

**As Reported by the House Juvenile and Family Law Committee**

**125th General Assembly**

**Regular Session**

**2003-2004**

**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**

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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  
control of the department of rehabilitation and correction, the 29  
department of youth services, the department of mental retardation 30  
and developmental disabilities, the department of mental health, 31  
or any other agency or department of state government. 32

(2) "Target state agency" means the agency of state 33  
government that the governor identifies in a notice provided under 34  
division (C)(1) of this section and that operates an institutional 35  
facility or facilities the governor believes should be closed. 36

(B) Notwithstanding any other provision of law, the governor 37  
shall not order the closure of any state institutional facility, 38  
for the purpose of expenditure reductions or budget cuts, other 39  
than in accordance with this section. 40

(C) If the governor determines that necessary expenditure 41  
reductions and budget cuts cannot be made without closing one or 42  
more state institutional facilities, all of the following apply: 43

(1) The governor shall determine which state agency's 44  
institutional facility or facilities the governor believes should 45  
be closed, shall notify the general assembly and that agency of 46  
that determination, and shall specify in the notice the number of 47

facilities of that agency that the governor believes should be  
closed and the anticipated savings to be obtained through that  
closure or those closures.

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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 commission shall meet 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  
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, if the governor still believes that necessary

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expenditure reductions and budget cuts cannot be made without  
closing one or more state institutional facilities, the governor  
may close state institutional facilities of the target state  
agency that are identified in the commission's recommendation  
contained in the report. Except as otherwise provided in this  
division, the governor shall not close any state institutional  
facility of the target state agency that is not listed in the  
commission's recommendation, and shall not close multiple  
institutions in any order other than the order of the commission's  
preference as specified in the recommendation. The governor is not  
required to follow the recommendation of the commission in closing  
an institutional facility if the governor determines that a  
significant change in circumstances make the recommendation  
unworkable.

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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 eleven members. Three members shall be members of the  
house of representatives appointed by the speaker of the house of  
representatives, none of the members so appointed may have a state  
institutional facility of the target state agency in the member's  
district, two of the members so appointed shall be members of the  
majority political party in the house of representatives, and one  
of the members so appointed shall not be a member of the majority  
political party in the house of representatives. Three members  
shall be members of the senate appointed by the president of the  
senate, none of the members so appointed may have a state  
institutional facility of the target state agency in the member's  
district, two of the members so appointed shall be members of the  
majority political party in the senate, and one of the members so

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appointed shall not be a member of the majority political party in  
the senate. One member shall be the director of budget and  
management. One member shall be the director, or other agency  
head, of the target state agency. Two members shall be private  
executives with expertise in facility utilization, with one of  
these members appointed by the speaker of the house of  
representatives and the other appointed by the president of the  
senate, and neither of the members so appointed may have a state  
institutional facility of the target state agency in the county in  
which the member resides. One member shall be a representative of  
the Ohio civil service employees' association or other  
representative association of the employees of the target state  
agency, appointed by the speaker of the house of representatives.  
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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(5) The impact of collective bargaining on facility

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<u>operations;</u>	143
<u>(6) The utilization and maximization of resources;</u>	144
<u>(7) Continuity of the staff and ability to serve the facility</u> <u>population;</u>	145 146
<u>(8) Continuing costs following closure of a facility;</u>	147
<u>(9) The impact of the closure on the local economy;</u>	148
<u>(10) Alternatives and opportunities for consolidation with</u> <u>other facilities.</u>	149 150
<u>The commission shall meet as often as necessary to make its</u> <u>determination, may take testimony and consider all relevant</u> <u>information, and shall prepare and provide in accordance with</u> <u>division (C)(2) of this section a report containing its</u> <u>recommendations. Upon providing the report regarding the target</u> <u>state agency, the commission shall cease to exist, provided that</u> <u>another commission shall be created for the same state agency if</u> <u>the agency is made a target state agency in another report</u> <u>provided under division (C)(1) of this section and provided that</u> <u>another commission shall be created for a different state agency</u> <u>if that other agency is made a target state agency in a report</u> <u>provided under that division.</u>	151 152 153 154 155 156 157 158 159 160 161 162
<u>Sec. 107.32. Notwithstanding any other provision of law, if</u> <u>the closure of the particular facility is authorized under section</u> <u>107.31 of the Revised Code, the governor may terminate any</u> <u>contract entered into under section 9.06 of the Revised Code for</u> <u>the private operation and management of any correctional facility</u> <u>under the control of the department of rehabilitation and</u> <u>correction, including, but not limited to the initial intensive</u> <u>program prison established pursuant to section 5120.033 of the</u> <u>Revised Code as it existed prior to the effective date of this</u> <u>section, and terminate the operation of, and close that facility.</u>	163 164 165 166 167 168 169 170 171 172

If the governor terminates a contract for the private operation 173  
and management of a facility, and terminates the operation of, and 174  
closes, the facility as described in this section, inmates in the 175  
facility shall be transferred to another correctional facility 176  
under the control of the department. If the initial intensive 177  
program prison is closed, divisions (G)(2)(a) and (b) of section 178  
2929.13 of the Revised Code have no effect while the facility is 179  
closed. 180

**Sec. 109.572.** (A)(1) Upon receipt of a request pursuant to 181  
section 2151.86, 3301.32, 3301.541, 3319.39, 5104.012, 5104.013, 182  
or 5153.111 of the Revised Code, a completed form prescribed 183  
pursuant to division (C)(1) of this section, and a set of 184  
fingerprint impressions obtained in the manner described in 185  
division (C)(2) of this section, the superintendent of the bureau 186  
of criminal identification and investigation shall conduct a 187  
criminal records check in the manner described in division (B) of 188  
this section to determine whether any information exists that 189  
indicates that the person who is the subject of the request 190  
previously has been convicted of or pleaded guilty to any of the 191  
following: 192

(a) A violation of section 2903.01, 2903.02, 2903.03, 193  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 194  
2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 195  
2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 196  
2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 197  
2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 198  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 199  
2925.06, or 3716.11 of the Revised Code, felonious sexual 200  
penetration in violation of former section 2907.12 of the Revised 201  
Code, a violation of section 2905.04 of the Revised Code as it 202  
existed prior to July 1, 1996, a violation of section 2919.23 of 203

the Revised Code that would have been a violation of section 204  
2905.04 of the Revised Code as it existed prior to July 1, 1996, 205  
had the violation been committed prior to that date, or a 206  
violation of section 2925.11 of the Revised Code that is not a 207  
minor drug possession offense; 208

(b) A violation of an existing or former law of this state, 209  
any other state, or the United States that is substantially 210  
equivalent to any of the offenses listed in division (A)(1)(a) of 211  
this section. 212

(2) On receipt of a request pursuant to section 5123.081 of 213  
the Revised Code with respect to an applicant for employment in 214  
any position with the department of mental retardation and 215  
developmental disabilities, pursuant to section 5126.28 of the 216  
Revised Code with respect to an applicant for employment in any 217  
position with a county board of mental retardation and 218  
developmental disabilities, or pursuant to section 5126.281 of the 219  
Revised Code with respect to an applicant for employment in a 220  
direct services position with an entity contracting with a county 221  
board for employment, a completed form prescribed pursuant to 222  
division (C)(1) of this section, and a set of fingerprint 223  
impressions obtained in the manner described in division (C)(2) of 224  
this section, the superintendent of the bureau of criminal 225  
identification and investigation shall conduct a criminal records 226  
check. The superintendent shall conduct the criminal records check 227  
in the manner described in division (B) of this section to 228  
determine whether any information exists that indicates that the 229  
person who is the subject of the request has been convicted of or 230  
pleaded guilty to any of the following: 231

(a) A violation of section 2903.01, 2903.02, 2903.03, 232  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 233  
2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 234  
2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 235



2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 236  
2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 237  
2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 238  
2925.03, or 3716.11 of the Revised Code; 239

(b) An existing or former municipal ordinance or law of this 240  
state, any other state, or the United States that is substantially 241  
equivalent to any of the offenses listed in division (A)(2)(a) of 242  
this section. 243

(3) On receipt of a request pursuant to section 173.41, 244  
3712.09, 3721.121, or 3722.151 of the Revised Code, a completed 245  
form prescribed pursuant to division (C)(1) of this section, and a 246  
set of fingerprint impressions obtained in the manner described in 247  
division (C)(2) of this section, the superintendent of the bureau 248  
of criminal identification and investigation shall conduct a 249  
criminal records check with respect to any person who has applied 250  
for employment in a position that involves providing direct care 251  
to an older adult. The superintendent shall conduct the criminal 252  
records check in the manner described in division (B) of this 253  
section to determine whether any information exists that indicates 254  
that the person who is the subject of the request previously has 255  
been convicted of or pleaded guilty to any of the following: 256

(a) A violation of section 2903.01, 2903.02, 2903.03, 257  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 258  
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 259  
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 260  
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 261  
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 262  
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 263  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 264  
2925.22, 2925.23, or 3716.11 of the Revised Code; 265

(b) An existing or former law of this state, any other state, 266  
or the United States that is substantially equivalent to any of 267

the offenses listed in division (A)(3)(a) of this section. 268

(4) On receipt of a request pursuant to section 3701.881 of 269  
the Revised Code with respect to an applicant for employment with 270  
a home health agency as a person responsible for the care, 271  
custody, or control of a child, a completed form prescribed 272  
pursuant to division (C)(1) of this section, and a set of 273  
fingerprint impressions obtained in the manner described in 274  
division (C)(2) of this section, the superintendent of the bureau 275  
of criminal identification and investigation shall conduct a 276  
criminal records check. The superintendent shall conduct the 277  
criminal records check in the manner described in division (B) of 278  
this section to determine whether any information exists that 279  
indicates that the person who is the subject of the request 280  
previously has been convicted of or pleaded guilty to any of the 281  
following: 282

