 of the Revised Code; 231

(b) An existing or former municipal ordinance or law of this 232  
state, any other state, or the United States that is substantially 233  
equivalent to any of the offenses listed in division (A)(2)(a) of 234  
this section. 235

(3) On receipt of a request pursuant to section 173.41, 236  
3712.09, 3721.121, or 3722.151 of the Revised Code, a completed 237  
form prescribed pursuant to division (C)(1) of this section, and a 238  
set of fingerprint impressions obtained in the manner described in 239  
division (C)(2) of this section, the superintendent of the bureau 240  
of criminal identification and investigation shall conduct a 241  
criminal records check with respect to any person who has applied 242  
for employment in a position that involves providing direct care 243  
to an older adult. The superintendent shall conduct the criminal 244  
records check in the manner described in division (B) of this 245  
section to determine whether any information exists that indicates 246  
that the person who is the subject of the request previously has 247  
been convicted of or pleaded guilty to any of the following: 248

(a) A violation of section 2903.01, 2903.02, 2903.03, 249  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 250  
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 251  
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 252  
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 253  
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 254  
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 255  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 256  
2925.22, 2925.23, or 3716.11 of the Revised Code; 257

(b) An existing or former law of this state, any other state, 258  
or the United States that is substantially equivalent to any of 259  
the offenses listed in division (A)(3)(a) of this section. 260

(4) On receipt of a request pursuant to section 3701.881 of 261  
the Revised Code with respect to an applicant for employment with 262  
a home health agency as a person responsible for the care, 263  
custody, or control of a child, a completed form prescribed 264  
pursuant to division (C)(1) of this section, and a set of 265  
fingerprint impressions obtained in the manner described in 266  
division (C)(2) of this section, the superintendent of the bureau 267  
of criminal identification and investigation shall conduct a 268  
criminal records check. The superintendent shall conduct the 269  
criminal records check in the manner described in division (B) of 270  
this section to determine whether any information exists that 271  
indicates that the person who is the subject of the request 272  
previously has been convicted of or pleaded guilty to any of the 273  
following: 274

(a) A violation of section 2903.01, 2903.02, 2903.03, 275  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 276  
2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 277  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 278  
2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 279  
2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 280  
2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 281  
2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code or a 282  
violation of section 2925.11 of the Revised Code that is not a 283  
minor drug possession offense; 284

(b) An existing or former law of this state, any other state, 285  
or the United States that is substantially equivalent to any of 286  
the offenses listed in division (A)(4)(a) of this section. 287

(5) On receipt of a request pursuant to section 3701.881 of 288

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

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

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

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

(7) When conducting a criminal records check on a request 321  
pursuant to section 2151.86 of the Revised Code for a person who 322  
is a prospective foster caregiver or who is eighteen years old or 323  
older and resides in the home of a prospective foster caregiver, 324  
the superintendent, in addition to the determination made under 325  
division (A)(1) of this section, shall determine whether any 326  
information exists that indicates that the person has been 327  
convicted of or pleaded guilty to a violation of: 328

(a) Section 2909.02 or 2909.03 of the Revised Code; 329

(b) An existing or former law of this state, any other state, 330  
or the United States that is substantially equivalent to section 331  
2909.02 or 2909.03 of the Revised Code. 332

(8) Not later than thirty days after the date the 333  
superintendent receives the request, completed form, and 334  
fingerprint impressions, the superintendent shall send the person, 335  
board, or entity that made the request any information, other than 336  
information the dissemination of which is prohibited by federal 337  
law, the superintendent determines exists with respect to the 338  
person who is the subject of the request that indicates that the 339  
person previously has been convicted of or pleaded guilty to any 340  
offense listed or described in division (A)(1), (2), (3), (4), 341  
(5), (6), or (7) of this section, as appropriate. The 342  
superintendent shall send the person, board, or entity that made 343  
the request a copy of the list of offenses specified in division 344  
(A)(1), (2), (3), (4), (5), (6), or (7) of this section, as 345  
appropriate. If the request was made under section 3701.881 of the 346  
Revised Code with regard to an applicant who may be both 347  
responsible for the care, custody, or control of a child and 348  
involved in providing direct care to an older adult, the 349  
superintendent shall provide a list of the offenses specified in 350  
divisions (A)(4) and (5) of this section. 351

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

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

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

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

(2) The superintendent shall prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is required by section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121,

3722.151, 5104.012, 5104.013, 5123.081, 5126.28, 5126.281, or 383  
5153.111 of the Revised Code. Any person for whom a records check 384  
is required by any of those sections shall obtain the fingerprint 385  
impressions at a county sheriff's office, municipal police 386  
department, or any other entity with the ability to make 387  
fingerprint impressions on the standard impression sheets 388  
prescribed by the superintendent. The office, department, or 389  
entity may charge the person a reasonable fee for making the 390  
impressions. The standard impression sheets the superintendent 391  
prescribes pursuant to this division may be in a tangible format, 392  
in an electronic format, or in both tangible and electronic 393  
formats. 394

(3) Subject to division (D) of this section, the 395  
superintendent shall prescribe and charge a reasonable fee for 396  
providing a criminal records check requested under section 173.41, 397  
2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 398  
3722.151, 5104.012, 5104.013, 5123.081, 5126.28, 5126.281, or 399  
5153.111 of the Revised Code. The person making a criminal records 400  
request under section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 401  
3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 402  
5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code shall 403  
pay the fee prescribed pursuant to this division. A person making 404  
a request under section 3701.881 of the Revised Code for a 405  
criminal records check for an applicant who may be both 406  
responsible for the care, custody, or control of a child and 407  
involved in providing direct care to an older adult shall pay one 408  
fee for the request. 409

(4) The superintendent of the bureau of criminal 410  
identification and investigation may prescribe methods of 411  
forwarding fingerprint impressions and information necessary to 412  
conduct a criminal records check, which methods shall include, but 413  
not be limited to, an electronic method. 414

(D) A determination whether any information exists that 415  
indicates that a person previously has been convicted of or 416  
pleaded guilty to any offense listed or described in division 417  
(A)(1)(a) or (b), (A)(2)(a) or (b), (A)(3)(a) or (b), (A)(4)(a) or 418  
(b), (A)(5)(a) or (b), (A)(6), or (A)(7)(a) or (b) of this section 419  
that is made by the superintendent with respect to information 420  
considered in a criminal records check in accordance with this 421  
section is valid for the person who is the subject of the criminal 422  
records check for a period of one year from the date upon which 423  
the superintendent makes the determination. During the period in 424  
which the determination in regard to a person is valid, if another 425  
request under this section is made for a criminal records check 426  
for that person, the superintendent shall provide the information 427  
that is the basis for the superintendent's initial determination 428  
at a lower fee than the fee prescribed for the initial criminal 429  
records check. 430

(E) As used in this section: 431

(1) "Criminal records check" means any criminal records check 432  
conducted by the superintendent of the bureau of criminal 433  
identification and investigation in accordance with division (B) 434  
of this section. 435

(2) "Minor drug possession offense" has the same meaning as 436  
in section 2925.01 of the Revised Code. 437

(3) "Older adult" means a person age sixty or older. 438

**Sec. 313.12.** (A) When any person dies as a result of criminal 439  
or other violent means, by casualty, by suicide, or in any 440  
suspicious or unusual manner, ~~or~~ when any person, including a 441  
child under two years of age, dies suddenly when in apparent good 442  
health, or when any mentally retarded person or developmentally 443  
disabled person dies regardless of the circumstances, the 444

physician called in attendance, or any member of an ambulance 445  
service, emergency squad, or law enforcement agency who obtains 446  
knowledge thereof arising from ~~his~~ the person's duties, shall 447  
immediately notify the office of the coroner of the known facts 448  
concerning the time, place, manner, and circumstances of the 449  
death, and any other information ~~which~~ that is required pursuant 450  
to sections 313.01 to 313.22 of the Revised Code. In such cases, 451  
if a request is made for cremation, the funeral director called in 452  
attendance shall immediately notify the coroner. 453

(B) As used in this section, "mentally retarded person" and 454  
"developmentally disabled person" have the same meanings as in 455  
section 5123.01 of the Revised Code. 456

**Sec. 2108.50.** (A) ~~An~~ Subject to section 2108.521 of the 457  
Revised Code, an autopsy or post-mortem examination may be 458  
performed upon the body of a deceased person by a licensed 459  
physician or surgeon if consent has been given in the order named 460  
by one of the following persons of sound mind and eighteen years 461  
of age or older in a written instrument executed by the person or 462  
on the person's behalf at the person's express direction: 463

(1) The deceased person during the deceased person's 464  
lifetime; 465

(2) The decedent's spouse; 466

(3) If there is no surviving spouse, if the address of the 467  
surviving spouse is unknown or outside the United States, if the 468  
surviving spouse is physically or mentally unable or incapable of 469  
giving consent, or if the deceased person was separated and living 470  
apart from such surviving spouse, then a person having the first 471  
named degree of relationship in the following list in which a 472  
relative of the deceased person survives and is physically and 473  
mentally able and capable of giving consent may execute consent: 474



(a) Children;	475
(b) Parents;	476
(c) Brothers or sisters.	477
(4) If there are no surviving persons of any degree of relationship listed in division (A)(3) of this section, any other relative or person who assumes custody of the body for burial- <u>i</u>	478 479 480
(5) A person authorized by written instrument executed by the deceased person to make arrangements for burial- <u>i</u>	481 482
(6) A person who, at the time of death of the deceased person, was serving as guardian of the person for the deceased person.	483 484 485
(B) Consent to an autopsy or post-mortem examination <u>given under this section</u> may be revoked only by the person executing the consent and in the same manner as required for execution of consent under this section.	486 487 488 489
(C) As used in this section, "written instrument" includes a telegram or cablegram.	490 491
<b><u>Sec. 2108.521.</u></b> (A) <u>If a mentally retarded person or a developmentally disabled person dies, if the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities has a good faith reason to believe that the deceased person's death occurred under suspicious circumstances, if the coroner was apprised of the circumstances of the death, and if the coroner after being so apprised of the circumstances declines to conduct an autopsy, the department or the board may file a petition in a court of common pleas seeking an order authorizing an autopsy or post-mortem examination under this section.</u>	492 493 494 495 496 497 498 499 500 501 502
(B) <u>Upon the filing of a petition under division (A) of this</u>	503

section, the court may conduct, but is not required to conduct, a 504  
hearing on the petition. The court may determine whether to grant 505  
the petition without a hearing. The department or board, and all 506  
other interested parties, may submit information and statements to 507  
the court that are relevant to the petition, and, if the court 508  
conducts a hearing, may present evidence and testimony at the 509  
hearing. The court shall order the requested autopsy or 510  
post-mortem examination if it finds that, under the circumstances, 511  
the department or board has demonstrated a need for the autopsy or 512  
post-mortem examination. The court shall order an autopsy or 513  
post-mortem examination in the circumstances specified in this 514  
division regardless of whether any consent has been given, or has 515  
been given and withdrawn, under section 2108.50 of the Revised 516  
Code, and regardless of whether any information was presented to 517  
the coroner pursuant to section 313.131 of the Revised Code or to 518  
the court under this section regarding an autopsy being contrary 519  
to the deceased person's religious beliefs. 520

(C) An autopsy or post-mortem examination ordered under this 521  
section may be performed upon the body of the deceased person by a 522  
licensed physician or surgeon. The court may identify in the order 523  
the person who is to perform the autopsy or post-mortem 524  
examination. If an autopsy or post-mortem examination is ordered 525  
under this section, the department or board that requested the 526  
autopsy or examination shall pay the physician or surgeon who 527  
performs the autopsy or examination for costs and expenses 528  
incurred in performing the autopsy or examination. 529

**Sec. 2151.421.** (A)(1)(a) No person described in division 530  
(A)(1)(b) of this section who is acting in an official or 531  
professional capacity and knows or suspects that a child under 532  
eighteen years of age or a mentally retarded, developmentally 533  
disabled, or physically impaired child under twenty-one years of 534

age has suffered or faces a threat of suffering any physical or 535  
mental wound, injury, disability, or condition of a nature that 536  
reasonably indicates abuse or neglect of the child, shall fail to 537  
immediately report that knowledge or suspicion to the entity or 538  
persons specified in this division. Except as provided in section 539  
5120.173 of the Revised Code, the person making the report shall 540  
make it to the public children services agency or a municipal or 541  
county peace officer in the county in which the child resides or 542  
in which the abuse or neglect is occurring or has occurred. In the 543  
circumstances described in section 5120.173 of the Revised Code, 544  
the person making the report shall make it to the entity specified 545  
in that section. 546

(b) Division (A)(1)(a) of this section applies to any person 547  
who is an attorney; physician, including a hospital intern or 548  
resident; dentist; podiatrist; practitioner of a limited branch of 549  
medicine as specified in section 4731.15 of the Revised Code; 550  
registered nurse; licensed practical nurse; visiting nurse; other 551  
health care professional; licensed psychologist; licensed school 552  
psychologist; independent marriage and family therapist or 553  
marriage and family therapist; speech pathologist or audiologist; 554  
coroner; administrator or employee of a child day-care center; 555  
administrator or employee of a residential camp or child day camp; 556  
administrator or employee of a certified child care agency or 557  
other public or private children services agency; school teacher; 558  
school employee; school authority; person engaged in social work 559  
or the practice of professional counseling; agent of a county 560  
humane society; ~~or a~~ person rendering spiritual treatment through 561  
prayer in accordance with the tenets of a well-recognized 562  
religion; superintendent, board member, or employee of a county 563  
board of mental retardation; investigative agent contracted with 564  
by a county board of mental retardation; or employee of the 565  
department of mental retardation and developmental disabilities. 566

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

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

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

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

(B) Anyone, who knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental

wound, injury, disability, or other condition of a nature that 598  
reasonably indicates abuse or neglect of the child may report or 599  
cause reports to be made of that knowledge or suspicion to the 600  
entity or persons specified in this division. Except as provided 601  
in section 5120.173 of the Revised Code, a person making a report 602  
or causing a report to be made under this division shall make it 603  
or cause it to be made to the public children services agency or 604  
to a municipal or county peace officer. In the circumstances 605  
described in section 5120.173 of the Revised Code, a person making 606  
a report or causing a report to be made under this division shall 607  
make it or cause it to be made to the entity specified in that 608  
section. 609

(C) Any report made pursuant to division (A) or (B) of this 610  
section shall be made forthwith either by telephone or in person 611  
and shall be followed by a written report, if requested by the 612  
receiving agency or officer. The written report shall contain: 613

(1) The names and addresses of the child and the child's 614  
parents or the person or persons having custody of the child, if 615  
known; 616

(2) The child's age and the nature and extent of the child's 617  
known or suspected injuries, abuse, or neglect or of the known or 618  
suspected threat of injury, abuse, or neglect, including any 619  
evidence of previous injuries, abuse, or neglect; 620

(3) Any other information that might be helpful in 621  
establishing the cause of the known or suspected injury, abuse, or 622  
neglect or of the known or suspected threat of injury, abuse, or 623  
neglect. 624

Any person, who is required by division (A) of this section 625  
to report known or suspected child abuse or child neglect, may 626  
take or cause to be taken color photographs of areas of trauma 627  
visible on a child and, if medically indicated, cause to be 628

performed radiological examinations of the child. 629

(D)(1) When a municipal or county peace officer receives a 630  
report concerning the possible abuse or neglect of a child or the 631  
possible threat of abuse or neglect of a child, upon receipt of 632  
the report, the municipal or county peace officer who receives the 633  
report shall refer the report to the appropriate public children 634  
services agency. 635

(2) When a public children services agency receives a report 636  
pursuant to this division or division (A) or (B) of this section, 637  
upon receipt of the report, the public children services agency 638  
shall comply with section 2151.422 of the Revised Code. 639

(E) No township, municipal, or county peace officer shall 640  
remove a child about whom a report is made pursuant to this 641  
section from the child's parents, stepparents, or guardian or any 642  
other persons having custody of the child without consultation 643  
with the public children services agency, unless, in the judgment 644  
of the officer, and, if the report was made by physician, the 645  
physician, immediate removal is considered essential to protect 646  
the child from further abuse or neglect. The agency that must be 647  
consulted shall be the agency conducting the investigation of the 648  
report as determined pursuant to section 2151.422 of the Revised 649  
Code. 650