(a) A violation of section 2903.01, 2903.02, 2903.03, 283  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 284  
2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 285  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 286  
2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 287  
2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 288  
2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 289  
2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code or a 290  
violation of section 2925.11 of the Revised Code that is not a 291  
minor drug possession offense; 292

(b) An existing or former law of this state, any other state, 293  
or the United States that is substantially equivalent to any of 294  
the offenses listed in division (A)(4)(a) of this section. 295

(5) On receipt of a request pursuant to section 3701.881 of 296  
the Revised Code with respect to an applicant for employment with 297  
a home health agency in a position that involves providing direct 298

care to an older adult, a completed form prescribed pursuant to 299  
division (C)(1) of this section, and a set of fingerprint 300  
impressions obtained in the manner described in division (C)(2) of 301  
this section, the superintendent of the bureau of criminal 302  
identification and investigation shall conduct a criminal records 303  
check. The superintendent shall conduct the criminal records check 304  
in the manner described in division (B) of this section to 305  
determine whether any information exists that indicates that the 306  
person who is the subject of the request previously has been 307  
convicted of or pleaded guilty to any of the following: 308

(a) A violation of section 2903.01, 2903.02, 2903.03, 309  
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 310  
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 311  
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 312  
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 313  
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 314  
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 315  
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 316  
2925.22, 2925.23, or 3716.11 of the Revised Code; 317

(b) An existing or former law of this state, any other state, 318  
or the United States that is substantially equivalent to any of 319  
the offenses listed in division (A)(5)(a) of this section. 320

(6) When conducting a criminal records check upon a request 321  
pursuant to section 3319.39 of the Revised Code for an applicant 322  
who is a teacher, in addition to the determination made under 323  
division (A)(1) of this section, the superintendent shall 324  
determine whether any information exists that indicates that the 325  
person who is the subject of the request previously has been 326  
convicted of or pleaded guilty to any offense specified in section 327  
3319.31 of the Revised Code. 328

(7) When conducting a criminal records check on a request 329

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

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

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

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

(B) The superintendent shall conduct any criminal records

check requested under section 173.41, 2151.86, 3301.32, 3301.541, 361  
3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 362  
5104.013, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised 363  
Code as follows: 364

(1) The superintendent shall review or cause to be reviewed 365  
any relevant information gathered and compiled by the bureau under 366  
division (A) of section 109.57 of the Revised Code that relates to 367  
the person who is the subject of the request, including any 368  
relevant information contained in records that have been sealed 369  
under section 2953.32 of the Revised Code; 370

(2) If the request received by the superintendent asks for 371  
information from the federal bureau of investigation, the 372  
superintendent shall request from the federal bureau of 373  
investigation any information it has with respect to the person 374  
who is the subject of the request and shall review or cause to be 375  
reviewed any information the superintendent receives from that 376  
bureau. 377

(C)(1) The superintendent shall prescribe a form to obtain 378  
the information necessary to conduct a criminal records check from 379  
any person for whom a criminal records check is required by 380  
section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 381  
3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5123.081, 382  
5126.28, 5126.281, or 5153.111 of the Revised Code. The form that 383  
the superintendent prescribes pursuant to this division may be in 384  
a tangible format, in an electronic format, or in both tangible 385  
and electronic formats. 386

(2) The superintendent shall prescribe standard impression 387  
sheets to obtain the fingerprint impressions of any person for 388  
whom a criminal records check is required by section 173.41, 389  
2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 390  
3722.151, 5104.012, 5104.013, 5123.081, 5126.28, 5126.281, or 391

5153.111 of the Revised Code. Any person for whom a records check  
is required by any of those sections shall obtain the fingerprint  
impressions at a county sheriff's office, municipal police  
department, or any other entity with the ability to make  
fingerprint impressions on the standard impression sheets  
prescribed by the superintendent. The office, department, or  
entity may charge the person a reasonable fee for making the  
impressions. The standard impression sheets the superintendent  
prescribes pursuant to this division may be in a tangible format,  
in an electronic format, or in both tangible and electronic  
formats.

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

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

(D) A determination whether any information exists that

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

(E) As used in this section:

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

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

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

**Sec. 313.12.** (A) When any person dies as a result of criminal  
or other violent means, by casualty, by suicide, or in any  
suspicious or unusual manner, ~~or~~ when any person, including a  
child under two years of age, dies suddenly when in apparent good  
health, or when any mentally retarded person or developmentally  
disabled person dies regardless of the circumstances, the  
physician called in attendance, or any member of an ambulance

service, emergency squad, or law enforcement agency who obtains 454  
knowledge thereof arising from ~~his~~ the person's duties, shall 455  
immediately notify the office of the coroner of the known facts 456  
concerning the time, place, manner, and circumstances of the 457  
death, and any other information ~~which~~ that is required pursuant 458  
to sections 313.01 to 313.22 of the Revised Code. In such cases, 459  
if a request is made for cremation, the funeral director called in 460  
attendance shall immediately notify the coroner. 461

(B) As used in this section, "mentally retarded person" and 462  
"developmentally disabled person" have the same meanings as in 463  
section 5123.01 of the Revised Code. 464

**Sec. 2108.50.** (A) An Subject to section 2108.521 of the 465  
Revised Code, an autopsy or post-mortem examination may be 466  
performed upon the body of a deceased person by a licensed 467  
physician or surgeon if consent has been given in the order named 468  
by one of the following persons of sound mind and eighteen years 469  
of age or older in a written instrument executed by the person or 470  
on the person's behalf at the person's express direction: 471

(1) The deceased person during the deceased person's 472  
lifetime; 473

(2) The decedent's spouse; 474

(3) If there is no surviving spouse, if the address of the 475  
surviving spouse is unknown or outside the United States, if the 476  
surviving spouse is physically or mentally unable or incapable of 477  
giving consent, or if the deceased person was separated and living 478  
apart from such surviving spouse, then a person having the first 479  
named degree of relationship in the following list in which a 480  
relative of the deceased person survives and is physically and 481  
mentally able and capable of giving consent may execute consent: 482

(a) Children; 483



(b) Parents;	484
(c) Brothers or sisters.	485
(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-;	486 487 488
(5) A person authorized by written instrument executed by the deceased person to make arrangements for burial-;	489 490
(6) A person who, at the time of death of the deceased person, was serving as guardian of the person for the deceased person.	491 492 493
(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.	494 495 496 497
(C) As used in this section, "written instrument" includes a telegram or cablegram.	498 499
<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>	500 501 502 503 504 505 506 507 508 509 510
(B) <u>Upon the filing of a petition under division (A) of this section, the court may conduct, but is not required to conduct, a hearing on the petition. The court may determine whether to grant</u>	511 512 513

the petition without a hearing. The department or board, and all 514  
other interested parties, may submit information and statements to 515  
the court that are relevant to the petition, and, if the court 516  
conducts a hearing, may present evidence and testimony at the 517  
hearing. The court shall order the requested autopsy or 518  
post-mortem examination if it finds that, under the circumstances, 519  
the department or board has demonstrated a need for the autopsy or 520  
post-mortem examination. The court shall order an autopsy or 521  
post-mortem examination in the circumstances specified in this 522  
division regardless of whether any consent has been given, or has 523  
been given and withdrawn, under section 2108.50 of the Revised 524  
Code, and regardless of whether any information was presented to 525  
the coroner pursuant to section 313.131 of the Revised Code or to 526  
the court under this section regarding an autopsy being contrary 527  
to the deceased person's religious beliefs. 528

(C) An autopsy or post-mortem examination ordered under this 529  
section may be performed upon the body of the deceased person by a 530  
licensed physician or surgeon. The court may identify in the order 531  
the person who is to perform the autopsy or post-mortem 532  
examination. If an autopsy or post-mortem examination is ordered 533  
under this section, the department or board that requested the 534  
autopsy or examination shall pay the physician or surgeon who 535  
performs the autopsy or examination for costs and expenses 536  
incurred in performing the autopsy or examination. 537

**Sec. 2151.421.** (A)(1)(a) No person described in division 538  
(A)(1)(b) of this section who is acting in an official or 539  
professional capacity and knows or suspects that a child under 540  
eighteen years of age or a mentally retarded, developmentally 541  
disabled, or physically impaired child under twenty-one years of 542  
age has suffered or faces a threat of suffering any physical or 543  
mental wound, injury, disability, or condition of a nature that 544

reasonably indicates abuse or neglect of the child, shall fail to 545  
immediately report that knowledge or suspicion to the entity or 546  
persons specified in this division. Except as provided in section 547  
5120.173 of the Revised Code, the person making the report shall 548  
make it to the public children services agency or a municipal or 549  
county peace officer in the county in which the child resides or 550  
in which the abuse or neglect is occurring or has occurred. In the 551  
circumstances described in section 5120.173 of the Revised Code, 552  
the person making the report shall make it to the entity specified 553  
in that section. 554

(b) Division (A)(1)(a) of this section applies to any person 555  
who is an attorney; physician, including a hospital intern or 556  
resident; dentist; podiatrist; practitioner of a limited branch of 557  
medicine as specified in section 4731.15 of the Revised Code; 558  
registered nurse; licensed practical nurse; visiting nurse; other 559  
health care professional; licensed psychologist; licensed school 560  
psychologist; independent marriage and family therapist or 561  
marriage and family therapist; speech pathologist or audiologist; 562  
coroner; administrator or employee of a child day-care center; 563  
administrator or employee of a residential camp or child day camp; 564  
administrator or employee of a certified child care agency or 565  
other public or private children services agency; school teacher; 566  
school employee; school authority; person engaged in social work 567  
or the practice of professional counseling; agent of a county 568  
humane society; ~~or~~ a person rendering spiritual treatment through 569  
prayer in accordance with the tenets of a well-recognized 570  
religion; superintendent, board member, or employee of a county 571  
board of mental retardation; investigative agent contracted with 572  
by a county board of mental retardation; or employee of the 573  
department of mental retardation and developmental disabilities. 574

(2) An attorney or a physician is not required to make a 575  
report pursuant to division (A)(1) of this section concerning any 576

communication the attorney or physician receives from a client or 577  
patient in an attorney-client or physician-patient relationship, 578  
if, in accordance with division (A) or (B) of section 2317.02 of 579  
the Revised Code, the attorney or physician could not testify with 580  
respect to that communication in a civil or criminal proceeding, 581  
except that the client or patient is deemed to have waived any 582  
testimonial privilege under division (A) or (B) of section 2317.02 583  
of the Revised Code with respect to that communication and the 584  
attorney or physician shall make a report pursuant to division 585  
(A)(1) of this section with respect to that communication, if all 586  
of the following apply: 587

(a) The client or patient, at the time of the communication, 588  
is either a child under eighteen years of age or a mentally 589  
retarded, developmentally disabled, or physically impaired person 590  
under twenty-one years of age. 591

(b) The attorney or physician knows or suspects, as a result 592  
of the communication or any observations made during that 593  
communication, that the client or patient has suffered or faces a 594  
threat of suffering any physical or mental wound, injury, 595  
disability, or condition of a nature that reasonably indicates 596  
abuse or neglect of the client or patient. 597

(c) The attorney-client or physician-patient relationship 598  
does not arise out of the client's or patient's attempt to have an 599  
abortion without the notification of her parents, guardian, or 600  
custodian in accordance with section 2151.85 of the Revised Code. 601

(B) Anyone, who knows or suspects that a child under eighteen 602  
years of age or a mentally retarded, developmentally disabled, or 603  
physically impaired person under twenty-one years of age has 604  
suffered or faces a threat of suffering any physical or mental 605  
wound, injury, disability, or other condition of a nature that 606  
reasonably indicates abuse or neglect of the child may report or 607  
cause reports to be made of that knowledge or suspicion to the 608

entity or persons specified in this division. Except as provided 609  
in section 5120.173 of the Revised Code, a person making a report 610  
or causing a report to be made under this division shall make it 611  
or cause it to be made to the public children services agency or 612  
to a municipal or county peace officer. In the circumstances 613  
described in section 5120.173 of the Revised Code, a person making 614  
a report or causing a report to be made under this division shall 615  
make it or cause it to be made to the entity specified in that 616  
section. 617

(C) Any report made pursuant to division (A) or (B) of this 618  
section shall be made forthwith either by telephone or in person 619  
and shall be followed by a written report, if requested by the 620  
receiving agency or officer. The written report shall contain: 621

(1) The names and addresses of the child and the child's 622  
parents or the person or persons having custody of the child, if 623  
known; 624

(2) The child's age and the nature and extent of the child's 625  
known or suspected injuries, abuse, or neglect or of the known or 626  
suspected threat of injury, abuse, or neglect, including any 627  
evidence of previous injuries, abuse, or neglect; 628

(3) Any other information that might be helpful in 629  
establishing the cause of the known or suspected injury, abuse, or 630  
neglect or of the known or suspected threat of injury, abuse, or 631  
neglect. 632

Any person, who is required by division (A) of this section 633  
to report known or suspected child abuse or child neglect, may 634  
take or cause to be taken color photographs of areas of trauma 635  
visible on a child and, if medically indicated, cause to be 636  
performed radiological examinations of the child. 637

(D)(1) When a municipal or county peace officer receives a 638  
report concerning the possible abuse or neglect of a child or the 639

possible threat of abuse or neglect of a child, upon receipt of 640  
the report, the municipal or county peace officer who receives the 641  
report shall refer the report to the appropriate public children 642  
services agency. 643

(2) When a public children services agency receives a report 644  
pursuant to this division or division (A) or (B) of this section, 645  
upon receipt of the report, the public children services agency 646  
shall comply with section 2151.422 of the Revised Code. 647

(E) No township, municipal, or county peace officer shall 648  
remove a child about whom a report is made pursuant to this 649  
section from the child's parents, stepparents, or guardian or any 650  
other persons having custody of the child without consultation 651  
with the public children services agency, unless, in the judgment 652  
of the officer, and, if the report was made by physician, the 653  
physician, immediate removal is considered essential to protect 654  
the child from further abuse or neglect. The agency that must be 655  
consulted shall be the agency conducting the investigation of the 656  
report as determined pursuant to section 2151.422 of the Revised 657  
Code. 658

(F)(1) Except as provided in section 2151.422 of the Revised 659  
Code, the public children services agency shall investigate, 660  
within twenty-four hours, each report of known or suspected child 661  
abuse or child neglect and of a known or suspected threat of child 662  
abuse or child neglect that is referred to it under this section 663  
to determine the circumstances surrounding the injuries, abuse, or 664  
neglect or the threat of injury, abuse, or neglect, the cause of 665  
the injuries, abuse, neglect, or threat, and the person or persons 666  
responsible. The investigation shall be made in cooperation with 667  
the law enforcement agency and in accordance with the memorandum 668  
of understanding prepared under division (J) of this section. A 669  
failure to make the investigation in accordance with the 670  
memorandum is not grounds for, and shall not result in, the 671

dismissal of any charges or complaint arising from the report or 672  
the suppression of any evidence obtained as a result of the report 673  
and does not give, and shall not be construed as giving, any 674  
rights or any grounds for appeal or post-conviction relief to any 675  
person. The public children services agency shall report each case 676  
to a central registry which the department of job and family 677  
services shall maintain in order to determine whether prior 678  
reports have been made in other counties concerning the child or 679  
other principals in the case. The public children services agency 680  
shall submit a report of its investigation, in writing, to the law 681  
enforcement agency. 682

(2) The public children services agency shall make any 683  
recommendations to the county prosecuting attorney or city 684  
director of law that it considers necessary to protect any 685  
children that are brought to its attention. 686

(G)(1)(a) Except as provided in division (H)(3) of this 687  
section, anyone or any hospital, institution, school, health 688  
department, or agency participating in the making of reports under 689  
division (A) of this section, anyone or any hospital, institution, 690  
school, health department, or agency participating in good faith 691  
in the making of reports under division (B) of this section, and 692  
anyone participating in good faith in a judicial proceeding 693  
resulting from the reports, shall be immune from any civil or 694  
criminal liability for injury, death, or loss to person or 695  
property that otherwise might be incurred or imposed as a result 696  
of the making of the reports or the participation in the judicial 697  
proceeding. 698

(b) Notwithstanding section 4731.22 of the Revised Code, the 699  
physician-patient privilege shall not be a ground for excluding 700  
evidence regarding a child's injuries, abuse, or neglect, or the 701  
cause of the injuries, abuse, or neglect in any judicial 702  
proceeding resulting from a report submitted pursuant to this 703

section. 704

(2) In any civil or criminal action or proceeding in which it 705  
is alleged and proved that participation in the making of a report 706  
under this section was not in good faith or participation in a 707  
judicial proceeding resulting from a report made under this 708  
section was not in good faith, the court shall award the 709  
prevailing party reasonable attorney's fees and costs and, if a 710  
civil action or proceeding is voluntarily dismissed, may award 711  
reasonable attorney's fees and costs to the party against whom the 712  
civil action or proceeding is brought. 713

(H)(1) Except as provided in divisions (H)(4), (M), and (N) 714  
of this section, a report made under this section is confidential. 715  
The information provided in a report made pursuant to this section 716  
and the name of the person who made the report shall not be 717  
released for use, and shall not be used, as evidence in any civil 718  
action or proceeding brought against the person who made the 719  
report. In a criminal proceeding, the report is admissible in 720  
evidence in accordance with the Rules of Evidence and is subject 721  
to discovery in accordance with the Rules of Criminal Procedure. 722

(2) No person shall permit or encourage the unauthorized 723  
dissemination of the contents of any report made under this 724  
section. 725

(3) A person who knowingly makes or causes another person to 726  
make a false report under division (B) of this section that 727  
alleges that any person has committed an act or omission that 728  
resulted in a child being an abused child or a neglected child is 729  
guilty of a violation of section 2921.14 of the Revised Code. 730

(4) If a report is made pursuant to division (A) or (B) of 731  
this section and the child who is the subject of the report dies 732  
for any reason at any time after the report is made, but before 733  
the child attains eighteen years of age, the public children 734



services agency or municipal or county peace officer to which the 735  
report was made or referred, on the request of the child fatality 736  
review board, shall submit a summary sheet of information 737  
providing a summary of the report to the review board of the 738  
county in which the deceased child resided at the time of death. 739  
On the request of the review board, the agency or peace officer 740  
may, at its discretion, make the report available to the review 741  
board. 742