(F)(1) Except as provided in section 2151.422 of the Revised 651  
Code, the public children services agency shall investigate, 652  
within twenty-four hours, each report of known or suspected child 653  
abuse or child neglect and of a known or suspected threat of child 654  
abuse or child neglect that is referred to it under this section 655  
to determine the circumstances surrounding the injuries, abuse, or 656  
neglect or the threat of injury, abuse, or neglect, the cause of 657  
the injuries, abuse, neglect, or threat, and the person or persons 658  
responsible. The investigation shall be made in cooperation with 659  
the law enforcement agency and in accordance with the memorandum 660

of understanding prepared under division (J) of this section. A 661  
failure to make the investigation in accordance with the 662  
memorandum is not grounds for, and shall not result in, the 663  
dismissal of any charges or complaint arising from the report or 664  
the suppression of any evidence obtained as a result of the report 665  
and does not give, and shall not be construed as giving, any 666  
rights or any grounds for appeal or post-conviction relief to any 667  
person. The public children services agency shall report each case 668  
to a central registry which the department of job and family 669  
services shall maintain in order to determine whether prior 670  
reports have been made in other counties concerning the child or 671  
other principals in the case. The public children services agency 672  
shall submit a report of its investigation, in writing, to the law 673  
enforcement agency. 674

(2) The public children services agency shall make any 675  
recommendations to the county prosecuting attorney or city 676  
director of law that it considers necessary to protect any 677  
children that are brought to its attention. 678

(G)(1)(a) Except as provided in division (H)(3) of this 679  
section, anyone or any hospital, institution, school, health 680  
department, or agency participating in the making of reports under 681  
division (A) of this section, anyone or any hospital, institution, 682  
school, health department, or agency participating in good faith 683  
in the making of reports under division (B) of this section, and 684  
anyone participating in good faith in a judicial proceeding 685  
resulting from the reports, shall be immune from any civil or 686  
criminal liability for injury, death, or loss to person or 687  
property that otherwise might be incurred or imposed as a result 688  
of the making of the reports or the participation in the judicial 689  
proceeding. 690

(b) Notwithstanding section 4731.22 of the Revised Code, the 691  
physician-patient privilege shall not be a ground for excluding 692

evidence regarding a child's injuries, abuse, or neglect, or the 693  
cause of the injuries, abuse, or neglect in any judicial 694  
proceeding resulting from a report submitted pursuant to this 695  
section. 696

(2) In any civil or criminal action or proceeding in which it 697  
is alleged and proved that participation in the making of a report 698  
under this section was not in good faith or participation in a 699  
judicial proceeding resulting from a report made under this 700  
section was not in good faith, the court shall award the 701  
prevailing party reasonable attorney's fees and costs and, if a 702  
civil action or proceeding is voluntarily dismissed, may award 703  
reasonable attorney's fees and costs to the party against whom the 704  
civil action or proceeding is brought. 705

(H)(1) Except as provided in divisions (H)(4), (M), and (N) 706  
of this section, a report made under this section is confidential. 707  
The information provided in a report made pursuant to this section 708  
and the name of the person who made the report shall not be 709  
released for use, and shall not be used, as evidence in any civil 710  
action or proceeding brought against the person who made the 711  
report. In a criminal proceeding, the report is admissible in 712  
evidence in accordance with the Rules of Evidence and is subject 713  
to discovery in accordance with the Rules of Criminal Procedure. 714

(2) No person shall permit or encourage the unauthorized 715  
dissemination of the contents of any report made under this 716  
section. 717

(3) A person who knowingly makes or causes another person to 718  
make a false report under division (B) of this section that 719  
alleges that any person has committed an act or omission that 720  
resulted in a child being an abused child or a neglected child is 721  
guilty of a violation of section 2921.14 of the Revised Code. 722

(4) If a report is made pursuant to division (A) or (B) of 723



this section and the child who is the subject of the report dies 724  
for any reason at any time after the report is made, but before 725  
the child attains eighteen years of age, the public children 726  
services agency or municipal or county peace officer to which the 727  
report was made or referred, on the request of the child fatality 728  
review board, shall submit a summary sheet of information 729  
providing a summary of the report to the review board of the 730  
county in which the deceased child resided at the time of death. 731  
On the request of the review board, the agency or peace officer 732  
may, at its discretion, make the report available to the review 733  
board. 734

(5) A public children services agency shall advise a person 735  
alleged to have inflicted abuse or neglect on a child who is the 736  
subject of a report made pursuant to this section in writing of 737  
the disposition of the investigation. The agency shall not provide 738  
to the person any information that identifies the person who made 739  
the report, statements of witnesses, or police or other 740  
investigative reports. 741

(I) Any report that is required by this section, other than a 742  
report that is made to the state highway patrol as described in 743  
section 5120.173 of the Revised Code, shall result in protective 744  
services and emergency supportive services being made available by 745  
the public children services agency on behalf of the children 746  
about whom the report is made, in an effort to prevent further 747  
neglect or abuse, to enhance their welfare, and, whenever 748  
possible, to preserve the family unit intact. The agency required 749  
to provide the services shall be the agency conducting the 750  
investigation of the report pursuant to section 2151.422 of the 751  
Revised Code. 752

(J)(1) Each public children services agency shall prepare a 753  
memorandum of understanding that is signed by all of the 754  
following: 755

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

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

(c) The county peace officer;

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

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

(f) The prosecuting attorney of the county;

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

(h) The county humane society.

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the

dismissal of any charges or complaint arising from any reported 786  
case of abuse or neglect or the suppression of any evidence 787  
obtained as a result of any reported child abuse or child neglect 788  
and does not give, and shall not be construed as giving, any 789  
rights or any grounds for appeal or post-conviction relief to any 790  
person. 791

(3) A memorandum of understanding shall include all of the 792  
following: 793

(a) The roles and responsibilities for handling emergency and 794  
nonemergency cases of abuse and neglect; 795

(b) Standards and procedures to be used in handling and 796  
coordinating investigations of reported cases of child abuse and 797  
reported cases of child neglect, methods to be used in 798  
interviewing the child who is the subject of the report and who 799  
allegedly was abused or neglected, and standards and procedures 800  
addressing the categories of persons who may interview the child 801  
who is the subject of the report and who allegedly was abused or 802  
neglected. 803

(K)(1) Except as provided in division (K)(4) of this section, 804  
a person who is required to make a report pursuant to division (A) 805  
of this section may make a reasonable number of requests of the 806  
public children services agency that receives or is referred the 807  
report to be provided with the following information: 808

(a) Whether the agency has initiated an investigation of the 809  
report; 810

(b) Whether the agency is continuing to investigate the 811  
report; 812

(c) Whether the agency is otherwise involved with the child 813  
who is the subject of the report; 814

(d) The general status of the health and safety of the child 815

who is the subject of the report; 816

(e) Whether the report has resulted in the filing of a 817  
complaint in juvenile court or of criminal charges in another 818  
court. 819

(2) A person may request the information specified in 820  
division (K)(1) of this section only if, at the time the report is 821  
made, the person's name, address, and telephone number are 822  
provided to the person who receives the report. 823

When a municipal or county peace officer or employee of a 824  
public children services agency receives a report pursuant to 825  
division (A) or (B) of this section the recipient of the report 826  
shall inform the person of the right to request the information 827  
described in division (K)(1) of this section. The recipient of the 828  
report shall include in the initial child abuse or child neglect 829  
report that the person making the report was so informed and, if 830  
provided at the time of the making of the report, shall include 831  
the person's name, address, and telephone number in the report. 832

Each request is subject to verification of the identity of 833  
the person making the report. If that person's identity is 834  
verified, the agency shall provide the person with the information 835  
described in division (K)(1) of this section a reasonable number 836  
of times, except that the agency shall not disclose any 837  
confidential information regarding the child who is the subject of 838  
the report other than the information described in those 839  
divisions. 840

(3) A request made pursuant to division (K)(1) of this 841  
section is not a substitute for any report required to be made 842  
pursuant to division (A) of this section. 843

(4) If an agency other than the agency that received or was 844  
referred the report is conducting the investigation of the report 845  
pursuant to section 2151.422 of the Revised Code, the agency 846

conducting the investigation shall comply with the requirements of 847  
division (K) of this section. 848

(L) The director of job and family services shall adopt rules 849  
in accordance with Chapter 119. of the Revised Code to implement 850  
this section. The department of job and family services may enter 851  
into a plan of cooperation with any other governmental entity to 852  
aid in ensuring that children are protected from abuse and 853  
neglect. The department shall make recommendations to the attorney 854  
general that the department determines are necessary to protect 855  
children from child abuse and child neglect. 856

(M) No later than the end of the day following the day on 857  
which a public children services agency receives a report of 858  
alleged child abuse or child neglect, or a report of an alleged 859  
threat of child abuse or child neglect, that allegedly occurred in 860  
or involved an out-of-home care entity, the agency shall provide 861  
written notice of the allegations contained in and the person 862  
named as the alleged perpetrator in the report to the 863  
administrator, director, or other chief administrative officer of 864  
the out-of-home care entity that is the subject of the report 865  
unless the administrator, director, or other chief administrative 866  
officer is named as an alleged perpetrator in the report. If the 867  
administrator, director, or other chief administrative officer of 868  
an out-of-home care entity is named as an alleged perpetrator in a 869  
report of alleged child abuse or child neglect, or a report of an 870  
alleged threat of child abuse or child neglect, that allegedly 871  
occurred in or involved the out-of-home care entity, the agency 872  
shall provide the written notice to the owner or governing board 873  
of the out-of-home care entity that is the subject of the report. 874  
The agency shall not provide witness statements or police or other 875  
investigative reports. 876

(N) No later than three days after the day on which a public 877  
children services agency that conducted the investigation as 878

determined pursuant to section 2151.422 of the Revised Code makes 879  
a disposition of an investigation involving a report of alleged 880  
child abuse or child neglect, or a report of an alleged threat of 881  
child abuse or child neglect, that allegedly occurred in or 882  
involved an out-of-home care entity, the agency shall send written 883  
notice of the disposition of the investigation to the 884  
administrator, director, or other chief administrative officer and 885  
the owner or governing board of the out-of-home care entity. The 886  
agency shall not provide witness statements or police or other 887  
investigative reports. 888

Sec. 2152.821. (A) As used in this section: 889

(1) "Mentally retarded person" and "developmentally disabled 890  
person" have the same meanings as in section 5123.01 of the 891  
Revised Code. 892

(2) "Mentally retarded or developmentally disabled victim" 893  
includes any of the following persons: 894

(a) A mentally retarded person or developmentally disabled 895  
person who was a victim of a violation identified in division 896  
(B)(1) of this section or an act that would be an offense of 897  
violence if committed by an adult; 898

(b) A mentally retarded person or developmentally disabled 899  
person against whom was directed any conduct that constitutes, or 900  
that is an element of, a violation identified in division (B)(1) 901  
of this section or an act that would be an offense of violence if 902  
committed by an adult. 903

(B)(1) In any proceeding in juvenile court involving a 904  
complaint, indictment, or information in which a child is charged 905  
with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 906  
2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 907  
2907.322, or 2907.323 of the Revised Code or an act that would be 908

an offense of violence if committed by an adult and in which an  
alleged victim of the violation or act was a mentally retarded  
person or developmentally disabled person, the juvenile judge,  
upon motion of the prosecution, shall order that the testimony of  
the mentally retarded or developmentally disabled victim be taken  
by deposition. The prosecution also may request that the  
deposition be videotaped in accordance with division (B)(2) of  
this section. The judge shall notify the mentally retarded or  
developmentally disabled victim whose deposition is to be taken,  
the prosecution, and the attorney for the child who is charged  
with the violation or act of the date, time, and place for taking  
the deposition. The notice shall identify the mentally retarded or  
developmentally disabled victim who is to be examined and shall  
indicate whether a request that the deposition be videotaped has  
been made. The child who is charged with the violation or act  
shall have the right to attend the deposition and the right to be  
represented by counsel. Depositions shall be taken in the manner  
provided in civil cases, except that the judge in the proceeding  
shall preside at the taking of the deposition and shall rule at  
that time on any objections of the prosecution or the attorney for  
the child charged with the violation or act. The prosecution and  
the attorney for the child charged with the violation or act shall  
have the right, as at an adjudication hearing, to full examination  
and cross-examination of the mentally retarded or developmentally  
disabled victim whose deposition is to be taken.

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If a deposition taken under this division is intended to be  
offered as evidence in the proceeding, it shall be filed in the  
juvenile court in which the action is pending and is admissible in  
the manner described in division (C) of this section. If a  
deposition of a mentally retarded or developmentally disabled  
victim taken under this division is admitted as evidence at the  
proceeding under division (C) of this section, the mentally

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retarded or developmentally disabled victim shall not be required 941  
to testify in person at the proceeding. 942

At any time before the conclusion of the proceeding, the 943  
attorney for the child charged with the violation or act may file 944  
a motion with the judge requesting that another deposition of the 945  
mentally retarded or developmentally disabled victim be taken 946  
because new evidence material to the defense of the child charged 947  
has been discovered that the attorney for the child charged could 948  
not with reasonable diligence have discovered prior to the taking 949  
of the admitted deposition. Any motion requesting another 950  
deposition shall be accompanied by supporting affidavits. Upon the 951  
filing of the motion and affidavits, the court may order that 952  
additional testimony of the mentally retarded or developmentally 953  
disabled victim relative to the new evidence be taken by another 954  
deposition. If the court orders the taking of another deposition 955  
under this provision, the deposition shall be taken in accordance 956  
with this division. If the admitted deposition was a videotaped 957  
deposition taken in accordance with division (B)(2) of this 958  
section, the new deposition also shall be videotaped in accordance 959  
with that division. In other cases, the new deposition may be 960  
videotaped in accordance with that division. 961

(2) If the prosecution requests that a deposition to be taken 962  
under division (B)(1) of this section be videotaped, the juvenile 963  
judge shall order that the deposition be videotaped in accordance 964  
with this division. If a juvenile judge issues an order to video 965  
tape the deposition, the judge shall exclude from the room in 966  
which the deposition is to be taken every person except the 967  
mentally retarded or developmentally disabled victim giving the 968  
testimony, the judge, one or more interpreters if needed, the 969  
attorneys for the prosecution and the child who is charged with 970  
the violation or act, any person needed to operate the equipment 971  
to be used, one person chosen by the mentally retarded or 972



developmentally disabled victim giving the deposition, and any 973  
person whose presence the judge determines would contribute to the 974  
welfare and well-being of the mentally retarded or developmentally 975  
disabled victim giving the deposition. The person chosen by the 976  
mentally retarded or developmentally disabled victim shall not be 977  
a witness in the proceeding and, both before and during the 978  
deposition, shall not discuss the testimony of the victim with any 979  
other witness in the proceeding. To the extent feasible, any 980  
person operating the recording equipment shall be restricted to a 981  
room adjacent to the room in which the deposition is being taken, 982  
or to a location in the room in which the deposition is being 983  
taken that is behind a screen or mirror so that the person 984  
operating the recording equipment can see and hear, but cannot be 985  
seen or heard by, the mentally retarded or developmentally 986  
disabled victim giving the deposition during the deposition. 987

The child who is charged with the violation or act shall be 988  
permitted to observe and hear the testimony of the mentally 989  
retarded or developmentally disabled victim giving the deposition 990  
on a monitor, shall be provided with an electronic means of 991  
immediate communication with the attorney of the child who is 992  
charged with the violation or act during the testimony, and shall 993  
be restricted to a location from which the child who is charged 994  
with the violation or act cannot be seen or heard by the mentally 995  
retarded or developmentally disabled victim giving the deposition, 996  
except on a monitor provided for that purpose. The mentally 997  
retarded or developmentally disabled victim giving the deposition 998  
shall be provided with a monitor on which the mentally retarded or 999  
developmentally disabled victim can observe, while giving 1000  
testimony, the child who is charged with the violation or act. The 1001  
judge, at the judge's discretion, may preside at the deposition by 1002  
electronic means from outside the room in which the deposition is 1003  
to be taken; if the judge presides by electronic means, the judge 1004

shall be provided with monitors on which the judge can see each 1005  
person in the room in which the deposition is to be taken and with 1006  
an electronic means of communication with each person in that 1007  
room, and each person in the room shall be provided with a monitor 1008  
on which that person can see the judge and with an electronic 1009  
means of communication with the judge. A deposition that is 1010  
videotaped under this division shall be taken and filed in the 1011  
manner described in division (B)(1) of this section and is 1012  
admissible in the manner described in this division and division 1013  
(C) of this section. If a deposition that is videotaped under this 1014  
division is admitted as evidence at the proceeding, the mentally 1015  
retarded or developmentally disabled victim shall not be required 1016  
to testify in person at the proceeding. No deposition videotaped 1017  
under this division shall be admitted as evidence at any 1018  
proceeding unless division (C) of this section is satisfied 1019  
relative to the deposition and all of the following apply relative 1020  
to the recording: 1021