(5) A public children services agency shall advise a person 743  
alleged to have inflicted abuse or neglect on a child who is the 744  
subject of a report made pursuant to this section in writing of 745  
the disposition of the investigation. The agency shall not provide 746  
to the person any information that identifies the person who made 747  
the report, statements of witnesses, or police or other 748  
investigative reports. 749

(I) Any report that is required by this section, other than a 750  
report that is made to the state highway patrol as described in 751  
section 5120.173 of the Revised Code, shall result in protective 752  
services and emergency supportive services being made available by 753  
the public children services agency on behalf of the children 754  
about whom the report is made, in an effort to prevent further 755  
neglect or abuse, to enhance their welfare, and, whenever 756  
possible, to preserve the family unit intact. The agency required 757  
to provide the services shall be the agency conducting the 758  
investigation of the report pursuant to section 2151.422 of the 759  
Revised Code. 760

(J)(1) Each public children services agency shall prepare a 761  
memorandum of understanding that is signed by all of the 762  
following: 763

(a) If there is only one juvenile judge in the county, the 764  
juvenile judge of the county or the juvenile judge's 765  
representative; 766

(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 case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or child neglect

and does not give, and shall not be construed as giving, any 797  
rights or any grounds for appeal or post-conviction relief to any 798  
person. 799

(3) A memorandum of understanding shall include all of the 800  
following: 801

(a) The roles and responsibilities for handling emergency and 802  
nonemergency cases of abuse and neglect; 803

(b) Standards and procedures to be used in handling and 804  
coordinating investigations of reported cases of child abuse and 805  
reported cases of child neglect, methods to be used in 806  
interviewing the child who is the subject of the report and who 807  
allegedly was abused or neglected, and standards and procedures 808  
addressing the categories of persons who may interview the child 809  
who is the subject of the report and who allegedly was abused or 810  
neglected. 811

(K)(1) Except as provided in division (K)(4) of this section, 812  
a person who is required to make a report pursuant to division (A) 813  
of this section may make a reasonable number of requests of the 814  
public children services agency that receives or is referred the 815  
report to be provided with the following information: 816

(a) Whether the agency has initiated an investigation of the 817  
report; 818

(b) Whether the agency is continuing to investigate the 819  
report; 820

(c) Whether the agency is otherwise involved with the child 821  
who is the subject of the report; 822

(d) The general status of the health and safety of the child 823  
who is the subject of the report; 824

(e) Whether the report has resulted in the filing of a 825  
complaint in juvenile court or of criminal charges in another 826

court. 827

(2) A person may request the information specified in 828  
division (K)(1) of this section only if, at the time the report is 829  
made, the person's name, address, and telephone number are 830  
provided to the person who receives the report. 831

When a municipal or county peace officer or employee of a 832  
public children services agency receives a report pursuant to 833  
division (A) or (B) of this section the recipient of the report 834  
shall inform the person of the right to request the information 835  
described in division (K)(1) of this section. The recipient of the 836  
report shall include in the initial child abuse or child neglect 837  
report that the person making the report was so informed and, if 838  
provided at the time of the making of the report, shall include 839  
the person's name, address, and telephone number in the report. 840

Each request is subject to verification of the identity of 841  
the person making the report. If that person's identity is 842  
verified, the agency shall provide the person with the information 843  
described in division (K)(1) of this section a reasonable number 844  
of times, except that the agency shall not disclose any 845  
confidential information regarding the child who is the subject of 846  
the report other than the information described in those 847  
divisions. 848

(3) A request made pursuant to division (K)(1) of this 849  
section is not a substitute for any report required to be made 850  
pursuant to division (A) of this section. 851

(4) If an agency other than the agency that received or was 852  
referred the report is conducting the investigation of the report 853  
pursuant to section 2151.422 of the Revised Code, the agency 854  
conducting the investigation shall comply with the requirements of 855  
division (K) of this section. 856

(L) The director of job and family services shall adopt rules 857

in accordance with Chapter 119. of the Revised Code to implement 858  
this section. The department of job and family services may enter 859  
into a plan of cooperation with any other governmental entity to 860  
aid in ensuring that children are protected from abuse and 861  
neglect. The department shall make recommendations to the attorney 862  
general that the department determines are necessary to protect 863  
children from child abuse and child neglect. 864

(M) No later than the end of the day following the day on 865  
which a public children services agency receives a report of 866  
alleged child abuse or child neglect, or a report of an alleged 867  
threat of child abuse or child neglect, that allegedly occurred in 868  
or involved an out-of-home care entity, the agency shall provide 869  
written notice of the allegations contained in and the person 870  
named as the alleged perpetrator in the report to the 871  
administrator, director, or other chief administrative officer of 872  
the out-of-home care entity that is the subject of the report 873  
unless the administrator, director, or other chief administrative 874  
officer is named as an alleged perpetrator in the report. If the 875  
administrator, director, or other chief administrative officer of 876  
an out-of-home care entity is named as an alleged perpetrator in a 877  
report of alleged child abuse or child neglect, or a report of an 878  
alleged threat of child abuse or child neglect, that allegedly 879  
occurred in or involved the out-of-home care entity, the agency 880  
shall provide the written notice to the owner or governing board 881  
of the out-of-home care entity that is the subject of the report. 882  
The agency shall not provide witness statements or police or other 883  
investigative reports. 884

(N) No later than three days after the day on which a public 885  
children services agency that conducted the investigation as 886  
determined pursuant to section 2151.422 of the Revised Code makes 887  
a disposition of an investigation involving a report of alleged 888  
child abuse or child neglect, or a report of an alleged threat of 889

child abuse or child neglect, that allegedly occurred in or 890  
involved an out-of-home care entity, the agency shall send written 891  
notice of the disposition of the investigation to the 892  
administrator, director, or other chief administrative officer and 893  
the owner or governing board of the out-of-home care entity. The 894  
agency shall not provide witness statements or police or other 895  
investigative reports. 896

Sec. 2152.821. (A) As used in this section: 897

(1) "Mentally retarded person" and "developmentally disabled 898  
person" have the same meanings as in section 5123.01 of the 899  
Revised Code. 900

(2) "Mentally retarded or developmentally disabled victim" 901  
includes any of the following persons: 902

(a) A mentally retarded person or developmentally disabled 903  
person who was a victim of a violation identified in division 904  
(B)(1) of this section or an act that would be an offense of 905  
violence if committed by an adult; 906

(b) A mentally retarded person or developmentally disabled 907  
person against whom was directed any conduct that constitutes, or 908  
that is an element of, a violation identified in division (B)(1) 909  
of this section or an act that would be an offense of violence if 910  
committed by an adult. 911

(B)(1) In any proceeding in juvenile court involving a 912  
complaint, indictment, or information in which a child is charged 913  
with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 914  
2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 915  
2907.322, or 2907.323 of the Revised Code or an act that would be 916  
an offense of violence if committed by an adult and in which an 917  
alleged victim of the violation or act was a mentally retarded 918  
person or developmentally disabled person, the juvenile judge, 919

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

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At any time before the conclusion of the proceeding, the

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attorney for the child charged with the violation or act may file 952  
a motion with the judge requesting that another deposition of the 953  
mentally retarded or developmentally disabled victim be taken 954  
because new evidence material to the defense of the child charged 955  
has been discovered that the attorney for the child charged could 956  
not with reasonable diligence have discovered prior to the taking 957  
of the admitted deposition. Any motion requesting another 958  
deposition shall be accompanied by supporting affidavits. Upon the 959  
filing of the motion and affidavits, the court may order that 960  
additional testimony of the mentally retarded or developmentally 961  
disabled victim relative to the new evidence be taken by another 962  
deposition. If the court orders the taking of another deposition 963  
under this provision, the deposition shall be taken in accordance 964  
with this division. If the admitted deposition was a videotaped 965  
deposition taken in accordance with division (B)(2) of this 966  
section, the new deposition also shall be videotaped in accordance 967  
with that division. In other cases, the new deposition may be 968  
videotaped in accordance with that division. 969

(2) If the prosecution requests that a deposition to be taken 970  
under division (B)(1) of this section be videotaped, the juvenile 971  
judge shall order that the deposition be videotaped in accordance 972  
with this division. If a juvenile judge issues an order to video 973  
tape the deposition, the judge shall exclude from the room in 974  
which the deposition is to be taken every person except the 975  
mentally retarded or developmentally disabled victim giving the 976  
testimony, the judge, one or more interpreters if needed, the 977  
attorneys for the prosecution and the child who is charged with 978  
the violation or act, any person needed to operate the equipment 979  
to be used, one person chosen by the mentally retarded or 980  
developmentally disabled victim giving the deposition, and any 981  
person whose presence the judge determines would contribute to the 982  
welfare and well-being of the mentally retarded or developmentally 983



disabled victim giving the deposition. The person chosen by the 984  
mentally retarded or developmentally disabled victim shall not be 985  
a witness in the proceeding and, both before and during the 986  
deposition, shall not discuss the testimony of the victim with any 987  
other witness in the proceeding. To the extent feasible, any 988  
person operating the recording equipment shall be restricted to a 989  
room adjacent to the room in which the deposition is being taken, 990  
or to a location in the room in which the deposition is being 991  
taken that is behind a screen or mirror so that the person 992  
operating the recording equipment can see and hear, but cannot be 993  
seen or heard by, the mentally retarded or developmentally 994  
disabled victim giving the deposition during the deposition. 995

The child who is charged with the violation or act shall be 996  
permitted to observe and hear the testimony of the mentally 997  
retarded or developmentally disabled victim giving the deposition 998  
on a monitor, shall be provided with an electronic means of 999  
immediate communication with the attorney of the child who is 1000  
charged with the violation or act during the testimony, and shall 1001  
be restricted to a location from which the child who is charged 1002  
with the violation or act cannot be seen or heard by the mentally 1003  
retarded or developmentally disabled victim giving the deposition, 1004  
except on a monitor provided for that purpose. The mentally 1005  
retarded or developmentally disabled victim giving the deposition 1006  
shall be provided with a monitor on which the mentally retarded or 1007  
developmentally disabled victim can observe, while giving 1008  
testimony, the child who is charged with the violation or act. The 1009  
judge, at the judge's discretion, may preside at the deposition by 1010  
electronic means from outside the room in which the deposition is 1011  
to be taken; if the judge presides by electronic means, the judge 1012  
shall be provided with monitors on which the judge can see each 1013  
person in the room in which the deposition is to be taken and with 1014  
an electronic means of communication with each person in that 1015

room, and each person in the room shall be provided with a monitor 1016  
on which that person can see the judge and with an electronic 1017  
means of communication with the judge. A deposition that is 1018  
videotaped under this division shall be taken and filed in the 1019  
manner described in division (B)(1) of this section and is 1020  
admissible in the manner described in this division and division 1021  
(C) of this section. If a deposition that is videotaped under this 1022  
division is admitted as evidence at the proceeding, the mentally 1023  
retarded or developmentally disabled victim shall not be required 1024  
to testify in person at the proceeding. No deposition videotaped 1025  
under this division shall be admitted as evidence at any 1026  
proceeding unless division (C) of this section is satisfied 1027  
relative to the deposition and all of the following apply relative 1028  
to the recording: 1029

(a) The recording is both aural and visual and is recorded on 1030  
film or videotape, or by other electronic means. 1031

(b) The recording is authenticated under the Rules of 1032  
Evidence and the Rules of Criminal Procedure as a fair and 1033  
accurate representation of what occurred, and the recording is not 1034  
altered other than at the direction and under the supervision of 1035  
the judge in the proceeding. 1036

(c) Each voice on the recording that is material to the 1037  
testimony on the recording or the making of the recording, as 1038  
determined by the judge, is identified. 1039

(d) Both the prosecution and the child who is charged with 1040  
the violation or act are afforded an opportunity to view the 1041  
recording before it is shown in the proceeding. 1042

(C)(1) At any proceeding in relation to which a deposition 1043  
was taken under division (B) of this section, the deposition or a 1044  
part of it is admissible in evidence upon motion of the 1045  
prosecution if the testimony in the deposition or the part to be 1046

admitted is not excluded by the hearsay rule and if the deposition 1047  
or the part to be admitted otherwise is admissible under the Rules 1048  
of Evidence. For purposes of this division, testimony is not 1049  
excluded by the hearsay rule if the testimony is not hearsay under 1050  
Evidence Rule 801; the testimony is within an exception to the 1051  
hearsay rule set forth in Evidence Rule 803; the mentally retarded 1052  
or developmentally disabled victim who gave the testimony is 1053  
unavailable as a witness, as defined in Evidence Rule 804, and the 1054  
testimony is admissible under that rule; or both of the following 1055  
apply: 1056

(a) The child who is charged with the violation or act had an 1057  
opportunity and similar motive at the time of the taking of the 1058  
deposition to develop the testimony by direct, cross, or redirect 1059  
examination. 1060

(b) The judge determines that there is reasonable cause to 1061  
believe that, if the mentally retarded or developmentally disabled 1062  
victim who gave the testimony in the deposition were to testify in 1063  
person at the proceeding, the mentally retarded or developmentally 1064  
disabled victim would experience serious emotional trauma as a 1065  
result of the mentally retarded or developmentally disabled 1066  
victim's participation at the proceeding. 1067

(2) Objections to receiving in evidence a deposition or a 1068  
part of it under division (C) of this section shall be made as 1069  
provided in civil actions. 1070

(3) The provisions of divisions (B) and (C) of this section 1071  
are in addition to any other provisions of the Revised Code, the 1072  
Rules of Juvenile Procedure, the Rules of Criminal Procedure, or 1073  
the Rules of Evidence that pertain to the taking or admission of 1074  
depositions in a juvenile court proceeding and do not limit the 1075  
admissibility under any of those other provisions of any 1076  
deposition taken under division (B) of this section or otherwise 1077

taken. 1078

(D) In any proceeding in juvenile court involving a 1079  
complaint, indictment, or information in which a child is charged 1080  
with a violation listed in division (B)(1) of this section or an 1081  
act that would be an offense of violence if committed by an adult 1082  
and in which an alleged victim of the violation or offense was a 1083  
mentally retarded or developmentally disabled person, the 1084  
prosecution may file a motion with the juvenile judge requesting 1085  
the judge to order the testimony of the mentally retarded or 1086  
developmentally disabled victim to be taken in a room other than 1087  
the room in which the proceeding is being conducted and be 1088  
televised, by closed circuit equipment, into the room in which the 1089  
proceeding is being conducted to be viewed by the child who is 1090  
charged with the violation or act and any other persons who are 1091  
not permitted in the room in which the testimony is to be taken 1092  
but who would have been present during the testimony of the 1093  
mentally retarded or developmentally disabled victim had it been 1094  
given in the room in which the proceeding is being conducted. 1095  
Except for good cause shown, the prosecution shall file a motion 1096  
under this division at least seven days before the date of the 1097  
proceeding. The juvenile judge may issue the order upon the motion 1098  
of the prosecution filed under this division, if the judge 1099  
determines that the mentally retarded or developmentally disabled 1100  
victim is unavailable to testify in the room in which the 1101  
proceeding is being conducted in the physical presence of the 1102  
child charged with the violation or act for one or more of the 1103  
reasons set forth in division (F) of this section. If a juvenile 1104  
judge issues an order of that nature, the judge shall exclude from 1105  
the room in which the testimony is to be taken every person except 1106  
a person described in division (B)(2) of this section. The judge, 1107  
at the judge's discretion, may preside during the giving of the 1108  
testimony by electronic means from outside the room in which it is 1109

being given, subject to the limitations set forth in division 1110  
(B)(2) of this section. To the extent feasible, any person 1111  
operating the televising equipment shall be hidden from the sight 1112  
and hearing of the mentally retarded or developmentally disabled 1113  
victim giving the testimony, in a manner similar to that described 1114  
in division (B)(2) of this section. The child who is charged with 1115  
the violation or act shall be permitted to observe and hear the 1116  
testimony of the mentally retarded or developmentally disabled 1117  
victim giving the testimony on a monitor, shall be provided with 1118  
an electronic means of immediate communication with the attorney 1119  
of the child who is charged with the violation or act during the 1120  
testimony, and shall be restricted to a location from which the 1121  
child who is charged with the violation or act cannot be seen or 1122  
heard by the mentally retarded or developmentally disabled victim 1123  
giving the testimony, except on a monitor provided for that 1124  
purpose. The mentally retarded or developmentally disabled victim 1125  
giving the testimony shall be provided with a monitor on which the 1126  
mentally retarded or developmentally disabled victim can observe, 1127  
while giving testimony, the child who is charged with the 1128  
violation or act. 1129

(E) In any proceeding in juvenile court involving a 1130  
complaint, indictment, or information in which a child is charged 1131  
with a violation listed in division (B)(1) of this section or an 1132  
act that would be an offense of violence if committed by an adult 1133  
and in which an alleged victim of the violation or offense was a 1134  
mentally retarded or developmentally disabled person, the 1135  
prosecution may file a motion with the juvenile judge requesting 1136  
the judge to order the testimony of the mentally retarded or 1137  
developmentally disabled victim to be taken outside of the room in 1138  
which the proceeding is being conducted and be recorded for 1139  
showing in the room in which the proceeding is being conducted 1140  
before the judge, the child who is charged with the violation or 1141

act, and any other persons who would have been present during the 1142  
testimony of the mentally retarded or developmentally disabled 1143  
victim had it been given in the room in which the proceeding is 1144  
being conducted. Except for good cause shown, the prosecution 1145  
shall file a motion under this division at least seven days before 1146  
the date of the proceeding. The juvenile judge may issue the order 1147  
upon the motion of the prosecution filed under this division, if 1148  
the judge determines that the mentally retarded or developmentally 1149  
disabled victim is unavailable to testify in the room in which the 1150  
proceeding is being conducted in the physical presence of the 1151  
child charged with the violation or act, due to one or more of the 1152  
reasons set forth in division (F) of this section. If a juvenile 1153  
judge issues an order of that nature, the judge shall exclude from 1154  
the room in which the testimony is to be taken every person except 1155  
a person described in division (B)(2) of this section. To the 1156  
extent feasible, any person operating the recording equipment 1157  
shall be hidden from the sight and hearing of the mentally 1158  
retarded or developmentally disabled victim giving the testimony, 1159  
in a manner similar to that described in division (B)(2) of this 1160  
section. The child who is charged with the violation or act shall 1161  
be permitted to observe and hear the testimony of the mentally 1162  
retarded or developmentally disabled victim giving the testimony 1163  
on a monitor, shall be provided with an electronic means of 1164  
immediate communication with the attorney of the child who is 1165  
charged with the violation or act during the testimony, and shall 1166  
be restricted to a location from which the child who is charged 1167  
with the violation or act cannot be seen or heard by the mentally 1168  
retarded or developmentally disabled victim giving the testimony, 1169  
except on a monitor provided for that purpose. The mentally 1170  
retarded or developmentally disabled victim giving the testimony 1171  
shall be provided with a monitor on which the mentally retarded or 1172  
developmentally disabled victim can observe, while giving 1173  
testimony, the child who is charged with the violation or act. No 1174

order for the taking of testimony by recording shall be issued 1175  
under this division unless the provisions set forth in divisions 1176  
(B)(2)(a), (b), (c), and (d) of this section apply to the 1177  
recording of the testimony. 1178