(a) The recording is both aural and visual and is recorded on 1022  
film or videotape, or by other electronic means. 1023

(b) The recording is authenticated under the Rules of 1024  
Evidence and the Rules of Criminal Procedure as a fair and 1025  
accurate representation of what occurred, and the recording is not 1026  
altered other than at the direction and under the supervision of 1027  
the judge in the proceeding. 1028

(c) Each voice on the recording that is material to the 1029  
testimony on the recording or the making of the recording, as 1030  
determined by the judge, is identified. 1031

(d) Both the prosecution and the child who is charged with 1032  
the violation or act are afforded an opportunity to view the 1033  
recording before it is shown in the proceeding. 1034

(C)(1) At any proceeding in relation to which a deposition 1035

was taken under division (B) of this section, the deposition or a 1036  
part of it is admissible in evidence upon motion of the 1037  
prosecution if the testimony in the deposition or the part to be 1038  
admitted is not excluded by the hearsay rule and if the deposition 1039  
or the part to be admitted otherwise is admissible under the Rules 1040  
of Evidence. For purposes of this division, testimony is not 1041  
excluded by the hearsay rule if the testimony is not hearsay under 1042  
Evidence Rule 801; the testimony is within an exception to the 1043  
hearsay rule set forth in Evidence Rule 803; the mentally retarded 1044  
or developmentally disabled victim who gave the testimony is 1045  
unavailable as a witness, as defined in Evidence Rule 804, and the 1046  
testimony is admissible under that rule; or both of the following 1047  
apply: 1048

(a) The child who is charged with the violation or act had an 1049  
opportunity and similar motive at the time of the taking of the 1050  
deposition to develop the testimony by direct, cross, or redirect 1051  
examination. 1052

(b) The judge determines that there is reasonable cause to 1053  
believe that, if the mentally retarded or developmentally disabled 1054  
victim who gave the testimony in the deposition were to testify in 1055  
person at the proceeding, the mentally retarded or developmentally 1056  
disabled victim would experience serious emotional trauma as a 1057  
result of the mentally retarded or developmentally disabled 1058  
victim's participation at the proceeding. 1059

(2) Objections to receiving in evidence a deposition or a 1060  
part of it under division (C) of this section shall be made as 1061  
provided in civil actions. 1062

(3) The provisions of divisions (B) and (C) of this section 1063  
are in addition to any other provisions of the Revised Code, the 1064  
Rules of Juvenile Procedure, the Rules of Criminal Procedure, or 1065  
the Rules of Evidence that pertain to the taking or admission of 1066

depositions in a juvenile court proceeding and do not limit the 1067  
admissibility under any of those other provisions of any 1068  
deposition taken under division (B) of this section or otherwise 1069  
taken. 1070

(D) In any proceeding in juvenile court involving a 1071  
complaint, indictment, or information in which a child is charged 1072  
with a violation listed in division (B)(1) of this section or an 1073  
act that would be an offense of violence if committed by an adult 1074  
and in which an alleged victim of the violation or offense was a 1075  
mentally retarded or developmentally disabled person, the 1076  
prosecution may file a motion with the juvenile judge requesting 1077  
the judge to order the testimony of the mentally retarded or 1078  
developmentally disabled victim to be taken in a room other than 1079  
the room in which the proceeding is being conducted and be 1080  
televised, by closed circuit equipment, into the room in which the 1081  
proceeding is being conducted to be viewed by the child who is 1082  
charged with the violation or act and any other persons who are 1083  
not permitted in the room in which the testimony is to be taken 1084  
but who would have been present during the testimony of the 1085  
mentally retarded or developmentally disabled victim had it been 1086  
given in the room in which the proceeding is being conducted. 1087  
Except for good cause shown, the prosecution shall file a motion 1088  
under this division at least seven days before the date of the 1089  
proceeding. The juvenile judge may issue the order upon the motion 1090  
of the prosecution filed under this division, if the judge 1091  
determines that the mentally retarded or developmentally disabled 1092  
victim is unavailable to testify in the room in which the 1093  
proceeding is being conducted in the physical presence of the 1094  
child charged with the violation or act for one or more of the 1095  
reasons set forth in division (F) of this section. If a juvenile 1096  
judge issues an order of that nature, the judge shall exclude from 1097  
the room in which the testimony is to be taken every person except 1098

a person described in division (B)(2) of this section. The judge, 1099  
at the judge's discretion, may preside during the giving of the 1100  
testimony by electronic means from outside the room in which it is 1101  
being given, subject to the limitations set forth in division 1102  
(B)(2) of this section. To the extent feasible, any person 1103  
operating the televising equipment shall be hidden from the sight 1104  
and hearing of the mentally retarded or developmentally disabled 1105  
victim giving the testimony, in a manner similar to that described 1106  
in division (B)(2) of this section. The child who is charged with 1107  
the violation or act shall be permitted to observe and hear the 1108  
testimony of the mentally retarded or developmentally disabled 1109  
victim giving the testimony on a monitor, shall be provided with 1110  
an electronic means of immediate communication with the attorney 1111  
of the child who is charged with the violation or act during the 1112  
testimony, and shall be restricted to a location from which the 1113  
child who is charged with the violation or act cannot be seen or 1114  
heard by the mentally retarded or developmentally disabled victim 1115  
giving the testimony, except on a monitor provided for that 1116  
purpose. The mentally retarded or developmentally disabled victim 1117  
giving the testimony shall be provided with a monitor on which the 1118  
mentally retarded or developmentally disabled victim can observe, 1119  
while giving testimony, the child who is charged with the 1120  
violation or act. 1121

(E) In any proceeding in juvenile court involving a 1122  
complaint, indictment, or information in which a child is charged 1123  
with a violation listed in division (B)(1) of this section or an 1124  
act that would be an offense of violence if committed by an adult 1125  
and in which an alleged victim of the violation or offense was a 1126  
mentally retarded or developmentally disabled person, the 1127  
prosecution may file a motion with the juvenile judge requesting 1128  
the judge to order the testimony of the mentally retarded or 1129  
developmentally disabled victim to be taken outside of the room in 1130

which the proceeding is being conducted and be recorded for 1131  
showing in the room in which the proceeding is being conducted 1132  
before the judge, the child who is charged with the violation or 1133  
act, and any other persons who would have been present during the 1134  
testimony of the mentally retarded or developmentally disabled 1135  
victim had it been given in the room in which the proceeding is 1136  
being conducted. Except for good cause shown, the prosecution 1137  
shall file a motion under this division at least seven days before 1138  
the date of the proceeding. The juvenile judge may issue the order 1139  
upon the motion of the prosecution filed under this division, if 1140  
the judge determines that the mentally retarded or developmentally 1141  
disabled victim is unavailable to testify in the room in which the 1142  
proceeding is being conducted in the physical presence of the 1143  
child charged with the violation or act, due to one or more of the 1144  
reasons set forth in division (F) of this section. If a juvenile 1145  
judge issues an order of that nature, the judge shall exclude from 1146  
the room in which the testimony is to be taken every person except 1147  
a person described in division (B)(2) of this section. To the 1148  
extent feasible, any person operating the recording equipment 1149  
shall be hidden from the sight and hearing of the mentally 1150  
retarded or developmentally disabled victim giving the testimony, 1151  
in a manner similar to that described in division (B)(2) of this 1152  
section. The child who is charged with the violation or act shall 1153  
be permitted to observe and hear the testimony of the mentally 1154  
retarded or developmentally disabled victim giving the testimony 1155  
on a monitor, shall be provided with an electronic means of 1156  
immediate communication with the attorney of the child who is 1157  
charged with the violation or act during the testimony, and shall 1158  
be restricted to a location from which the child who is charged 1159  
with the violation or act cannot be seen or heard by the mentally 1160  
retarded or developmentally disabled victim giving the testimony, 1161  
except on a monitor provided for that purpose. The mentally 1162  
retarded or developmentally disabled victim giving the testimony 1163

shall be provided with a monitor on which the mentally retarded or 1164  
developmentally disabled victim can observe, while giving 1165  
testimony, the child who is charged with the violation or act. No 1166  
order for the taking of testimony by recording shall be issued 1167  
under this division unless the provisions set forth in divisions 1168  
(B)(2)(a), (b), (c), and (d) of this section apply to the 1169  
recording of the testimony. 1170

(F) For purposes of divisions (D) and (E) of this section, a 1171  
juvenile judge may order the testimony of a mentally retarded or 1172  
developmentally disabled victim to be taken outside of the room in 1173  
which a proceeding is being conducted if the judge determines that 1174  
the mentally retarded or developmentally disabled victim is 1175  
unavailable to testify in the room in the physical presence of the 1176  
child charged with the violation or act due to one or more of the 1177  
following circumstances: 1178

(1) The persistent refusal of the mentally retarded or 1179  
developmentally disabled victim to testify despite judicial 1180  
requests to do so; 1181

(2) The inability of the mentally retarded or developmentally 1182  
disabled victim to communicate about the alleged violation or 1183  
offense because of extreme fear, failure of memory, or another 1184  
similar reason; 1185

(3) The substantial likelihood that the mentally retarded or 1186  
developmentally disabled victim will suffer serious emotional 1187  
trauma from so testifying. 1188

(G)(1) If a juvenile judge issues an order pursuant to 1189  
division (D) or (E) of this section that requires the testimony of 1190  
a mentally retarded or developmentally disabled victim in a 1191  
juvenile court proceeding to be taken outside of the room in which 1192  
the proceeding is being conducted, the order shall specifically 1193  
identify the mentally retarded or developmentally disabled victim 1194

to whose testimony it applies, the order applies only during the 1195  
testimony of the specified mentally retarded or developmentally 1196  
disabled victim, and the mentally retarded or developmentally 1197  
disabled victim giving the testimony shall not be required to 1198  
testify at the proceeding other than in accordance with the order. 1199  
The authority of a judge to close the taking of a deposition under 1200  
division (B)(2) of this section or a proceeding under division (D) 1201  
or (E) of this section is in addition to the authority of a judge 1202  
to close a hearing pursuant to section 2151.35 of the Revised 1203  
Code. 1204

(2) A juvenile judge who makes any determination regarding 1205  
the admissibility of a deposition under divisions (B) and (C) of 1206  
this section, the videotaping of a deposition under division 1207  
(B)(2) of this section, or the taking of testimony outside of the 1208  
room in which a proceeding is being conducted under division (D) 1209  
or (E) of this section shall enter the determination and findings 1210  
on the record in the proceeding. 1211

**Sec. 2311.14.** (A)(1) Whenever because of a hearing, speech, 1212  
or other impairment a party to or witness in a legal proceeding 1213  
cannot readily understand or communicate, the court shall appoint 1214  
a qualified interpreter to assist such person. Before appointing 1215  
any interpreter under this division for a party or witness who is 1216  
a mentally retarded person or developmentally disabled person, the 1217  
court shall evaluate the qualifications of the interpreter and 1218  
shall make a determination as to the ability of the interpreter to 1219  
effectively interpret on behalf of the party or witness that the 1220  
interpreter will assist, and the court may appoint the interpreter 1221  
only if the court is satisfied that the interpreter is able to 1222  
effectively interpret on behalf of that party or witness. 1223

(2) This section is not limited to a person who speaks a 1224  
language other than English. It also applies to the language and 1225



descriptions of any mentally retarded person or developmentally disabled person who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter. The interpreter may aid the parties in formulating methods of questioning the person with mental retardation or a developmental disability and in interpreting the answers of the person. 1226  
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(B) Before entering upon ~~his~~ official duties, the interpreter shall take an oath that ~~he~~ the interpreter will make a true interpretation of the proceedings to the party or witness, and that ~~he~~ the interpreter will truly repeat the statements made by such party or witness to the court, to the best of ~~his~~ the interpreter's ability. If the interpreter is appointed to assist a mentally retarded person or developmentally disabled person as described in division (A)(2) of this section, the oath also shall include an oath that the interpreter will not prompt, lead, suggest, or otherwise improperly influence the testimony of the witness or party. 1232  
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(C) The court shall determine a reasonable fee for all such interpreter service which shall be paid out of the same funds as witness fees. 1243  
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(D) As used in this section, "mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code. 1246  
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**Sec. 2903.341.** (A) As used in this section: 1249

(1) "MR/DD caretaker" means any MR/DD employee or any person who assumes the duty to provide for the care and protection of a mentally retarded person or a developmentally disabled person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "MR/DD caretaker" includes a 1250  
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person who is an employee of a care facility and a person who is 1256  
an employee of an entity under contract with a provider. "MR/DD 1257  
caretaker" does not include a person who owns, operates, or 1258  
administers a care facility or who is an agent of a care facility 1259  
unless that person also personally provides care to persons with 1260  
mental retardation or a developmental disability. 1261

(2) "Mentally retarded person" and "developmentally disabled 1262  
person" have the same meanings as in section 5123.01 of the 1263  
Revised Code. 1264

(3) "MR/DD employee" has the same meaning as in section 1265  
5123.50 of the Revised Code. 1266

(B) No MR/DD caretaker shall create a substantial risk to the 1267  
health or safety of a mentally retarded person or a 1268  
developmentally disabled person. An MR/DD caretaker does not 1269  
create a substantial risk to the health or safety of a mentally 1270  
retarded person or a developmentally disabled person under this 1271  
division when the MR/DD caretaker treats a physical or mental 1272  
illness or defect of the mentally retarded person or 1273  
developmentally disabled person by spiritual means through prayer 1274  
alone, in accordance with the tenets of a recognized religious 1275  
body. 1276

(C) No person who owns, operates, or administers a care 1277  
facility or who is an agent of a care facility shall condone, or 1278  
knowingly permit, any conduct by an MR/DD caretaker who is 1279  
employed by or under the control of the owner, operator, 1280  
administrator, or agent that is in violation of division (B) of 1281  
this section and that involves a mentally retarded person or a 1282  
developmentally disabled person who is under the care of the 1283  
owner, operator, administrator, or agent. A person who relies upon 1284  
treatment by spiritual means through prayer alone, in accordance 1285  
with the tenets of a recognized religious denomination, shall not 1286  
be considered endangered under this division for that reason 1287

<u>alone.</u>	1288
<u>(D)(1) It is an affirmative defense to a charge of a violation of division (B) or (C) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:</u>	1289
<u>(a) The person has supervisory authority over the actor.</u>	1290
<u>(b) The person has authority over the actor's conduct pursuant to a contract for the provision of services.</u>	1291
<u>(2) It is an affirmative defense to a charge of a violation of division (C) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved mentally retarded person or a developmentally disabled person or that the admission, discharge, and transfer rule set forth in the Administrative Code is being followed.</u>	1292
<u>(3) It is an affirmative defense to a charge of a violation of division (C) of this section that the actor did not have readily available a means to prevent either the harm to the person with mental retardation or a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.</u>	1293
<u>(E)(1) Except as provided in division (E)(2) or (E)(3) of this section, whoever violates division (B) or (C) of this section is guilty of patient endangerment, a misdemeanor of the first degree.</u>	1294
<u>(2) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section, patient endangerment is a felony of the fourth degree.</u>	1295
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(3) If the violation results in serious physical harm to the 1318  
person with mental retardation or a developmental disability, 1319  
patient endangerment is a felony of the third degree. 1320

**Sec. 2930.03.** (A) A person or entity required or authorized 1321  
under this chapter to give notice to a victim shall give the 1322  
notice to the victim by any means reasonably calculated to provide 1323  
prompt actual notice. Except when a provision requires that notice 1324  
is to be given in a specific manner, a notice may be oral or 1325  
written. 1326