(F) For purposes of divisions (D) and (E) of this section, a 1179  
juvenile judge may order the testimony of a mentally retarded or 1180  
developmentally disabled victim to be taken outside of the room in 1181  
which a proceeding is being conducted if the judge determines that 1182  
the mentally retarded or developmentally disabled victim is 1183  
unavailable to testify in the room in the physical presence of the 1184  
child charged with the violation or act due to one or more of the 1185  
following circumstances: 1186

(1) The persistent refusal of the mentally retarded or 1187  
developmentally disabled victim to testify despite judicial 1188  
requests to do so; 1189

(2) The inability of the mentally retarded or developmentally 1190  
disabled victim to communicate about the alleged violation or 1191  
offense because of extreme fear, failure of memory, or another 1192  
similar reason; 1193

(3) The substantial likelihood that the mentally retarded or 1194  
developmentally disabled victim will suffer serious emotional 1195  
trauma from so testifying. 1196

(G)(1) If a juvenile judge issues an order pursuant to 1197  
division (D) or (E) of this section that requires the testimony of 1198  
a mentally retarded or developmentally disabled victim in a 1199  
juvenile court proceeding to be taken outside of the room in which 1200  
the proceeding is being conducted, the order shall specifically 1201  
identify the mentally retarded or developmentally disabled victim 1202  
to whose testimony it applies, the order applies only during the 1203  
testimony of the specified mentally retarded or developmentally 1204  
disabled victim, and the mentally retarded or developmentally 1205

disabled victim giving the testimony shall not be required to 1206  
testify at the proceeding other than in accordance with the order. 1207  
The authority of a judge to close the taking of a deposition under 1208  
division (B)(2) of this section or a proceeding under division (D) 1209  
or (E) of this section is in addition to the authority of a judge 1210  
to close a hearing pursuant to section 2151.35 of the Revised 1211  
Code. 1212

(2) A juvenile judge who makes any determination regarding 1213  
the admissibility of a deposition under divisions (B) and (C) of 1214  
this section, the videotaping of a deposition under division 1215  
(B)(2) of this section, or the taking of testimony outside of the 1216  
room in which a proceeding is being conducted under division (D) 1217  
or (E) of this section shall enter the determination and findings 1218  
on the record in the proceeding. 1219

**Sec. 2311.14.** (A)(1) Whenever because of a hearing, speech, 1220  
or other impairment a party to or witness in a legal proceeding 1221  
cannot readily understand or communicate, the court shall appoint 1222  
a qualified interpreter to assist such person. Before appointing 1223  
any interpreter under this division for a party or witness who is 1224  
a mentally retarded person or developmentally disabled person, the 1225  
court shall evaluate the qualifications of the interpreter and 1226  
shall make a determination as to the ability of the interpreter to 1227  
effectively interpret on behalf of the party or witness that the 1228  
interpreter will assist, and the court may appoint the interpreter 1229  
only if the court is satisfied that the interpreter is able to 1230  
effectively interpret on behalf of that party or witness. 1231

(2) This section is not limited to a person who speaks a 1232  
language other than English. It also applies to the language and 1233  
descriptions of any mentally retarded person or developmentally 1234  
disabled person who cannot be reasonably understood, or who cannot 1235  
understand questioning, without the aid of an interpreter. The 1236



interpreter may aid the parties in formulating methods of 1237  
questioning the person with mental retardation or a developmental 1238  
disability and in interpreting the answers of the person. 1239

(B) Before entering upon ~~his~~ official duties, the interpreter 1240  
shall take an oath that ~~he~~ the interpreter will make a true 1241  
interpretation of the proceedings to the party or witness, and 1242  
that ~~he~~ the interpreter will truly repeat the statements made by 1243  
such party or witness to the court, to the best of ~~his~~ the 1244  
interpreter's ability. If the interpreter is appointed to assist a 1245  
mentally retarded person or developmentally disabled person as 1246  
described in division (A)(2) of this section, the oath also shall 1247  
include an oath that the interpreter will not prompt, lead, 1248  
suggest, or otherwise improperly influence the testimony of the 1249  
witness or party. 1250

(C) The court shall determine a reasonable fee for all such 1251  
interpreter service which shall be paid out of the same funds as 1252  
witness fees. 1253

(D) As used in this section, "mentally retarded person" and 1254  
"developmentally disabled person" have the same meanings as in 1255  
section 5123.01 of the Revised Code. 1256

**Sec. 2903.341.** (A) As used in this section: 1257

(1) "MR/DD caretaker" means any MR/DD employee or any person 1258  
who assumes the duty to provide for the care and protection of a 1259  
mentally retarded person or a developmentally disabled person on a 1260  
voluntary basis, by contract, through receipt of payment for care 1261  
and protection, as a result of a family relationship, or by order 1262  
of a court of competent jurisdiction. "MR/DD caretaker" includes a 1263  
person who is an employee of a care facility and a person who is 1264  
an employee of an entity under contract with a provider. "MR/DD 1265  
caretaker" does not include a person who owns, operates, or 1266

administers a care facility or who is an agent of a care facility 1267  
unless that person also personally provides care to persons with 1268  
mental retardation or a developmental disability. 1269

(2) "Mentally retarded person" and "developmentally disabled 1270  
person" have the same meanings as in section 5123.01 of the 1271  
Revised Code. 1272

(3) "MR/DD employee" has the same meaning as in section 1273  
5123.50 of the Revised Code. 1274

(B) No MR/DD caretaker shall create a substantial risk to the 1275  
health or safety of a mentally retarded person or a 1276  
developmentally disabled person. An MR/DD caretaker does not 1277  
create a substantial risk to the health or safety of a mentally 1278  
retarded person or a developmentally disabled person under this 1279  
division when the MR/DD caretaker treats a physical or mental 1280  
illness or defect of the mentally retarded person or 1281  
developmentally disabled person by spiritual means through prayer 1282  
alone, in accordance with the tenets of a recognized religious 1283  
body. 1284

(C) No person who owns, operates, or administers a care 1285  
facility or who is an agent of a care facility shall condone, or 1286  
knowingly permit, any conduct by an MR/DD caretaker who is 1287  
employed by or under the control of the owner, operator, 1288  
administrator, or agent that is in violation of division (B) of 1289  
this section and that involves a mentally retarded person or a 1290  
developmentally disabled person who is under the care of the 1291  
owner, operator, administrator, or agent. A person who relies upon 1292  
treatment by spiritual means through prayer alone, in accordance 1293  
with the tenets of a recognized religious denomination, shall not 1294  
be considered endangered under this division for that reason 1295  
alone. 1296

(D)(1) It is an affirmative defense to a charge of a 1297

violation of division (B) or (C) of this section that the actor's 1298  
conduct was committed in good faith solely because the actor was 1299  
ordered to commit the conduct by a person to whom one of the 1300  
following applies: 1301

(a) The person has supervisory authority over the actor. 1302

(b) The person has authority over the actor's conduct 1303  
pursuant to a contract for the provision of services. 1304

(2) It is an affirmative defense to a charge of a violation 1305  
of division (C) of this section that the person who owns, 1306  
operates, or administers a care facility or who is an agent of a 1307  
care facility and who is charged with the violation is following 1308  
the individual service plan for the involved mentally retarded 1309  
person or a developmentally disabled person or that the admission, 1310  
discharge, and transfer rule set forth in the Administrative Code 1311  
is being followed. 1312

(3) It is an affirmative defense to a charge of a violation 1313  
of division (C) of this section that the actor did not have 1314  
readily available a means to prevent either the harm to the person 1315  
with mental retardation or a developmental disability or the death 1316  
of such a person and the actor took reasonable steps to summon 1317  
aid. 1318

(E)(1) Except as provided in division (E)(2) or (E)(3) of 1319  
this section, whoever violates division (B) or (C) of this section 1320  
is guilty of patient endangerment, a misdemeanor of the first 1321  
degree. 1322

(2) If the offender previously has been convicted of, or 1323  
pleaded guilty to, a violation of this section, patient 1324  
endangerment is a felony of the fourth degree. 1325

(3) If the violation results in serious physical harm to the 1326  
person with mental retardation or a developmental disability, 1327

patient endangerment is a felony of the third degree.