(B) Except for receipt of the initial information and notice 1327  
required to be given to a victim under divisions (A) and (B) of 1328  
section 2930.04, section 2930.05, and divisions (A) and (B) of 1329  
section 2930.06 of the Revised Code, a victim who wishes to 1330  
receive any notice authorized by this chapter shall make a request 1331  
for the notice to the prosecutor or the custodial agency that is 1332  
to provide the notice, as specified in this chapter. If the victim 1333  
does not make a request as described in this division, the 1334  
prosecutor or custodial agency is not required to provide any 1335  
notice described in this chapter other than the initial 1336  
information and notice required to be given to a victim under 1337  
divisions (A) and (B) of section 2930.04, section 2930.05, and 1338  
divisions (A) and (B) of section 2930.06 of the Revised Code. 1339

(C) A person or agency that is required to furnish notice 1340  
under this chapter shall give the notice to the victim at the 1341  
address or telephone number provided to the person or agency by 1342  
the victim. A victim who requests to receive notice under this 1343  
chapter as described in division (B) of this section shall inform 1344  
the person or agency of the name, address, or telephone number of 1345  
the victim and of any change to that information. 1346

(D) A person or agency that has furnished information to a 1347  
victim in accordance with any requirement or authorization under 1348

this chapter shall notify the victim promptly of any significant 1349  
changes to that information. 1350

(E) Divisions (A) to (D) of this section do not apply 1351  
regarding a notice that a prosecutor is required to provide under 1352  
section 2930.061 of the Revised Code. A prosecutor required to 1353  
provide notice under that section shall provide the notice as 1354  
specified in that section. 1355

Sec. 2930.061. (A) If a person is charged in a complaint, 1356  
indictment, or information with any crime or specified delinquent 1357  
act or with any other violation of law, and if the case involves a 1358  
victim that the prosecutor in the case knows is a mentally 1359  
retarded person or a developmentally disabled person, in addition 1360  
to any other notices required under this chapter or under any 1361  
other provision of law, the prosecutor in the case shall send 1362  
written notice of the charges to the department of mental 1363  
retardation and developmental disabilities. The written notice 1364  
shall specifically identify the person so charged. 1365

(B) As used in this section, "mentally retarded person" and 1366  
"developmentally disabled person" have the same meanings as in 1367  
section 5123.01 of the Revised Code. 1368

Sec. 2945.482. (A) As used in this section: 1369

(1) "Mentally retarded person" and "developmentally disabled 1370  
person" have the same meanings as in section 5123.01 of the 1371  
Revised Code. 1372

(2) "Mentally retarded or developmentally disabled victim" 1373  
includes a mentally retarded or developmentally disabled person 1374  
who was a victim of a violation identified in division (B)(1) of 1375  
this section or an offense of violence or against whom was 1376  
directed any conduct that constitutes, or that is an element of, a 1377  
violation identified in division (B)(1) of this section or an 1378

offense of violence.

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(B)(1) In any proceeding in the prosecution of a charge of a violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge shall preside at the taking of the deposition and shall rule at the time on any objections of the prosecution or the attorney for the defense. The prosecution and the attorney for the defense shall have the right, as at trial, to full examination and cross-examination of the mentally retarded or developmentally disabled victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the court in which the action is pending and is admissible in the manner described in division (C) of this section.

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If a deposition of a mentally retarded or developmentally disabled victim taken under this division is admitted as evidence at the proceeding under division (C) of this section, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding. 1411  
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At any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the mentally retarded or developmentally disabled victim be taken because new evidence material to the defense has been discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division. 1416  
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(2) If the prosecution requests that a deposition to be taken under division (B)(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the mentally retarded or developmentally disabled victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to operate the equipment to be used, one person chosen by the mentally retarded or developmentally disabled victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the mentally retarded or developmentally 1430  
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disabled victim giving the deposition. The person chosen by the 1443  
mentally retarded or developmentally disabled victim shall not be 1444  
a witness in the proceeding and, both before and during the 1445  
deposition, shall not discuss the testimony of the mentally 1446  
retarded or developmentally disabled victim with any other witness 1447  
in the proceeding. To the extent feasible, any person operating 1448  
the recording equipment shall be restricted to a room adjacent to 1449  
the room in which the deposition is being taken, or to a location 1450  
in the room in which the deposition is being taken that is behind 1451  
a screen or mirror, so that the person operating the recording 1452  
equipment can see and hear, but cannot be seen or heard by, the 1453  
mentally retarded or developmentally disabled victim giving the 1454  
deposition during the deposition. 1455

The defendant shall be permitted to observe and hear the 1456  
testimony of the mentally retarded or developmentally disabled 1457  
victim giving the deposition on a monitor, shall be provided with 1458  
an electronic means of immediate communication with the 1459  
defendant's attorney during the testimony, and shall be restricted 1460  
to a location from which the defendant cannot be seen or heard by 1461  
the mentally retarded or developmentally disabled victim giving 1462  
the deposition, except on a monitor provided for that purpose. The 1463  
mentally retarded or developmentally disabled victim giving the 1464  
deposition shall be provided with a monitor on which the victim 1465  
can observe, during the testimony, the defendant. The judge, at 1466  
the judge's discretion, may preside at the deposition by 1467  
electronic means from outside the room in which the deposition is 1468  
to be taken. If the judge presides by electronic means, the judge 1469  
shall be provided with monitors on which the judge can see each 1470  
person in the room in which the deposition is to be taken and with 1471  
an electronic means of communication with each person, and each 1472  
person in the room shall be provided with a monitor on which that 1473  
person can see the judge and with an electronic means of 1474



communication with the judge. A deposition that is videotaped 1475  
under this division shall be taken and filed in the manner 1476  
described in division (B)(1) of this section and is admissible in 1477  
the manner described in this division and division (C) of this 1478  
section, and, if a deposition that is videotaped under this 1479  
division is admitted as evidence at the proceeding, the mentally 1480  
retarded or developmentally disabled victim shall not be required 1481  
to testify in person at the proceeding. No deposition videotaped 1482  
under this division shall be admitted as evidence at any 1483  
proceeding unless division (C) of this section is satisfied 1484  
relative to the deposition and all of the following apply relative 1485  
to the recording: 1486

(a) The recording is both aural and visual and is recorded on 1487  
film or videotape, or by other electronic means. 1488

(b) The recording is authenticated under the Rules of 1489  
Evidence and the Rules of Criminal Procedure as a fair and 1490  
accurate representation of what occurred, and the recording is not 1491  
altered other than at the direction and under the supervision of 1492  
the judge in the proceeding. 1493

(c) Each voice on the recording that is material to the 1494  
testimony on the recording or the making of the recording, as 1495  
determined by the judge, is identified. 1496

(d) Both the prosecution and the defendant are afforded an 1497  
opportunity to view the recording before it is shown in the 1498  
proceeding. 1499

(C)(1) At any proceeding in a prosecution in relation to 1500  
which a deposition was taken under division (B) of this section, 1501  
the deposition or a part of it is admissible in evidence upon 1502  
motion of the prosecution if the testimony in the deposition or 1503  
the part to be admitted is not excluded by the hearsay rule and if 1504  
the deposition or the part to be admitted otherwise is admissible 1505

under the Rules of Evidence. For purposes of this division, 1506  
testimony is not excluded by the hearsay rule if the testimony is 1507  
not hearsay under Evidence Rule 801; the testimony is within an 1508  
exception to the hearsay rule set forth in Evidence Rule 803; the 1509  
mentally retarded or developmentally disabled victim who gave the 1510  
testimony is unavailable as a witness, as defined in Evidence Rule 1511  
804, and the testimony is admissible under that rule; or both of 1512  
the following apply: 1513

(a) The defendant had an opportunity and similar motive at 1514  
the time of the taking of the deposition to develop the testimony 1515  
by direct, cross, or redirect examination. 1516

(b) The judge determines that there is reasonable cause to 1517  
believe that, if the mentally retarded or developmentally disabled 1518  
victim who gave the testimony in the deposition were to testify in 1519  
person at the proceeding, the mentally retarded or developmentally 1520  
disabled victim would experience serious emotional trauma as a 1521  
result of the mentally retarded or developmentally disabled 1522  
victim's participation at the proceeding. 1523

(2) Objections to receiving in evidence a deposition or a 1524  
part of it under division (C) of this section shall be made as 1525  
provided in civil actions. 1526

(3) The provisions of divisions (B) and (C) of this section 1527  
are in addition to any other provisions of the Revised Code, the 1528  
Rules of Criminal Procedure, or the Rules of Evidence that pertain 1529  
to the taking or admission of depositions in a criminal proceeding 1530  
and do not limit the admissibility under any of those other 1531  
provisions of any deposition taken under division (B) of this 1532  
section or otherwise taken. 1533

(D) In any proceeding in the prosecution of any charge of a 1534  
violation listed in division (B)(1) of this section or an offense 1535  
of violence and in which an alleged victim of the violation or 1536

offense was a mentally retarded or developmentally disabled 1537  
person, the prosecution may file a motion with the judge 1538  
requesting the judge to order the testimony of the mentally 1539  
retarded or developmentally disabled victim to be taken in a room 1540  
other than the room in which the proceeding is being conducted and 1541  
be televised, by closed circuit equipment, into the room in which 1542  
the proceeding is being conducted to be viewed by the jury, if 1543  
applicable, the defendant, and any other persons who are not 1544  
permitted in the room in which the testimony is to be taken but 1545  
who would have been present during the testimony of the mentally 1546  
retarded or developmentally disabled victim had it been given in 1547  
the room in which the proceeding is being conducted. Except for 1548  
good cause shown, the prosecution shall file a motion under this 1549  
division at least seven days before the date of the proceeding. 1550  
The judge may issue the order upon the motion of the prosecution 1551  
filed under this section, if the judge determines that the 1552  
mentally retarded or developmentally disabled victim is 1553  
unavailable to testify in the room in which the proceeding is 1554  
being conducted in the physical presence of the defendant for one 1555  
or more of the reasons set forth in division (F) of this section. 1556  
If a judge issues an order of that nature, the judge shall exclude 1557  
from the room in which the testimony is to be taken every person 1558  
except a person described in division (B)(2) of this section. The 1559  
judge, at the judge's discretion, may preside during the giving of 1560  
the testimony by electronic means from outside the room in which 1561  
it is being given, subject to the limitations set forth in 1562  
division (B)(2) of this section. To the extent feasible, any 1563  
person operating the televising equipment shall be hidden from the 1564  
sight and hearing of the mentally retarded or developmentally 1565  
disabled victim giving the testimony, in a manner similar to that 1566  
described in division (B)(2) of this section. The defendant shall 1567  
be permitted to observe and hear the testimony of the mentally 1568  
retarded or developmentally disabled victim giving the testimony 1569

on a monitor, shall be provided with an electronic means of 1570  
immediate communication with the defendant's attorney during the 1571  
testimony, and shall be restricted to a location from which the 1572  
defendant cannot be seen or heard by the mentally retarded or 1573  
developmentally disabled victim giving the testimony, except on a 1574  
monitor provided for that purpose. The mentally retarded or 1575  
developmentally disabled victim giving the testimony shall be 1576  
provided with a monitor on which the mentally retarded or 1577  
developmentally disabled victim can observe, during the testimony, 1578  
the defendant. 1579

(E) In any proceeding in the prosecution of any charge of a 1580  
violation listed in division (B)(1) of this section or an offense 1581  
of violence and in which an alleged victim of the violation or 1582  
offense was a mentally retarded or developmentally disabled 1583  
victim, the prosecution may file a motion with the judge 1584  
requesting the judge to order the testimony of the mentally 1585  
retarded or developmentally disabled victim to be taken outside of 1586  
the room in which the proceeding is being conducted and be 1587  
recorded for showing in the room in which the proceeding is being 1588  
conducted before the judge, the jury, if applicable, the 1589  
defendant, and any other persons who would have been present 1590  
during the testimony of the mentally retarded or developmentally 1591  
disabled victim had it been given in the room in which the 1592  
proceeding is being conducted. Except for good cause shown, the 1593  
prosecution shall file a motion under this division at least seven 1594  
days before the date of the proceeding. The judge may issue the 1595  
order upon the motion of the prosecution filed under this 1596  
division, if the judge determines that the mentally retarded or 1597  
developmentally disabled victim is unavailable to testify in the 1598  
room in which the proceeding is being conducted in the physical 1599  
presence of the defendant, for one or more of the reasons set 1600  
forth in division (F) of this section. If a judge issues an order 1601

of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The defendant shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim who is giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the victim can observe, during the testimony, the defendant. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

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

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

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(2) The inability of the mentally retarded or developmentally

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disabled victim to communicate about the alleged violation or 1634  
offense because of extreme fear, failure of memory, or another 1635  
similar reason; 1636

(3) The substantial likelihood that the mentally retarded or 1637  
developmentally disabled victim will suffer serious emotional 1638  
trauma from so testifying. 1639

(G)(1) If a judge issues an order pursuant to division (D) or 1640  
(E) of this section that requires the testimony of a mentally 1641  
retarded or developmentally disabled victim in a criminal 1642  
proceeding to be taken outside of the room in which the proceeding 1643  
is being conducted, the order shall specifically identify the 1644  
mentally retarded or developmentally disabled victim to whose 1645  
testimony it applies, the order applies only during the testimony 1646  
of the specified mentally retarded or developmentally disabled 1647  
victim, and the mentally retarded or developmentally disabled 1648  
victim giving the testimony shall not be required to testify at 1649  
the proceeding other than in accordance with the order. 1650

(2) A judge who makes any determination regarding the 1651  
admissibility of a deposition under divisions (B) and (C) of this 1652  
section, the videotaping of a deposition under division (B)(2) of 1653  
this section, or the taking of testimony outside of the room in 1654  
which a proceeding is being conducted under division (D) or (E) of 1655  
this section shall enter the determination and findings on the 1656  
record in the proceeding. 1657

**Sec. 2945.491. (A) As used in this section:** 1658

(1) "Mentally retarded person" and "developmentally disabled 1659  
person" have the same meanings as in section 5123.01 of the 1660  
Revised Code. 1661

(2) "Mentally retarded or developmentally disabled victim" 1662  
includes a mentally retarded or developmentally disabled person 1663

who was a victim of a felony violation identified in division 1664  
(B)(1) of this section or a felony offense of violence or against 1665  
whom was directed any conduct that constitutes, or that is an 1666  
element of, a felony violation identified in division (B)(1) of 1667  
this section or a felony offense of violence. 1668

(B)(1) At a trial on a charge of a felony violation of 1669  
section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 1670  
2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 1671  
2907.323 of the Revised Code or an offense of violence and in 1672  
which an alleged victim of the violation or offense was a mentally 1673  
retarded or developmentally disabled person, the court, upon 1674  
motion of the prosecutor in the case, may admit videotaped 1675  
preliminary hearing testimony of the mentally retarded or 1676  
developmentally disabled victim as evidence at the trial, in lieu 1677  
of the mentally retarded or developmentally disabled victim 1678  
appearing as a witness and testifying at trial, if all of the 1679  
following apply: 1680

(a) The videotape of the testimony was made at the 1681  
preliminary hearing at which probable cause of the violation 1682  
charged was found. 1683

(b) The videotape of the testimony was made in accordance 1684  
with division (C) of section 2937.11 of the Revised Code. 1685