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

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

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

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

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(E) Divisions (A) to (D) of this section do not apply 1359  
regarding a notice that a prosecutor is required to provide under 1360  
section 2930.061 of the Revised Code. A prosecutor required to 1361  
provide notice under that section shall provide the notice as 1362  
specified in that section. 1363

**Sec. 2930.061.** (A) If a person is charged in a complaint, 1364  
indictment, or information with any crime or specified delinquent 1365  
act or with any other violation of law, and if the case involves a 1366  
victim that the prosecutor in the case knows is a mentally 1367  
retarded person or a developmentally disabled person, in addition 1368  
to any other notices required under this chapter or under any 1369  
other provision of law, the prosecutor in the case shall send 1370  
written notice of the charges to the department of mental 1371  
retardation and developmental disabilities. The written notice 1372  
shall specifically identify the person so charged. 1373

(B) As used in this section, "mentally retarded person" and 1374  
"developmentally disabled person" have the same meanings as in 1375  
section 5123.01 of the Revised Code. 1376

**Sec. 2945.482.** (A) As used in this section: 1377

(1) "Mentally retarded person" and "developmentally disabled 1378  
person" have the same meanings as in section 5123.01 of the 1379  
Revised Code. 1380

(2) "Mentally retarded or developmentally disabled victim" 1381  
includes a mentally retarded or developmentally disabled person 1382  
who was a victim of a violation identified in division (B)(1) of 1383  
this section or an offense of violence or against whom was 1384  
directed any conduct that constitutes, or that is an element of, a 1385  
violation identified in division (B)(1) of this section or an 1386  
offense of violence. 1387

(B)(1) In any proceeding in the prosecution of a charge of a 1388

violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 1389  
2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 1390  
2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an 1391  
offense of violence and in which an alleged victim of the 1392  
violation or offense was a mentally retarded or developmentally 1393  
disabled person, the judge of the court in which the prosecution 1394  
is being conducted, upon motion of an attorney for the 1395  
prosecution, shall order that the testimony of the mentally 1396  
retarded or developmentally disabled victim be taken by 1397  
deposition. The prosecution also may request that the deposition 1398  
be videotaped in accordance with division (B)(2) of this section. 1399  
The judge shall notify the mentally retarded or developmentally 1400  
disabled victim whose deposition is to be taken, the prosecution, 1401  
and the defense of the date, time, and place for taking the 1402  
deposition. The notice shall identify the mentally retarded or 1403  
developmentally disabled victim who is to be examined and shall 1404  
indicate whether a request that the deposition be videotaped has 1405  
been made. The defendant shall have the right to attend the 1406  
deposition and the right to be represented by counsel. Depositions 1407  
shall be taken in the manner provided in civil cases, except that 1408  
the judge shall preside at the taking of the deposition and shall 1409  
rule at the time on any objections of the prosecution or the 1410  
attorney for the defense. The prosecution and the attorney for the 1411  
defense shall have the right, as at trial, to full examination and 1412  
cross-examination of the mentally retarded or developmentally 1413  
disabled victim whose deposition is to be taken. If a deposition 1414  
taken under this division is intended to be offered as evidence in 1415  
the proceeding, it shall be filed in the court in which the action 1416  
is pending and is admissible in the manner described in division 1417  
(C) of this section. 1418

If a deposition of a mentally retarded or developmentally 1419  
disabled victim taken under this division is admitted as evidence 1420

at the proceeding under division (C) of this section, the mentally 1421  
retarded or developmentally disabled victim shall not be required 1422  
to testify in person at the proceeding. 1423

At any time before the conclusion of the proceeding, the 1424  
attorney for the defense may file a motion with the judge 1425  
requesting that another deposition of the mentally retarded or 1426  
developmentally disabled victim be taken because new evidence 1427  
material to the defense has been discovered that the attorney for 1428  
the defense could not with reasonable diligence have discovered 1429  
prior to the taking of the admitted deposition. If the court 1430  
orders the taking of another deposition under this provision, the 1431  
deposition shall be taken in accordance with this division. If the 1432  
admitted deposition was a videotaped deposition taken in 1433  
accordance with division (B)(2) of this section, the new 1434  
deposition shall be videotaped in accordance with that division. 1435  
In other cases, the new deposition may be videotaped in accordance 1436  
with that division. 1437

(2) If the prosecution requests that a deposition to be taken 1438  
under division (B)(2) of this section be videotaped, the judge 1439  
shall order that the deposition be videotaped in accordance with 1440  
this division. If a judge issues an order that the deposition be 1441  
videotaped, the judge shall exclude from the room in which the 1442  
deposition is to be taken every person except the mentally 1443  
retarded or developmentally disabled victim giving the testimony, 1444  
the judge, one or more interpreters if needed, the attorneys for 1445  
the prosecution and the defense, any person needed to operate the 1446  
equipment to be used, one person chosen by the mentally retarded 1447  
or developmentally disabled victim giving the deposition, and any 1448  
person whose presence the judge determines would contribute to the 1449  
welfare and well-being of the mentally retarded or developmentally 1450  
disabled victim giving the deposition. The person chosen by the 1451  
mentally retarded or developmentally disabled victim shall not be 1452

a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the mentally retarded or developmentally disabled victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the mentally retarded or developmentally disabled victim giving the deposition during the deposition.

The defendant shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the deposition, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the deposition shall be provided with a monitor on which the victim can observe, during the testimony, the defendant. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken. If the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner



described in division (B)(1) of this section and is admissible in 1485  
the manner described in this division and division (C) of this 1486  
section, and, if a deposition that is videotaped under this 1487  
division is admitted as evidence at the proceeding, the mentally 1488  
retarded or developmentally disabled victim shall not be required 1489  
to testify in person at the proceeding. No deposition videotaped 1490  
under this division shall be admitted as evidence at any 1491  
proceeding unless division (C) of this section is satisfied 1492  
relative to the deposition and all of the following apply relative 1493  
to the recording: 1494

(a) The recording is both aural and visual and is recorded on 1495  
film or videotape, or by other electronic means. 1496

(b) The recording is authenticated under the Rules of 1497  
Evidence and the Rules of Criminal Procedure as a fair and 1498  
accurate representation of what occurred, and the recording is not 1499  
altered other than at the direction and under the supervision of 1500  
the judge in the proceeding. 1501

(c) Each voice on the recording that is material to the 1502  
testimony on the recording or the making of the recording, as 1503  
determined by the judge, is identified. 1504

(d) Both the prosecution and the defendant are afforded an 1505  
opportunity to view the recording before it is shown in the 1506  
proceeding. 1507

(C)(1) At any proceeding in a prosecution in relation to 1508  
which a deposition was taken under division (B) of this section, 1509  
the deposition or a part of it is admissible in evidence upon 1510  
motion of the prosecution if the testimony in the deposition or 1511  
the part to be admitted is not excluded by the hearsay rule and if 1512  
the deposition or the part to be admitted otherwise is admissible 1513  
under the Rules of Evidence. For purposes of this division, 1514  
testimony is not excluded by the hearsay rule if the testimony is 1515

not hearsay under Evidence Rule 801; the testimony is within an 1516  
exception to the hearsay rule set forth in Evidence Rule 803; the 1517  
mentally retarded or developmentally disabled victim who gave the 1518  
testimony is unavailable as a witness, as defined in Evidence Rule 1519  
804, and the testimony is admissible under that rule; or both of 1520  
the following apply: 1521

(a) The defendant had an opportunity and similar motive at 1522  
the time of the taking of the deposition to develop the testimony 1523  
by direct, cross, or redirect examination. 1524

(b) The judge determines that there is reasonable cause to 1525  
believe that, if the mentally retarded or developmentally disabled 1526  
victim who gave the testimony in the deposition were to testify in 1527  
person at the proceeding, the mentally retarded or developmentally 1528  
disabled victim would experience serious emotional trauma as a 1529  
result of the mentally retarded or developmentally disabled 1530  
victim's participation at the proceeding. 1531

(2) Objections to receiving in evidence a deposition or a 1532  
part of it under division (C) of this section shall be made as 1533  
provided in civil actions. 1534

(3) The provisions of divisions (B) and (C) of this section 1535  
are in addition to any other provisions of the Revised Code, the 1536  
Rules of Criminal Procedure, or the Rules of Evidence that pertain 1537  
to the taking or admission of depositions in a criminal proceeding 1538  
and do not limit the admissibility under any of those other 1539  
provisions of any deposition taken under division (B) of this 1540  
section or otherwise taken. 1541

(D) In any proceeding in the prosecution of any charge of a 1542  
violation listed in division (B)(1) of this section or an offense 1543  
of violence and in which an alleged victim of the violation or 1544  
offense was a mentally retarded or developmentally disabled 1545  
person, the prosecution may file a motion with the judge 1546

requesting the judge to order the testimony of the mentally 1547  
retarded or developmentally disabled victim to be taken in a room 1548  
other than the room in which the proceeding is being conducted and 1549  
be televised, by closed circuit equipment, into the room in which 1550  
the proceeding is being conducted to be viewed by the jury, if 1551  
applicable, the defendant, and any other persons who are not 1552  
permitted in the room in which the testimony is to be taken but 1553  
who would have been present during the testimony of the mentally 1554  
retarded or developmentally disabled victim had it been given in 1555  
the room in which the proceeding is being conducted. Except for 1556  
good cause shown, the prosecution shall file a motion under this 1557  
division at least seven days before the date of the proceeding. 1558  
The judge may issue the order upon the motion of the prosecution 1559  
filed under this section, if the judge determines that the 1560  
mentally retarded or developmentally disabled victim is 1561  
unavailable to testify in the room in which the proceeding is 1562  
being conducted in the physical presence of the defendant for one 1563  
or more of the reasons set forth in division (F) of this section. 1564  
If a judge issues an order of that nature, the judge shall exclude 1565  
from the room in which the testimony is to be taken every person 1566  
except a person described in division (B)(2) of this section. The 1567  
judge, at the judge's discretion, may preside during the giving of 1568  
the testimony by electronic means from outside the room in which 1569  
it is being given, subject to the limitations set forth in 1570  
division (B)(2) of this section. To the extent feasible, any 1571  
person operating the televising equipment shall be hidden from the 1572  
sight and hearing of the mentally retarded or developmentally 1573  
disabled victim giving the testimony, in a manner similar to that 1574  
described in division (B)(2) of this section. The defendant shall 1575  
be permitted to observe and hear the testimony of the mentally 1576  
retarded or developmentally disabled victim giving the testimony 1577  
on a monitor, shall be provided with an electronic means of 1578  
immediate communication with the defendant's attorney during the 1579

testimony, and shall be restricted to a location from which the  
defendant cannot be seen or heard by the mentally retarded or  
developmentally disabled victim giving the testimony, except on a  
monitor provided for that purpose. The mentally retarded or  
developmentally disabled victim giving the testimony shall be  
provided with a monitor on which the mentally retarded or  
developmentally disabled victim can observe, during the testimony,  
the defendant.