(c) The testimony in the videotape is not excluded by the 1686  
hearsay rule and otherwise is admissible under the Rules of 1687  
Evidence. For purposes of this division, testimony is not excluded 1688  
by the hearsay rule if the testimony is not hearsay under Evidence 1689  
Rule 801, the testimony is within an exception to the hearsay rule 1690  
set forth in Evidence Rule 803, the mentally retarded or 1691  
developmentally disabled victim who gave the testimony is 1692  
unavailable as a witness, as defined in Evidence Rule 804, and the 1693  
testimony is admissible under that rule, or both of the following 1694

apply: 1695

(i) The accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the mentally retarded or developmentally disabled victim by direct, cross, or redirect examination. 1696  
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(ii) The court determines that there is reasonable cause to believe that if the mentally retarded or developmentally disabled victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the victim's participation at the trial. 1700  
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(2) If a mentally retarded or developmentally disabled victim of an alleged felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an alleged felony offense of violence testifies at the preliminary hearing in the case, if the testimony of the mentally retarded or developmentally disabled victim at the preliminary hearing was videotaped pursuant to division (C) of section 2937.11 of the Revised Code, and if the defendant in the case files a written objection to the use, pursuant to division (B)(1) of this section, of the videotaped testimony at the trial, the court, immediately after the filing of the objection, shall hold a hearing to determine whether the videotaped testimony of the mentally retarded or developmentally disabled victim should be admissible at trial under division (B)(1) of this section and, if it is admissible, whether the mentally retarded or developmentally disabled victim should be required to provide limited additional testimony of the type described in this division. At the hearing held pursuant to this division, the defendant and the prosecutor in the case may present any evidence that is relevant to the issues to be determined at the hearing, but the mentally retarded 1706  
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or developmentally disabled victim shall not be required to 1727  
testify at the hearing. 1728

After the hearing, the court shall not require the mentally 1729  
retarded or developmentally disabled victim to testify at the 1730  
trial, unless it determines that both of the following apply: 1731

(a) That the testimony of the mentally retarded or 1732  
developmentally disabled victim at trial is necessary for one or 1733  
more of the following reasons: 1734

(i) Evidence that was not available at the time of the 1735  
testimony of the mentally retarded or developmentally disabled 1736  
victim at the preliminary hearing has been discovered. 1737

(ii) The circumstances surrounding the case have changed 1738  
sufficiently to necessitate that the mentally retarded or 1739  
developmentally disabled victim testify at the trial. 1740

(b) That the testimony of the mentally retarded or 1741  
developmentally disabled victim at the trial is necessary to 1742  
protect the right of the defendant to a fair trial. 1743

The court shall enter its finding and the reasons for it in 1744  
the journal. If the court requires the mentally retarded or 1745  
developmentally disabled victim to testify at the trial, the 1746  
testimony of the victim shall be limited to the new evidence and 1747  
changed circumstances, and the mentally retarded or 1748  
developmentally disabled victim shall not otherwise be required to 1749  
testify at the trial. The required testimony of the mentally 1750  
retarded or developmentally disabled victim may be given in person 1751  
or, upon motion of the prosecution, may be taken by deposition in 1752  
accordance with division (B) of section 2945.482 of the Revised 1753  
Code provided the deposition is admitted as evidence under 1754  
division (C) of that section, may be taken outside of the 1755  
courtroom and televised into the courtroom in accordance with 1756  
division (D) of that section, or may be taken outside of the 1757

courtroom and recorded for showing in the courtroom in accordance 1758  
with division (E) of that section. 1759

(3) If videotaped testimony of a mentally retarded or 1760  
developmentally disabled victim is admitted at trial in accordance 1761  
with division (B)(1) of this section, the mentally retarded or 1762  
developmentally disabled victim shall not be compelled in any way 1763  
to appear as a witness at the trial, except as provided in 1764  
division (B)(2) of this section. 1765

(C) An order issued pursuant to division (B) of this section 1766  
shall specifically identify the mentally retarded or 1767  
developmentally disabled victim concerning whose testimony it 1768  
pertains. The order shall apply only during the testimony of the 1769  
mentally retarded or developmentally disabled victim it 1770  
specifically identifies. 1771

**Sec. 5120.173.** Any person who is required to report suspected 1772  
abuse or neglect of a child under eighteen years of age pursuant 1773  
to division (A) of section 2151.421 of the Revised Code, ~~and~~ any 1774  
person who is permitted to report or cause a report to be made of 1775  
suspected abuse or neglect of a child under eighteen years of age 1776  
pursuant to division (B) of that section, any person who is 1777  
required to report suspected abuse or neglect of a person with 1778  
mental retardation or a developmental disability pursuant to 1779  
division (C) of section 5123.61 of the Revised Code, and any 1780  
person who is permitted to report suspected abuse or neglect of a 1781  
person with mental retardation or a developmental disability 1782  
pursuant to division (F) of that section and who makes or causes 1783  
the report to be made, shall direct that report to the state 1784  
highway patrol if the child or the person with mental retardation 1785  
or a developmental disability is an inmate in the custody of a 1786  
state correctional institution. If the state highway patrol 1787  
determines after receipt of the report that it is probable that 1788

abuse or neglect of the inmate occurred, the patrol shall report 1789  
its findings to the department of rehabilitation and correction, 1790  
to the court that sentenced the inmate for the offense for which 1791  
the inmate is in the custody of the department, and to the 1792  
chairman and vice-chairman of the correctional institution 1793  
inspection committee established by section 103.71 of the Revised 1794  
Code. 1795

**Sec. 5123.081.** (A) As used in this section: 1796

(1) "Applicant" means a person who is under final 1797  
consideration for appointment to or employment with the department 1798  
of mental retardation and developmental disabilities, including, 1799  
but not limited to, a person who is being transferred to the 1800  
department and an employee who is being recalled or reemployed 1801  
after a layoff. 1802

(2) "Criminal records check" has the same meaning as in 1803  
section 109.572 of the Revised Code. 1804

(3) "Minor drug possession offense" has the same meaning as 1805  
in section 2925.01 of the Revised Code. 1806

(B) The director of mental retardation and developmental 1807  
disabilities shall request the superintendent of the bureau of 1808  
criminal identification and investigation to conduct a criminal 1809  
records check with respect to each applicant, except that the 1810  
director is not required to request a criminal records check for 1811  
an employee of the department who is being considered for a 1812  
different position or is returning after a leave of absence or 1813  
seasonal break in employment, as long as the director has no 1814  
reason to believe that the employee has committed any of the 1815  
offenses listed or described in division (E) of this section. 1816

If the applicant does not present proof that the applicant 1817  
has been a resident of this state for the five-year period 1818

immediately prior to the date upon which the criminal records 1819  
check is requested, the director shall request that the 1820  
superintendent of the bureau obtain information from the federal 1821  
bureau of investigation as a part of the criminal records check 1822  
for the applicant. If the applicant presents proof that the 1823  
applicant has been a resident of this state for that five-year 1824  
period, the director may request that the superintendent of the 1825  
bureau include information from the federal bureau of 1826  
investigation in the criminal records check. For purposes of this 1827  
division, an applicant may provide proof of residency in this 1828  
state by presenting, with a notarized statement asserting that the 1829  
applicant has been a resident of this state for that five-year 1830  
period, a valid driver's license, notification of registration as 1831  
an elector, a copy of an officially filed federal or state tax 1832  
form identifying the applicant's permanent residence, or any other 1833  
document the director considers acceptable. 1834

(C) The director shall provide to each applicant a copy of 1835  
the form prescribed pursuant to division (C)(1) of section 109.572 1836  
of the Revised Code, provide to each applicant a standard 1837  
impression sheet to obtain fingerprint impressions prescribed 1838  
pursuant to division (C)(2) of section 109.572 of the Revised 1839  
Code, obtain the completed form and impression sheet from each 1840  
applicant, and forward the completed form and impression sheet to 1841  
the superintendent of the bureau of criminal identification and 1842  
investigation at the time the criminal records check is requested. 1843

Any applicant who receives pursuant to this division a copy 1844  
of the form prescribed pursuant to division (C)(1) of section 1845  
109.572 of the Revised Code and a copy of an impression sheet 1846  
prescribed pursuant to division (C)(2) of that section and who is 1847  
requested to complete the form and provide a set of fingerprint 1848  
impressions shall complete the form or provide all the information 1849  
necessary to complete the form and shall provide the material with 1850

the impressions of the applicant's fingerprints. If an applicant, 1851  
upon request, fails to provide the information necessary to 1852  
complete the form or fails to provide impressions of the 1853  
applicant's fingerprints, the director shall not employ the 1854  
applicant. 1855

(D) The director may request any other state or federal 1856  
agency to supply the director with a written report regarding the 1857  
criminal record of each applicant. With regard to an applicant who 1858  
becomes a department employee, if the employee holds an 1859  
occupational or professional license or other credentials, the 1860  
director may request that the state or federal agency that 1861  
regulates the employee's occupation or profession supply the 1862  
director with a written report of any information pertaining to 1863  
the employee's criminal record that the agency obtains in the 1864  
course of conducting an investigation or in the process of 1865  
renewing the employee's license or other credentials. 1866

(E) Except as provided in division (K)(2) of this section and 1867  
in rules adopted by the director in accordance with division (M) 1868  
of this section, the director shall not employ a person to fill a 1869  
position with the department who has been convicted of or pleaded 1870  
guilty to any of the following: 1871

(1) A violation of section 2903.01, 2903.02, 2903.03, 1872  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 1873  
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 1874  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 1875  
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 1876  
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 1877  
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 1878  
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 1879  
section 2905.04 of the Revised Code as it existed prior to July 1, 1880  
1996, a violation of section 2919.23 of the Revised Code that 1881  
would have been a violation of section 2905.04 of the Revised Code 1882

as it existed prior to July 1, 1996, had the violation occurred 1883  
prior to that date, a violation of section 2925.11 of the Revised 1884  
Code that is not a minor drug possession offense, or felonious 1885  
sexual penetration in violation of former section 2907.12 of the 1886  
Revised Code; 1887

(2) A felony contained in the Revised Code that is not listed 1888  
in this division, if the felony bears a direct and substantial 1889  
relationship to the duties and responsibilities of the position 1890  
being filled; 1891

(3) Any offense contained in the Revised Code constituting a 1892  
misdemeanor of the first degree on the first offense and a felony 1893  
on a subsequent offense, if the offense bears a direct and 1894  
substantial relationship to the position being filled and the 1895  
nature of the services being provided by the department; 1896

(4) A violation of an existing or former municipal ordinance 1897  
or law of this state, any other state, or the United States, if 1898  
the offense is substantially equivalent to any of the offenses 1899  
listed or described in division (E)(1), (2), or (3) of this 1900  
section. 1901

(F) Prior to employing an applicant, the director shall 1902  
require the applicant to submit a statement with the applicant's 1903  
signature attesting that the applicant has not been convicted of 1904  
or pleaded guilty to any of the offenses listed or described in 1905  
division (E) of this section. The director also shall require the 1906  
applicant to sign an agreement under which the applicant agrees to 1907  
notify the director within fourteen calendar days if, while 1908  
employed with the department, the applicant is ever formally 1909  
charged with, convicted of, or pleads guilty to any of the 1910  
offenses listed or described in division (E) of this section. The 1911  
agreement shall inform the applicant that failure to report formal 1912  
charges, a conviction, or a guilty plea may result in being 1913  
dismissed from employment. 1914

(G) The director shall pay to the bureau of criminal 1915  
identification and investigation the fee prescribed pursuant to 1916  
division (C)(3) of section 109.572 of the Revised Code for each 1917  
criminal records check requested and conducted pursuant to this 1918  
section. 1919

(H)(1) Any report obtained pursuant to this section is not a 1920  
public record for purposes of section 149.43 of the Revised Code 1921  
and shall not be made available to any person, other than the 1922  
applicant who is the subject of the records check or criminal 1923  
records check or the applicant's representative, the department or 1924  
its representative, a county board of mental retardation and 1925  
developmental disabilities, and any court, hearing officer, or 1926  
other necessary individual involved in a case dealing with the 1927  
denial of employment to the applicant or the denial, suspension, 1928  
or revocation of a certificate or evidence of registration under 1929  
section 5123.082 of the Revised Code. 1930

(2) An individual for whom the director has obtained reports 1931  
under this section may submit a written request to the director to 1932  
have copies of the reports sent to any state agency, entity of 1933  
local government, or private entity. The individual shall specify 1934  
in the request the agencies or entities to which the copies are to 1935  
be sent. On receiving the request, the director shall send copies 1936  
of the reports to the agencies or entities specified. 1937

The director may request that a state agency, entity of local 1938  
government, or private entity send copies to the director of any 1939  
report regarding a records check or criminal records check that 1940  
the agency or entity possesses, if the director obtains the 1941  
written consent of the individual who is the subject of the 1942  
report. 1943

(I) The director shall request the registrar of motor 1944  
vehicles to supply the director with a certified abstract 1945

regarding the record of convictions for violations of motor 1946  
vehicle laws of each applicant who will be required by the 1947  
applicant's employment to transport individuals with mental 1948  
retardation or a developmental disability or to operate the 1949  
department's vehicles for any other purpose. For each abstract 1950  
provided under this section, the director shall pay the amount 1951  
specified in section 4509.05 of the Revised Code. 1952

(J) The director shall provide each applicant with a copy of 1953  
any report or abstract obtained about the applicant under this 1954  
section. 1955

(K)(1) The director shall inform each person, at the time of 1956  
the person's initial application for employment, that the person 1957  
is required to provide a set of impressions of the person's 1958  
fingerprints and that a criminal records check is required to be 1959  
conducted and satisfactorily completed in accordance with section 1960  
109.572 of the Revised Code if the person comes under final 1961  
consideration for employment as a precondition to employment in a 1962  
position. 1963

(2) The director may employ an applicant pending receipt of 1964  
reports requested under this section. The director shall terminate 1965  
employment of any such applicant if it is determined from the 1966  
reports that the applicant failed to inform the director that the 1967  
applicant had been convicted of or pleaded guilty to any of the 1968  
offenses listed or described in division (E) of this section. 1969

(L) The director may charge an applicant a fee for costs the 1970  
director incurs in obtaining reports, abstracts, or fingerprint 1971  
impressions under this section. A fee charged under this division 1972  
shall not exceed the amount of the fees the director pays under 1973  
divisions (G) and (I) of this section. If a fee is charged under 1974  
this division, the director shall notify the applicant of the 1975  
amount of the fee at the time of the applicant's initial 1976  
application for employment and that, unless the fee is paid, the 1977



director will not consider the applicant for employment.	1978
(M) The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section, including rules specifying circumstances under which the director may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (E) of this section but who meets standards in regard to rehabilitation set by the director.	1979 1980 1981 1982 1983 1984
<b>Sec. 5123.50.</b> As used in this section and sections 5123.51 <del>and</del> , 5123.52, <u>and 5123.541</u> of the Revised Code:	1985 1986
(A) "Abuse" means all of the following:	1987
(1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;	1988 1989
(2) Sexual abuse;	1990
(3) Verbal abuse.	1991
(B) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including violations of Chapter 2911. or 2913. of the Revised Code.	1992 1993 1994 1995
(C) "MR/DD employee" means all of the following:	1996
(1) An employee of the department of mental retardation and developmental disabilities;	1997 1998
(2) An employee of a county board of mental retardation and developmental disabilities;	1999 2000
(3) An "ICF/MR worker," as defined in section 5123.193 of the Revised Code;	2001 2002
(4) An individual who is employed in a position that includes providing specialized services to an individual with mental retardation or a <u>another</u> developmental disability.	2003 2004 2005

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

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

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

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

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

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

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

section 2151.421 of the Revised Code. On receipt of a notice under 2036  
section 2930.061 or 5123.541 of the Revised Code, the department 2037  
shall review the notice. 2038

2039

(B) The department shall do both of the following: 2040

(1) Investigate the allegation or adopt the findings of an 2041  
investigation or review of the allegation conducted by another 2042  
person or government entity and determine whether there is a 2043  
reasonable basis for the allegation; 2044

(2) If the department determines that there is a reasonable 2045  
basis for the allegation, conduct an adjudication pursuant to 2046  
Chapter 119. of the Revised Code. 2047

(C)(1) The department shall appoint an independent hearing 2048  
officer to conduct any hearing conducted pursuant to division 2049  
(B)(2) of this section, except that, if the hearing is regarding 2050  
an employee of the department who is represented by a union, the 2051  
department and a representative of the union shall jointly select 2052  
the hearing officer. 2053

(2) ~~No~~ (a) Except as provided in division (C)(2)(b) of this 2054  
section, no hearing shall be conducted under division (B)(2) of 2055  
this section until any criminal proceeding or collective 2056  
bargaining arbitration concerning the same allegation has 2057  
concluded. 2058

(b) The department may conduct a hearing pursuant to division 2059  
(B)(2) of this section before a criminal proceeding concerning the 2060  
same allegation is concluded if both of the following are the 2061  
case: 2062

(i) The department notifies the prosecutor responsible for 2063  
the criminal proceeding that the department proposes to conduct a 2064  
hearing. 2065

<u>(ii) The prosecutor consents to the hearing.</u>	2066
(3) In conducting a hearing pursuant to division (B)(2) of this section, the hearing officer shall do <del>both</del> <u>all</u> of the following:	2067 2068 2069
(a) Determine whether there is clear and convincing evidence that the MR/DD employee has done any of the following:	2070 2071
(i) <u>Misappropriated the property of <del>an individual</del> <u>one or more individuals</u> with mental retardation or a developmental disability that has a value, either separately or taken together, of one hundred dollars or more;</u>	2072 2073 2074 2075
<u>(ii) Misappropriated property of an individual with mental retardation or a developmental disability that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine, or cash dispensing machine;</u>	2076 2077 2078 2079 2080 2081
<del>(ii)</del> <u>(iii)</u> Knowingly abused <del>or neglected</del> such an individual;	2082
<del>(iii)</del> <u>(iv)</u> Recklessly abused or neglected such an individual, with resulting physical harm;	2083 2084
<del>(iv)</del> <u>(v)</u> Negligently abused or neglected such an individual, with resulting serious physical harm;	2085 2086
<u>(vi) Recklessly neglected such an individual, creating a substantial risk of serious physical harm;</u>	2087 2088
<u>(vii) Engaged in sexual conduct or had sexual contact with an individual with mental retardation or another developmental disability who was not the MR/DD employee's spouse and for whom the MR/DD employee was employed or under a contract to provide care;</u>	2089 2090 2091 2092 2093
<u>(viii) Unreasonably failed to make a report pursuant to division (C) of section 5123.61 of the Revised Code when the</u>	2094 2095

employee knew or should have known that the failure would result 2096  
in a substantial risk of harm to an individual with mental 2097  
retardation or a developmental disability. 2098

(b) Give weight to the decision in any collective bargaining 2099  
arbitration regarding the same allegation; 2100

(c) Give weight to any relevant facts presented at the 2101  
hearing. 2102

(D)(1) Unless the director of mental retardation and 2103  
developmental disabilities determines that there are extenuating 2104  
circumstances and except as provided in ~~divisions (D)(4) and~~ 2105  
division (E) of this section, the director shall include in the 2106  
registry established under section 5123.52 of the Revised Code the 2107  
name of an MR/DD employee if the director, after considering all 2108  
of the factors listed in division (C)(3) of this section, finds 2109  
that there is clear and convincing evidence that ~~the~~ an MR/DD 2110  
employee has done one or more of the things described in division 2111  
(C)(3)(a) of this section the director shall include the name of 2112  
the employee in the registry established under section 5123.52 of 2113  
the Revised Code. 2114

(2) Extenuating circumstances the director must consider 2115  
include the use of physical force by an MR/DD employee that was 2116  
necessary as self-defense. 2117

(3) If the director includes an MR/DD employee in the 2118  
registry established under section 5123.52 of the Revised Code, 2119  
the director shall notify the employee, the person or government 2120  
entity that employs or contracts with the employee, the individual 2121  
with mental retardation or a developmental disability who was the 2122  
subject of the report and that individual's legal guardian, if 2123  
any, the attorney general, and the prosecuting attorney or other 2124  
law enforcement agency. If the MR/DD employee holds a license, 2125  
certificate, registration, or other authorization to engage in a 2126

profession issued pursuant to Title XLVII of the Revised Code, the 2127  
director shall notify the appropriate agency, board, department, 2128  
or other entity responsible for regulating the employee's 2129  
professional practice. 2130

(4) ~~The director shall not include in the registry an~~ 2131  
~~individual who has been found not guilty by a court or jury of an~~ 2132  
~~offense arising from the same facts~~ If an individual whose name 2133  
appears on the registry is involved in a court proceeding or 2134  
arbitration arising from the same facts as the allegation 2135  
resulting in the individual's placement on the registry, the 2136  
disposition of the proceeding or arbitration shall be noted in the 2137  
registry next to the individual's name. 2138

(E) In the case of an allegation concerning an employee of 2139  
the department, after the hearing conducted pursuant to division 2140  
(B)(2) of this section, the director of health or that director's 2141  
designee shall review the decision of the hearing officer to 2142  
determine whether the standard described in division (C)~~(2)~~(3) of 2143  
this section has been met. If the director or designee determines 2144  
that the standard has been met and that no extenuating 2145  
circumstances exist, the director or designee shall notify the 2146  
director of mental retardation and developmental disabilities that 2147  
the MR/DD employee is to be included in the registry established 2148  
under section 5123.52 of the Revised Code. If the director of 2149  
mental retardation and developmental disabilities receives such 2150  
notification, the director shall include the MR/DD employee in the 2151  
registry, ~~unless division (D)(4) of this section applies,~~ and 2152  
shall provide the notification described in division (D)(3) of 2153  
this section. 2154

(F) If the department is required by Chapter 119. of the 2155  
Revised Code to give notice of an opportunity for a hearing and 2156  
the MR/DD employee subject to the notice does not timely request a 2157  
hearing in accordance with section 119.07 of the Revised Code, the 2158

department is not required to hold a hearing. 2159

(G) Files and records of investigations conducted pursuant to 2160  
this section are not public records as defined in section 149.43 2161  
of the Revised Code, but, on request, the department shall provide 2162  
copies of those files and records to the attorney general, a 2163  
prosecuting attorney, or a law enforcement agency. 2164

Sec. 5123.541. (A) No MR/DD employee shall engage in any 2165  
sexual conduct or have any sexual contact with an individual with 2166  
mental retardation or another developmental disability for whom 2167  
the MR/DD employee is employed or under a contract to provide care 2168  
unless the individual is the MR/DD employee's spouse. 2169

(B) Any MR/DD employee who violates division (A) of this 2170  
section shall be eligible to be included in the registry regarding 2171  
misappropriation, abuse, neglect, or other specified misconduct by 2172  
MR/DD employees established under section 5123.52 of the Revised 2173  
Code, in addition to any other sanction or penalty authorized or 2174  
required by law. 2175

(C)(1) Any person listed in division (C)(2) of section 2176  
5123.61 of the Revised Code who has reason to believe that an 2177  
MR/DD employee has violated division (A) of this section shall 2178  
immediately report that belief to the department of mental 2179  
retardation and developmental disabilities. 2180

(2) Any person who has reason to believe that an MR/DD 2181  
employee has violated division (A) of this section may report that 2182  
belief to the department of mental retardation and developmental 2183  
disabilities. 2184

Sec. 5123.542. (A) Each of the following shall annually 2185  
provide a written notice to each of its MR/DD employees explaining 2186  
the conduct for which an MR/DD employee may be included in the 2187  
registry established under section 5123.52 of the Revised Code: 2188

<u>(1) The department of mental retardation and developmental disabilities;</u>	2189
	2190
<u>(2) Each county board of mental retardation and developmental disabilities;</u>	2191
	2192
<u>(3) Each contracting entity, as defined in section 5126.281 of the Revised Code;</u>	2193
	2194
<u>(4) Each owner, operator, or administrator of a residential facility, as defined in section 5123.19 of the Revised Code;</u>	2195
	2196
<u>(5) Each owner, operator, or administrator of a program certified by the department to provide supported living.</u>	2197
	2198
<u>(B) The notice described in division (A) of this section shall be in a form and provided in a manner prescribed by the department of mental retardation and developmental disabilities. The form shall be the same for all persons and entities required to provide notice under division (A) of this section.</u>	2199
	2200
	2201
	2202
	2203
<u>(C) The fact that an MR/DD employee does not receive the notice required by this section does not exempt the employee from inclusion in the registry established under section 5123.52 of the Revised Code.</u>	2204
	2205
	2206
	2207
<b>Sec. 5123.61.</b> (A) As used in this section:	2208
(1) "Law enforcement agency" means the state highway patrol, the police department of a municipal corporation, or a county sheriff.	2209
	2210
	2211
(2) "Abuse" has the same meaning as in section 5123.50 of the Revised Code, except that it includes a misappropriation, as defined in that section.	2212
	2213
	2214
(3) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.	2215
	2216
(B) The department of mental retardation and developmental	2217



disabilities shall establish a registry office for the purpose of 2218  
maintaining reports of abuse, neglect, and other major unusual 2219  
incidents made to the department under this section and reports 2220  
received from county boards of mental retardation and 2221  
developmental disabilities under section 5126.31 of the Revised 2222  
Code. The department shall establish committees to review reports 2223  
of abuse, neglect, and other major unusual incidents. 2224

(C)(1) Any person listed in division (C)(2) of this section, 2225  
having reason to believe that a person with mental retardation or 2226  
a developmental disability has suffered or faces a substantial 2227  
risk of suffering any wound, injury, disability, or condition of 2228  
such a nature as to reasonably indicate abuse or neglect of that 2229  
person, shall immediately report or cause reports to be made of 2230  
such information to the entity specified in this division. Except 2231  
as provided in section 5120.173 of the Revised Code or as 2232  
otherwise provided in this division, the person making the report 2233  
shall make it to a law enforcement agency or to the county board 2234  
of mental retardation and developmental disabilities, ~~except that~~ 2235  
~~if.~~ If the report concerns a resident of a facility operated by 2236  
the department of mental retardation and developmental 2237  
disabilities the report shall be made either to a law enforcement 2238  
agency or to the department. If the report concerns any act or 2239  
omission of an employee of a county board of mental retardation 2240  
and developmental disabilities, the report immediately shall be 2241  
made to the department and to the county board. 2242

(2) All of the following persons are required to make a 2243  
report under division (C)(1) of this section: 2244

(a) Any physician, including a hospital intern or resident, 2245  
any dentist, podiatrist, chiropractor, practitioner of a limited 2246  
branch of medicine as specified in section 4731.15 of the Revised 2247  
Code, hospital administrator or employee of a hospital, nurse 2248  
licensed under Chapter 4723. of the Revised Code, employee of an 2249

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

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

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

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

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

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

employees of the legal rights service. 2281

(b) An attorney or physician is not required to make a report 2282  
pursuant to division (C)(1) of this section concerning any 2283  
communication the attorney or physician receives from a client or 2284  
patient in an attorney-client or physician-patient relationship, 2285  
if, in accordance with division (A) or (B) of section 2317.02 of 2286  
the Revised Code, the attorney or physician could not testify with 2287  
respect to that communication in a civil or criminal proceeding, 2288  
except that the client or patient is deemed to have waived any 2289  
testimonial privilege under division (A) or (B) of section 2317.02 2290  
of the Revised Code with respect to that communication and the 2291  
attorney or physician shall make a report pursuant to division 2292  
(C)(1) of this section, if both of the following apply: 2293

(i) The client or patient, at the time of the communication, 2294  
is a person with mental retardation or a developmental disability. 2295

(ii) The attorney or physician knows or suspects, as a result 2296  
of the communication or any observations made during that 2297  
communication, that the client or patient has suffered or faces a 2298  
substantial risk of suffering any wound, injury, disability, or 2299  
condition of a nature that reasonably indicates abuse or neglect 2300  
of the client or patient. 2301

(4) Any person who fails to make a report required under 2302  
division (C) of this section and who is an MR/DD employee, as 2303  
defined in section 5123.50 of the Revised Code, shall be eligible 2304  
to be included in the registry regarding misappropriation, abuse, 2305  
neglect, or other specified misconduct by MR/DD employees 2306  
established under section 5123.52 of the Revised Code. 2307

(D) The reports required under division (C) of this section 2308  
shall be made forthwith by telephone or in person and shall be 2309  
followed by a written report. The reports shall contain the 2310  
following: 2311

(1) The names and addresses of the person with mental 2312  
retardation or a developmental disability and the person's 2313  
custodian, if known; 2314

(2) The age of the person with mental retardation or a 2315  
developmental disability; 2316

(3) Any other information that would assist in the 2317  
investigation of the report. 2318

(E) When a physician performing services as a member of the 2319  
staff of a hospital or similar institution has reason to believe 2320  
that a person with mental retardation or a developmental 2321  
disability has suffered injury, abuse, or physical neglect, the 2322  
physician shall notify the person in charge of the institution or 2323  
that person's designated delegate, who shall make the necessary 2324  
reports. 2325

(F) Any person having reasonable cause to believe that a 2326  
person with mental retardation or a developmental disability has 2327  
suffered or faces a substantial risk of suffering abuse or neglect 2328  
may report ~~the belief~~, or cause a report to be made, of that 2329  
belief to the entity specified in this division. Except as 2330  
provided in section 5120.173 of the Revised Code or as otherwise 2331  
provided in this division, the person making the report shall make 2332  
it to a law enforcement agency or the county board of mental 2333  
retardation and developmental disabilities, ~~or, if.~~ If the person 2334  
is a resident of a facility operated by the department of mental 2335  
retardation and developmental disabilities, the report shall be 2336  
made to a law enforcement agency or to the department. If the 2337  
report concerns any act or omission of an employee of a county 2338  
board of mental retardation and developmental disabilities, the 2339  
report immediately shall be made to the department and to the 2340  
county board. 2341

(G)(1) Upon the receipt of a report concerning the possible 2342

abuse or neglect of a person with mental retardation or a 2343  
developmental disability, the law enforcement agency shall inform 2344  
the county board of mental retardation and developmental 2345  
disabilities or, if the person is a resident of a facility 2346  
operated by the department of mental retardation and developmental 2347  
disabilities, the director of the department or the director's 2348  
designee. 2349

(2) On receipt of a report under this section that includes 2350  
an allegation of action or inaction that may constitute a crime 2351  
under federal law or the law of this state, the department of 2352  
mental retardation and developmental disabilities shall notify the 2353  
law enforcement agency. 2354

(3) When a county board of mental retardation and 2355  
developmental disabilities receives a report under this section 2356  
that includes an allegation of action or inaction that may 2357  
constitute a crime under federal law or the law of this state, the 2358  
superintendent of the board or an individual the superintendent 2359  
designates under division (H) of this section shall notify the law 2360  
enforcement agency. The superintendent or individual shall notify 2361  
the department of mental retardation and developmental 2362  
disabilities when it receives any report under this section. 2363

(4) When a county board of mental retardation and 2364  
developmental disabilities receives a report under this section 2365  
and believes that the degree of risk to the person is such that 2366  
the report is an emergency, the superintendent of the board or an 2367  
employee of the board the superintendent designates shall attempt 2368  
a face-to-face contact with the person with mental retardation or 2369  
a developmental disability who allegedly is the victim within one 2370  
hour of the board's receipt of the report. 2371

(H) The superintendent of the board may designate an 2372  
individual to be responsible for notifying the law enforcement 2373  
agency and the department when the county board receives a report 2374

under this section. 2375

(I) An adult with mental retardation or a developmental 2376  
disability about whom a report is made may be removed from the 2377  
adult's place of residence only by law enforcement officers who 2378  
consider that the adult's immediate removal is essential to 2379  
protect the adult from further injury or abuse or in accordance 2380  
with the order of a court made pursuant to section 5126.33 of the 2381  
Revised Code. 2382

(J) A law enforcement agency shall investigate each report of 2383  
abuse or neglect it receives under this section. In addition, the 2384  
department, in cooperation with law enforcement officials, shall 2385  
investigate each report regarding a resident of a facility 2386  
operated by the department to determine the circumstances 2387  
surrounding the injury, the cause of the injury, and the person 2388  
responsible. The investigation shall be in accordance with the 2389  
memorandum of understanding prepared under section 5126.058 of the 2390  
Revised Code. The department shall determine, with the registry 2391  
office which shall be maintained by the department, whether prior 2392  
reports have been made concerning ~~and~~ an adult with mental 2393  
retardation or a developmental disability or other principals in 2394  
the case. If the department finds that the report involves action 2395  
or inaction that may constitute a crime under federal law or the 2396  
law of this state, it shall submit a report of its investigation, 2397  
in writing, to the law enforcement agency. If the person with 2398  
mental retardation or a developmental disability is an adult, with 2399  
the consent of the adult, the department shall provide such 2400  
protective services as are necessary to protect the adult. The law 2401  
enforcement agency shall make a written report of its findings to 2402  
the department. 2403

If the person is an adult and is not a resident of a facility 2404  
operated by the department, the county board of mental retardation 2405  
and developmental disabilities shall review the report of abuse or 2406

neglect in accordance with sections 5126.30 to 5126.33 of the 2407  
Revised Code and the law enforcement agency shall make the written 2408  
report of its findings to the county board. 2409

(K) Any person or any hospital, institution, school, health 2410  
department, or agency participating in the making of reports 2411  
pursuant to this section, any person participating as a witness in 2412  
an administrative or judicial proceeding resulting from the 2413  
reports, or any person or governmental entity that discharges 2414  
responsibilities under sections 5126.31 to 5126.33 of the Revised 2415  
Code shall be immune from any civil or criminal liability that 2416  
might otherwise be incurred or imposed as a result of such actions 2417  
except liability for perjury, unless the person or governmental 2418  
entity has acted in bad faith or with malicious purpose. 2419

(L) No employer or any person with the authority to do so 2420  
shall discharge, demote, transfer, prepare a negative work 2421  
performance evaluation, reduce pay or benefits, terminate work 2422  
privileges, or take any other action detrimental to an employee or 2423  
retaliate against an employee as a result of the employee's having 2424  
made a report under this section. This division does not preclude 2425  
an employer or person with authority from taking action with 2426  
regard to an employee who has made a report under this section if 2427  
there is another reasonable basis for the action. 2428

(M) Reports made under this section are not public records as 2429  
defined in section 149.43 of the Revised Code. Information 2430  
contained in the reports on request shall be made available to the 2431  
person who is the subject of the report, to the person's legal 2432  
counsel, and to agencies authorized to receive information in the 2433  
report by the department or by a county board of mental 2434  
retardation and developmental disabilities. 2435

(N) Notwithstanding section 4731.22 of the Revised Code, the 2436  
physician-patient privilege shall not be a ground for excluding 2437  
evidence regarding the injuries or physical neglect of a person 2438

with mental retardation or a developmental disability or the cause 2439  
thereof in any judicial proceeding resulting from a report 2440  
submitted pursuant to this section. 2441

Sec. 5123.614. (A) Subject to division (B) of this section, 2442  
on receipt of a report of a major unusual incident made pursuant 2443  
to section 5123.61 or 5126.31 of the Revised Code or rules adopted 2444  
under section 5123.612 of the Revised Code, the department of 2445  
mental retardation and developmental disabilities may do either of 2446  
the following: 2447

(1) Conduct an independent review or investigation of the 2448  
incident; 2449

(2) Request that an independent review or investigation of 2450  
the incident be conducted by a county board of mental retardation 2451  
and developmental disabilities that is not implicated in the 2452  
report, a regional council of government, or any other entity 2453  
authorized to conduct such investigations. 2454

(B) If a report described in division (A) of this section 2455  
concerning the health or safety of a person with mental 2456  
retardation or a developmental disability involves an allegation 2457  
that an employee of a county board of mental retardation and 2458  
developmental disabilities has created a substantial risk of 2459  
serious physical harm to a person with mental retardation or a 2460  
developmental disability, the department shall do one of the 2461  
following: 2462

(1) Conduct an independent investigation regarding the 2463  
incident; 2464

(2) Request that an independent review or investigation of 2465  
the incident be conducted by a county board of mental retardation 2466  
and developmental disabilities that is not implicated in the 2467  
report, a regional council of government, or any other entity 2468



authorized to conduct such investigations.

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

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

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

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

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

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

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

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<u>probate judge or the probate judge's representative selected by</u>	2498
<u>the probate judges or, if they are unable to do so for any reason,</u>	2499
<u>the probate judge who is senior in point of service or the senior</u>	2500
<u>probate judge's representative;</u>	2501
<u>(3) The county peace officer;</u>	2502
<u>(4) All chief municipal peace officers within the county;</u>	2503
<u>(5) Other law enforcement officers handling abuse, neglect,</u>	2504
<u>and exploitation of mentally retarded and developmentally disabled</u>	2505
<u>persons in the county;</u>	2506
<u>(6) The prosecuting attorney of the county;</u>	2507
<u>(7) The public children services agency;</u>	2508
<u>(8) The coroner of the county.</u>	2509
<u>(B) A memorandum of understanding shall set forth the normal</u>	2510
<u>operating procedure to be employed by all concerned officials in</u>	2511
<u>the execution of their respective responsibilities under this</u>	2512
<u>section and sections 313.12, 2151.421, 2903.16, 5126.31, and</u>	2513
<u>5126.33 of the Revised Code and shall have as its primary goal the</u>	2514
<u>elimination of all unnecessary interviews of persons who are the</u>	2515
<u>subject of reports made pursuant to this section. A failure to</u>	2516
<u>follow the procedure set forth in the memorandum by the concerned</u>	2517
<u>officials is not grounds for, and shall not result in, the</u>	2518
<u>dismissal of any charge or complaint arising from any reported</u>	2519
<u>case of abuse, neglect, or exploitation or the suppression of any</u>	2520
<u>evidence obtained as a result of any reported abuse, neglect, or</u>	2521
<u>exploitation and does not give any rights or grounds for appeal or</u>	2522
<u>post-conviction relief to any person.</u>	2523
<u>(C) A memorandum of understanding shall include, but is not</u>	2524
<u>limited to, all of the following:</u>	2525
<u>(1) The roles and responsibilities for handling emergency and</u>	2526
<u>nonemergency cases of abuse, neglect, or exploitation;</u>	2527

(2) The roles and responsibilities for handling and coordinating investigations of reported cases of abuse, neglect, or exploitation and methods to be used in interviewing the person who is the subject of the report and who allegedly was abused, neglected, or exploited; 2528  
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(3) The roles and responsibilities for addressing the categories of persons who may interview the person who is the subject of the report and who allegedly was abused, neglected, or exploited; 2533  
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(4) The roles and responsibilities for providing victim services to mentally retarded and developmentally disabled persons pursuant to Chapter 2930. of the Revised Code; 2537  
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(5) The roles and responsibilities for the filing of criminal charges against persons alleged to have abused, neglected, or exploited mentally retarded or developmentally disabled persons. 2540  
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(D) A memorandum of understanding may be signed by victim advocates, municipal court judges, municipal prosecutors, and any other person whose participation furthers the goals of a memorandum of understanding, as set forth in this section. 2543  
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**Sec. 5126.28.** (A) As used in this section: 2547

(1) "Applicant" means a person who is under final consideration for appointment or employment in a position with a county board of mental retardation and developmental disabilities, including, but not limited to, a person who is being transferred to the county board and an employee who is being recalled or reemployed after a layoff. 2548  
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(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code. 2554  
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(3) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code. 2556  
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(B) The superintendent of a county board of mental 2558  
retardation and developmental disabilities shall request the 2559  
superintendent of the bureau of criminal identification and 2560  
investigation to conduct a criminal records check with respect to 2561  
any applicant who has applied to the board for employment in any 2562  
position, except that a county board superintendent is not 2563  
required to request a criminal records check for an employee of 2564  
the board who is being considered for a different position or is 2565  
returning after a leave of absence or seasonal break in 2566  
employment, as long as the superintendent has no reason to believe 2567  
that the employee has committed any of the offenses listed or 2568  
described in division (E) of this section. 2569

If the applicant does not present proof that the applicant 2570  
has been a resident of this state for the five-year period 2571  
immediately prior to the date upon which the criminal records 2572  
check is requested, the county board superintendent shall request 2573  
that the superintendent of the bureau obtain information from the 2574  
federal bureau of investigation as a part of the criminal records 2575  
check for the applicant. If the applicant presents proof that the 2576  
applicant has been a resident of this state for that five-year 2577  
period, the county board superintendent may request that the 2578  
superintendent of the bureau include information from the federal 2579  
bureau of investigation in the criminal records check. For 2580  
purposes of this division, an applicant may provide proof of 2581  
residency in this state by presenting, with a notarized statement 2582  
asserting that the applicant has been a resident of this state for 2583  
that five-year period, a valid driver's license, notification of 2584  
registration as an elector, a copy of an officially filed federal 2585  
or state tax form identifying the applicant's permanent residence, 2586  
or any other document the superintendent considers acceptable. 2587

(C) The county board superintendent shall provide to each 2588  
applicant a copy of the form prescribed pursuant to division 2589

(C)(1) of section 109.572 of the Revised Code, provide to each 2590  
applicant a standard impression sheet to obtain fingerprint 2591  
impressions prescribed pursuant to division (C)(2) of section 2592  
109.572 of the Revised Code, obtain the completed form and 2593  
impression sheet from each applicant, and forward the completed 2594  
form and impression sheet to the superintendent of the bureau of 2595  
criminal identification and investigation at the time the criminal 2596  
records check is requested. 2597

Any applicant who receives pursuant to this division a copy 2598  
of the form prescribed pursuant to division (C)(1) of section 2599  
109.572 of the Revised Code and a copy of an impression sheet 2600  
prescribed pursuant to division (C)(2) of that section and who is 2601  
requested to complete the form and provide a set of fingerprint 2602  
impressions shall complete the form or provide all the information 2603  
necessary to complete the form and shall provide the impression 2604  
sheet with the impressions of the applicant's fingerprints. If an 2605  
applicant, upon request, fails to provide the information 2606  
necessary to complete the form or fails to provide impressions of 2607  
the applicant's fingerprints, the county board superintendent 2608  
shall not employ that applicant. 2609

(D) A county board superintendent may request any other state 2610  
or federal agency to supply the board with a written report 2611  
regarding the criminal record of each applicant. With regard to an 2612  
applicant who becomes a board employee, if the employee holds an 2613  
occupational or professional license or other credentials, the 2614  
superintendent may request that the state or federal agency that 2615  
regulates the employee's occupation or profession supply the board 2616  
with a written report of any information pertaining to the 2617  
employee's criminal record that the agency obtains in the course 2618  
of conducting an investigation or in the process of renewing the 2619  
employee's license or other credentials. 2620

(E) Except as provided in division (K)(2) of this section and 2621

in rules adopted by the department of mental retardation and 2622  
developmental disabilities in accordance with division (M) of this 2623  
section, no county board of mental retardation and developmental 2624  
disabilities shall employ a person to fill a position with the 2625  
board who has been convicted of or pleaded guilty to any of the 2626  
following: 2627

(1) A violation of section 2903.01, 2903.02, 2903.03, 2628  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2629  
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2630  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2631  
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2632  
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2633  
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2634  
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 2635  
section 2905.04 of the Revised Code as it existed prior to July 1, 2636  
1996, a violation of section 2919.23 of the Revised Code that 2637  
would have been a violation of section 2905.04 of the Revised Code 2638  
as it existed prior to July 1, 1996, had the violation occurred 2639  
prior to that date, a violation of section 2925.11 of the Revised 2640  
Code that is not a minor drug possession offense, or felonious 2641  
sexual penetration in violation of former section 2907.12 of the 2642  
Revised Code; 2643

(2) A felony contained in the Revised Code that is not listed 2644  
in this division, if the felony bears a direct and substantial 2645  
relationship to the duties and responsibilities of the position 2646  
being filled; 2647

(3) Any offense contained in the Revised Code constituting a 2648  
misdemeanor of the first degree on the first offense and a felony 2649  
on a subsequent offense, if the offense bears a direct and 2650  
substantial relationship to the position being filled and the 2651  
nature of the services being provided by the county board; 2652

(4) A violation of an existing or former municipal ordinance 2653

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

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

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

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

or revocation of a certificate or evidence of registration under 2686  
section 5126.25 of the Revised Code. 2687

(2) An individual for whom a county board superintendent has 2688  
obtained reports under this section may submit a written request 2689  
to the county board to have copies of the reports sent to any 2690  
state agency, entity of local government, or private entity. The 2691  
individual shall specify in the request the agencies or entities 2692  
to which the copies are to be sent. On receiving the request, the 2693  
county board shall send copies of the reports to the agencies or 2694  
entities specified. 2695

A county board may request that a state agency, entity of 2696  
local government, or private entity send copies to the board of 2697  
any report regarding a records check or criminal records check 2698  
that the agency or entity possesses, if the county board obtains 2699  
the written consent of the individual who is the subject of the 2700  
report. 2701

(I) Each county board superintendent shall request the 2702  
registrar of motor vehicles to supply the superintendent with a 2703  
certified abstract regarding the record of convictions for 2704  
violations of motor vehicle laws of each applicant who will be 2705  
required by the applicant's employment to transport individuals 2706  
with mental retardation or developmental disabilities or to 2707  
operate the board's vehicles for any other purpose. For each 2708  
abstract provided under this section, the board shall pay the 2709  
amount specified in section 4509.05 of the Revised Code. 2710

(J) The county board superintendent shall provide each 2711  
applicant with a copy of any report or abstract obtained about the 2712  
applicant under this section. At the request of the director of 2713  
mental retardation and developmental disabilities, the 2714  
superintendent also shall provide the director with a copy of a 2715  
report or abstract obtained under this section. 2716



(K)(1) The county board superintendent shall inform each 2717  
person, at the time of the person's initial application for 2718  
employment, that the person is required to provide a set of 2719  
impressions of the person's fingerprints and that a criminal 2720  
records check is required to be conducted and satisfactorily 2721  
completed in accordance with section 109.572 of the Revised Code 2722  
if the person comes under final consideration for appointment or 2723  
employment as a precondition to employment in a position. 2724

(2) A board may employ an applicant pending receipt of 2725  
reports requested under this section. The board shall terminate 2726  
employment of any such applicant if it is determined from the 2727  
reports that the applicant failed to inform the county board that 2728  
the applicant had been convicted of or pleaded guilty to any of 2729  
the offenses listed or described in division (E) of this section. 2730

(L) The board may charge an applicant a fee for costs it 2731  
incurs in obtaining reports, abstracts, or fingerprint impressions 2732  
under this section. A fee charged under this division shall not 2733  
exceed the amount of the fees the board pays under divisions (G) 2734  
and (I) of this section. If a fee is charged under this division, 2735  
the board shall notify the applicant of the amount of the fee at 2736  
the time of the applicant's initial application for employment and 2737  
that, unless the fee is paid, the board will not consider the 2738  
applicant for employment. 2739

(M) The department of mental retardation and developmental 2740  
disabilities shall adopt rules pursuant to Chapter 119. of the 2741  
Revised Code to implement this section and section 5126.281 of the 2742  
Revised Code, including rules specifying circumstances under which 2743  
a county board or contracting entity may hire a person who has 2744  
been convicted of or pleaded guilty to an offense listed or 2745  
described in division (E) of this section but who meets standards 2746  
in regard to rehabilitation set by the department. The rules may 2747  
not authorize a county board or contracting entity to hire an 2748

individual who is included in the registry established under 2749  
section 5123.52 of the Revised Code. 2750

**Sec. 5126.30.** As used in sections 5126.30 to 5126.34 of the 2751  
Revised Code: 2752

(A) "Adult" means a person eighteen years of age or older 2753  
with mental retardation or a developmental disability. 2754

(B) "Caretaker" means a person who is responsible for the 2755  
care of an adult by order of a court, including an order of 2756  
guardianship, or who assumes the responsibility for the care of an 2757  
adult as a volunteer, as a family member, by contract, or by the 2758  
acceptance of payment for care. 2759

(C) "Abuse" has the same meaning as in section 5123.50 of the 2760  
Revised Code, except that it includes a misappropriation, as 2761  
defined in that section. 2762

(D) "Neglect" has the same meaning as in section 5123.50 of 2763  
the Revised Code. 2764

(E) "Exploitation" means the unlawful or improper act of a 2765  
caretaker using an adult or an adult's resources for monetary or 2766  
personal benefit, profit, or gain, including misappropriation, as 2767  
defined in section 5123.50 of the Revised Code, of an adult's 2768  
resources. 2769

(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, 2770  
or Friday, except when that day is a holiday as defined in section 2771  
1.14 of the Revised Code. 2772

~~(F)~~(G) "Incapacitated" means lacking understanding or 2773  
capacity, with or without the assistance of a caretaker, to make 2774  
and carry out decisions regarding food, clothing, shelter, health 2775  
care, or other necessities, but does not include mere refusal to 2776  
consent to the provision of services. 2777

(H) "Emergency protective services" means protective services 2778

furnished to a person with mental retardation or a developmental disability to prevent immediate physical harm. 2779  
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(I) "Protective services" means services provided by the county board of mental retardation and developmental disabilities to an adult with mental retardation or a developmental disability for the prevention, correction, or discontinuance of an act of as well as conditions resulting from abuse, neglect, or exploitation. 2781  
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(J) "Protective service plan" means an individualized plan developed by the county board of mental retardation and developmental disabilities to prevent the further abuse, neglect, or exploitation of an adult with mental retardation or a developmental disability. 2786  
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(K) "Substantial risk" has the same meaning as in section 2901.01 of the Revised Code. 2791  
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(L) "Party" means all of the following: 2793

(1) An adult who is the subject of a probate proceeding under sections 5126.30 to 5126.33 of the Revised Code; 2794  
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(2) A caretaker, unless otherwise ordered by the probate court; 2796  
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(3) Any other person designated as a party by the probate court including but not limited to, the adult's spouse, custodian, guardian, or parent. 2798  
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(M) "Board" has the same meaning as in section 5126.02 of the Revised Code. 2801  
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**Sec. 5126.33.** (A) A county board of mental retardation and developmental disabilities may file a complaint with the probate court of the county in which an adult with mental retardation or a developmental disability resides for an order authorizing the board to arrange services described in division (C) of section 2803  
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5126.31 of the Revised Code for that adult if the adult is 2808  
eligible to receive services or support under section 5126.041 of 2809  
the Revised Code and the board has been unable to secure consent. 2810  
The complaint shall include: 2811

(1) The name, age, and address of the adult; 2812

(2) Facts describing the nature of the abuse ~~or~~, neglect, or 2813  
exploitation and supporting the board's belief that services are 2814  
needed; 2815

(3) The types of services proposed by the board, as set forth 2816  
in the ~~individualized~~ protective service plan ~~prepared pursuant to~~ 2817  
described in division (J) of section 5126.31 5126.30 of the 2818  
Revised Code and filed with the complaint; 2819

(4) Facts showing the board's attempts to obtain the consent 2820  
of the adult or the adult's guardian to the services. 2821

(B) The board shall give the adult notice of the filing of 2822  
the complaint and in simple and clear language shall inform the 2823  
adult of the adult's rights in the hearing under division (C) of 2824  
this section and explain the consequences of a court order. This 2825  
notice shall be personally served upon ~~the adult~~ all parties, and 2826  
also shall be given to ~~the adult's caretaker~~, the adult's legal 2827  
counsel, if any, and the legal rights service. The notice shall be 2828  
given at least twenty-four hours prior to the hearing, although 2829  
the court may waive this requirement upon a showing that there is 2830  
a substantial risk that the adult will suffer immediate physical 2831  
harm in the twenty-four hour period and that the board has made 2832  
reasonable attempts to give the notice required by this division. 2833

(C) Upon the filing of a complaint for an order under this 2834  
section, the court shall hold a hearing at least twenty-four hours 2835  
and no later than seventy-two hours after the notice under 2836  
division (B) of this section has been given unless the court has 2837

waived the notice. ~~The adult~~ All parties shall have the right to 2838  
be present at the hearing, present evidence, and examine and 2839  
cross-examine witnesses. The Ohio Rules of Evidence shall apply to 2840  
a hearing conducted pursuant to this division. The adult shall be 2841  
represented by counsel unless the court finds that the adult has 2842  
made a voluntary, informed, and knowing waiver of the right to 2843  
counsel. If the adult is indigent, the court shall appoint counsel 2844  
to represent the adult. The board shall be represented by the 2845  
county prosecutor or an attorney designated by the board. 2846

(D)(1) The court shall issue an order authorizing the board 2847  
to arrange the protective services if it finds, on the basis of 2848  
clear and convincing evidence, all of the following: 2849

(a) The adult has been abused ~~or~~, neglected, or exploited; 2850

(b) The adult is incapacitated; 2851

(c) There is a substantial risk to the adult of immediate 2852  
physical harm or death; 2853

(d) The adult is in need of the services; 2854

(e) No person authorized by law or court order to give 2855  
consent for the adult is available or willing to consent to the 2856  
services. 2857

(2) The board shall develop a detailed protective service 2858  
plan describing the services that the board will provide, or 2859  
arrange for the provision of, to the adult to prevent further 2860  
abuse, neglect, or exploitation. The board shall submit the plan 2861  
to the court for approval. The protective service plan may be 2862  
changed only by court order. 2863

(3) In formulating the order, the court shall consider the 2864  
individual protective service plan and shall specifically 2865  
designate the services that are necessary to deal with the abuse 2866  
~~or~~, neglect, or exploitation or condition resulting from abuse ~~or~~, 2867

neglect, or exploitation and that are available locally, and 2868  
authorize the board to arrange for these services only. The court 2869  
shall limit the provision of these services to a period not 2870  
exceeding ~~fourteen days~~ six months, renewable for an additional 2871  
~~fourteen-day~~ six-month period on a showing by the board that 2872  
continuation of the order is necessary. 2873

(E) If the court finds that all other options for meeting the 2874  
adult's needs have been exhausted, it may order that the adult be 2875  
removed from the adult's place of residence and placed in another 2876  
residential setting. Before issuing that order, the court shall 2877  
consider the adult's choice of residence and shall determine that 2878  
the new residential setting is the least restrictive alternative 2879  
available for meeting the adult's needs and is a place where the 2880  
adult can obtain the necessary requirements for daily living in 2881  
safety. The court shall not order an adult to a hospital or public 2882  
hospital as defined in section 5122.01 or a state institution as 2883  
defined in section 5123.01 of the Revised Code. 2884

(F) The court shall not authorize a change in an adult's 2885  
placement ordered under division (E) of this section unless it 2886  
finds compelling reasons to justify a change. The parties to whom 2887  
notice was given in division (B) of this section shall be given 2888  
notice of a proposed change at least five working days prior to 2889  
the change. 2890

(G) The adult, the board, or any other person who received 2891  
notice of the petition may file a motion for modification of the 2892  
court order at any time. 2893

(H) The county board shall pay court costs incurred in 2894  
proceedings brought pursuant to this section. The adult shall not 2895  
be required to pay for court-ordered services. 2896

(I)(1) After the filing of a complaint for an order under 2897  
this section, the court, prior to the final disposition, may enter 2898

any temporary order that the court finds necessary to protect the 2899  
adult with mental retardation or a developmental disability from 2900  
abuse, neglect, or exploitation including, but not limited to, the 2901  
following: 2902

(a) A temporary protection order; 2903

(b) An order requiring the evaluation of the adult; 2904

(c) An order requiring a party to vacate the adult's place of 2905  
residence or legal settlement, provided that, subject to division 2906  
(K)(1)(d) of this section, no operator of a residential facility 2907  
licensed by the department may be removed under this division; 2908

(d) In the circumstances described in, and in accordance with 2909  
the procedures set forth in, section 5123.191 of the Revised Code, 2910  
an order of the type described in that section that appoints a 2911  
receiver to take possession of and operate a residential facility 2912  
licensed by the department. 2913

(2) The court may grant an ex parte order pursuant to this 2914  
division on its own motion or if a party files a written motion or 2915  
makes an oral motion requesting the issuance of the order and 2916  
stating the reasons for it if it appears to the court that the 2917  
best interest and the welfare of the adult require that the court 2918  
issue the order immediately. The court, if acting on its own 2919  
motion, or the person requesting the granting of an ex parte 2920  
order, to the extent possible, shall give notice of its intent or 2921  
of the request to all parties, the adult's legal counsel, if any, 2922  
and the legal rights service. If the court issues an ex parte 2923  
order, the court shall hold a hearing to review the order within 2924  
seventy-two hours after it is issued or before the end of the next 2925  
day after the day on which it is issued, whichever occurs first. 2926  
The court shall give written notice of the hearing to all parties 2927  
to the action. 2928

Sec. 5126.331. (A) A probate court, through a probate judge 2929  
or magistrate, may issue by telephone an ex parte emergency order 2930  
authorizing any of the actions described in division (B) of this 2931  
section if all of the following are the case: 2932

(1) The court receives notice from the county board of mental 2933  
retardation and developmental disabilities, or an authorized 2934  
employee of the board, that the board or employee believes an 2935  
emergency order is needed as described in this section. 2936

(2) The adult who is the subject of the notice is eligible to 2937  
receive services or support under section 5126.041 of the Revised 2938  
Code. 2939

(3) There is reasonable cause to believe that the adult is 2940  
incapacitated. 2941

(4) There is reasonable cause to believe that there is a 2942  
substantial risk to the adult of immediate physical harm or death. 2943

(B) An order issued under this section may authorize the 2944  
county board of mental retardation and developmental disabilities 2945  
to do any of the following: 2946

(1) Provide, or arrange for the provision of, emergency 2947  
protective services for the adult; 2948

(2) Remove the adult from the adult's place of residence or 2949  
legal settlement; 2950

(3) Remove the adult from the place where the abuse, neglect, 2951  
or exploitation occurred. 2952

(C) A court shall not issue an order under this section to 2953  
remove an adult from a place described in division (B)(2) or (3) 2954  
of this section until the court is satisfied that reasonable 2955  
efforts have been made to notify the adult and any person with 2956  
whom the adult resides of the proposed removal and the reasons for 2957



it, except that, the court may issue an order prior to giving the 2958  
notice if one of the following is the case: 2959

(1) Notification could jeopardize the physical or emotional 2960  
safety of the adult. 2961

(2) The notification could result in the adult being removed 2962  
from the court's jurisdiction. 2963

(D) An order issued under this section shall be in effect for 2964  
not longer than twenty-four hours, except that if the day 2965  
following the day on which the order is issued is a weekend-day or 2966  
legal holiday, the order shall remain in effect until the next 2967  
business day. 2968

(E)(1) Except as provided in division (E)(2) of this section, 2969  
not later than twenty-four hours after an order is issued under 2970  
this section, the county board or employee that provided notice to 2971  
the probate court shall file a complaint with the court in 2972  
accordance with division (A) of section 5126.33 of the Revised 2973  
Code. 2974

(2) If the day following the day on which the order was 2975  
issued is a weekend-day or a holiday, the county board or employee 2976  
shall file the complaint with the probate court on the next 2977  
business day. 2978

(3) Except as provided in section 5126.332 of the Revised 2979  
Code, proceedings on the complaint filed pursuant to this division 2980  
shall be conducted in accordance with section 5126.33 of the 2981  
Revised Code. 2982

**Sec. 5126.332.** (A) If an order is issued pursuant to section 2983  
5126.331 of the Revised Code, the court shall hold a hearing not 2984  
later than twenty-four hours after the issuance to determine 2985  
whether there is probable cause for the order, except that if the 2986  
day following the day on which the order is issued is a 2987

weekend-day or legal holiday, the court shall hold the hearing on 2988  
the next business day. 2989

(B) At the hearing, the court: 2990

(1) Shall consider the adult's choice of residence and 2991  
determine whether protective services are the least restrictive 2992  
alternative available for meeting the adult's needs; 2993

(2) May issue temporary orders to protect the adult from 2994  
immediate physical harm, including, but not limited to, temporary 2995  
protection orders, evaluations, and orders requiring a party to 2996  
vacate the adult's place of residence or legal settlement; 2997

(3) May order emergency protective services. 2998

(C) A temporary order issued pursuant to division (B)(2) of 2999  
this section is effective for thirty days. The court may renew the 3000  
order for an additional thirty-day period. 3001

**Sec. 5126.333.** Any person who has reason to believe that 3002  
there is a substantial risk to an adult with mental retardation or 3003  
a developmental disability of immediate physical harm or death and 3004  
that the responsible county board of mental retardation and 3005  
developmental disabilities has failed to seek an order pursuant to 3006  
section 5126.33 or 5126.331 of the Revised Code may notify the 3007  
department of mental retardation and developmental disabilities. 3008  
Within twenty-four hours of receipt of such notice, the department 3009  
shall cause an investigation to be conducted regarding the notice. 3010  
The department shall provide assistance to the county board to 3011  
provide for the health and safety of the adult as permitted by 3012  
law. 3013

**Section 2.** That existing sections 109.572, 313.12, 2108.50, 3014  
2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 3015  
5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 of the Revised 3016

Code are hereby repealed. 3017

**Section 3.** The Department of Mental Retardation and 3018  
Developmental Disabilities shall adopt rules pursuant to Chapter 3019  
119. of the Revised Code that provide standards for the 3020  
substantiation by the Department and by county boards of mental 3021  
retardation of reports of abuse or neglect filed under section 3022  
5123.61 of the Revised Code. 3023

**Section 4.** That the version of section 5123.50 of the Revised 3024  
Code that is scheduled to take effect on December 31, 2003, be 3025  
amended to read as follows: 3026

**Sec. 5123.50.** As used in this section and sections 5123.51 3027  
~~and~~, 5123.52, and 5123.541 of the Revised Code: 3028

(A) "Abuse" means all of the following: 3029

(1) The use of physical force that can reasonably be expected 3030  
to result in physical harm or serious physical harm; 3031

(2) Sexual abuse; 3032

(3) Verbal abuse. 3033

(B) "Misappropriation" means depriving, defrauding, or 3034  
otherwise obtaining the real or personal property of an individual 3035  
by any means prohibited by the Revised Code, including violations 3036  
of Chapter 2911. or 2913. of the Revised Code. 3037

(C) "MR/DD employee" means all of the following: 3038

(1) An employee of the department of mental retardation and 3039  
developmental disabilities; 3040

(2) An employee of a county board of mental retardation and 3041  
developmental disabilities; 3042

(3) An employee in a position that includes providing 3043

specialized services to an individual with mental retardation or a 3044  
another developmental disability. 3045

(D) "Neglect" means, when there is a duty to do so, failing 3046  
to provide an individual with any treatment, care, goods, or 3047  
services that are necessary to maintain the health and safety of 3048  
the individual. 3049

(E) "Physical harm" and "serious physical harm" have the same 3050  
meanings as in section 2901.01 of the Revised Code. 3051

(F) "Sexual abuse" means unlawful sexual conduct or sexual 3052  
~~contact, as those terms are defined in section 2907.01 of the~~ 3053  
~~Revised Code.~~ 3054

(G) "Specialized services" means any program or service 3055  
designed and operated to serve primarily individuals with mental 3056  
retardation or a developmental disability, including a program or 3057  
service provided by an entity licensed or certified by the 3058  
department of mental retardation and developmental disabilities. A 3059  
program or service available to the general public is not a 3060  
specialized service. 3061

(H) "Verbal abuse" means purposely using words to threaten, 3062  
coerce, intimidate, harass, or humiliate an individual. 3063

(I) "Sexual conduct," "sexual contact," and "spouse" have the 3064  
same meanings as in section 2907.01 of the Revised Code. 3065

**Section 5.** That the existing version of section 5123.50 of 3066  
the Revised Code that is scheduled to take effect on December 31, 3067  
2003, is hereby repealed. 3068

**Section 6.** Sections 4 and 5 of this act shall take effect 3069  
December 31, 2003. 3070

**Section 7.** Sections 107.31 and 107.32 of the Revised Code 3071

shall apply to all state institutional facilities, as defined in 3072  
section 107.31 of the Revised Code, that were in operation on or 3073  
after January 1, 2003. 3074

**Section 8.** Section 109.572 of the Revised Code is presented 3075  
in this act as a composite of the section as amended by both Sub. 3076  
H.B. 448 and Sub. H.B. 538 of the 123rd General Assembly. Section 3077  
2151.421 of the Revised Code is presented in this act as a 3078  
composite of the section as amended by Am. Sub. H.B. 374, Sub. 3079  
H.B. 510, and Am. Sub. S.B. 221 all of the 124th General Assembly. 3080  
Section 5126.28 of the Revised Code is presented in this act as a 3081  
composite of the section as amended by both Sub. H.B. 538 and Sub. 3082  
S.B. 171 of the 123rd General Assembly. The General Assembly, 3083  
applying the principle stated in division (B) of section 1.52 of 3084  
the Revised Code that amendments are to be harmonized if 3085  
reasonably capable of simultaneous operation, finds that the 3086  
composites are the resulting versions of the sections in effect 3087  
prior to the effective date of the sections as presented in this 3088  
act. 3089