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(E) In any proceeding in the prosecution of any charge of a  
violation listed in division (B)(1) of this section or an offense  
of violence and in which an alleged victim of the violation or  
offense was a mentally retarded or developmentally disabled  
victim, the prosecution may file a motion with the judge  
requesting the judge to order the testimony of the mentally  
retarded or developmentally disabled victim to be taken outside of  
the room in which the proceeding is being conducted and be  
recorded for showing in the room in which the proceeding is being  
conducted before the judge, the jury, if applicable, the  
defendant, and any other persons who would have been present  
during the testimony of the mentally retarded or developmentally  
disabled victim had it been given in the room in which the  
proceeding is being conducted. Except for good cause shown, the  
prosecution shall file a motion under this division at least seven  
days before the date of the proceeding. The judge may issue the  
order upon the motion of the prosecution filed under this  
division, if the judge determines that the mentally retarded or  
developmentally disabled victim is unavailable to testify in the  
room in which the proceeding is being conducted in the physical  
presence of the defendant, for one or more of the reasons set  
forth in division (F) of this section. If a judge issues an order  
of that nature, the judge shall exclude from the room in which the  
testimony is to be taken every person except a person described in

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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 disabled victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another

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similar reason; 1644

(3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying. 1645  
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(G)(1) If a judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. 1648  
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(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding. 1659  
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**Sec. 2945.491.** (A) As used in this section: 1666

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code. 1667  
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(2) "Mentally retarded or developmentally disabled victim" includes a mentally retarded or developmentally disabled person who was a victim of a felony violation identified in division (B)(1) of this section or a felony offense of violence or against 1670  
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whom was directed any conduct that constitutes, or that is an 1674  
element of, a felony violation identified in division (B)(1) of 1675  
this section or a felony offense of violence. 1676

(B)(1) At a trial on a charge of a felony violation of 1677  
section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 1678  
2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 1679  
2907.323 of the Revised Code or an offense of violence and in 1680  
which an alleged victim of the violation or offense was a mentally 1681  
retarded or developmentally disabled person, the court, upon 1682  
motion of the prosecutor in the case, may admit videotaped 1683  
preliminary hearing testimony of the mentally retarded or 1684  
developmentally disabled victim as evidence at the trial, in lieu 1685  
of the mentally retarded or developmentally disabled victim 1686  
appearing as a witness and testifying at trial, if all of the 1687  
following apply: 1688

(a) The videotape of the testimony was made at the 1689  
preliminary hearing at which probable cause of the violation 1690  
charged was found. 1691

(b) The videotape of the testimony was made in accordance 1692  
with division (C) of section 2937.11 of the Revised Code. 1693

(c) The testimony in the videotape is not excluded by the 1694  
hearsay rule and otherwise is admissible under the Rules of 1695  
Evidence. For purposes of this division, testimony is not excluded 1696  
by the hearsay rule if the testimony is not hearsay under Evidence 1697  
Rule 801, the testimony is within an exception to the hearsay rule 1698  
set forth in Evidence Rule 803, the mentally retarded or 1699  
developmentally disabled victim who gave the testimony is 1700  
unavailable as a witness, as defined in Evidence Rule 804, and the 1701  
testimony is admissible under that rule, or both of the following 1702  
apply: 1703

(i) The accused had an opportunity and similar motive at the 1704

preliminary hearing to develop the testimony of the mentally retarded or developmentally disabled victim by direct, cross, or redirect examination. 1705  
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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. 1708  
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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 or developmentally disabled victim shall not be required to testify at the hearing. 1714  
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After the hearing, the court shall not require the mentally retarded or developmentally disabled victim to testify at the trial, unless it determines that both of the following apply: 1737  
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(a) That the testimony of the mentally retarded or developmentally disabled victim at trial is necessary for one or more of the following reasons: 1740  
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(i) Evidence that was not available at the time of the testimony of the mentally retarded or developmentally disabled victim at the preliminary hearing has been discovered. 1743  
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(ii) The circumstances surrounding the case have changed sufficiently to necessitate that the mentally retarded or developmentally disabled victim testify at the trial. 1746  
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(b) That the testimony of the mentally retarded or developmentally disabled victim at the trial is necessary to protect the right of the defendant to a fair trial. 1749  
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The court shall enter its finding and the reasons for it in the journal. If the court requires the mentally retarded or developmentally disabled victim to testify at the trial, the testimony of the victim shall be limited to the new evidence and changed circumstances, and the mentally retarded or developmentally disabled victim shall not otherwise be required to testify at the trial. The required testimony of the mentally retarded or developmentally disabled victim may be given in person or, upon motion of the prosecution, may be taken by deposition in accordance with division (B) of section 2945.482 of the Revised Code provided the deposition is admitted as evidence under division (C) of that section, may be taken outside of the courtroom and televised into the courtroom in accordance with division (D) of that section, or may be taken outside of the courtroom and recorded for showing in the courtroom in accordance with division (E) of that section. 1752  
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(3) If videotaped testimony of a mentally retarded or developmentally disabled victim is admitted at trial in accordance with division (B)(1) of this section, the mentally retarded or developmentally disabled victim shall not be compelled in any way to appear as a witness at the trial, except as provided in division (B)(2) of this section.

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

**Sec. 5120.173.** Any person who is required to report suspected abuse or neglect of a child under eighteen years of age pursuant to division (A) of section 2151.421 of the Revised Code, ~~and~~ any person who is permitted to report or cause a report to be made of suspected abuse or neglect of a child under eighteen years of age pursuant to division (B) of that section, any person who is required to report suspected abuse or neglect of a person with mental retardation or a developmental disability pursuant to division (C) of section 5123.61 of the Revised Code, and any person who is permitted to report suspected abuse or neglect of a person with mental retardation or a developmental disability pursuant to division (F) of that section and who makes or causes the report to be made, shall direct that report to the state highway patrol if the child or the person with mental retardation or a developmental disability is an inmate in the custody of a state correctional institution. If the state highway patrol determines after receipt of the report that it is probable that abuse or neglect of the inmate occurred, the patrol shall report its findings to the department of rehabilitation and correction,

to the court that sentenced the inmate for the offense for which 1799  
the inmate is in the custody of the department, and to the 1800  
chairman and vice-chairman of the correctional institution 1801  
inspection committee established by section 103.71 of the Revised 1802  
Code. 1803

**Sec. 5123.081.** (A) As used in this section: 1804

(1) "Applicant" means a person who is under final 1805  
consideration for appointment to or employment with the department 1806  
of mental retardation and developmental disabilities, including, 1807  
but not limited to, a person who is being transferred to the 1808  
department and an employee who is being recalled or reemployed 1809  
after a layoff. 1810

(2) "Criminal records check" has the same meaning as in 1811  
section 109.572 of the Revised Code. 1812

(3) "Minor drug possession offense" has the same meaning as 1813  
in section 2925.01 of the Revised Code. 1814

(B) The director of mental retardation and developmental 1815  
disabilities shall request the superintendent of the bureau of 1816  
criminal identification and investigation to conduct a criminal 1817  
records check with respect to each applicant, except that the 1818  
director is not required to request a criminal records check for 1819  
an employee of the department who is being considered for a 1820  
different position or is returning after a leave of absence or 1821  
seasonal break in employment, as long as the director has no 1822  
reason to believe that the employee has committed any of the 1823  
offenses listed or described in division (E) of this section. 1824

If the applicant does not present proof that the applicant 1825  
has been a resident of this state for the five-year period 1826  
immediately prior to the date upon which the criminal records 1827  
check is requested, the director shall request that the 1828

superintendent of the bureau obtain information from the federal 1829  
bureau of investigation as a part of the criminal records check 1830  
for the applicant. If the applicant presents proof that the 1831  
applicant has been a resident of this state for that five-year 1832  
period, the director may request that the superintendent of the 1833  
bureau include information from the federal bureau of 1834  
investigation in the criminal records check. For purposes of this 1835  
division, an applicant may provide proof of residency in this 1836  
state by presenting, with a notarized statement asserting that the 1837  
applicant has been a resident of this state for that five-year 1838  
period, a valid driver's license, notification of registration as 1839  
an elector, a copy of an officially filed federal or state tax 1840  
form identifying the applicant's permanent residence, or any other 1841  
document the director considers acceptable. 1842

(C) The director shall provide to each applicant a copy of 1843  
the form prescribed pursuant to division (C)(1) of section 109.572 1844  
of the Revised Code, provide to each applicant a standard 1845  
impression sheet to obtain fingerprint impressions prescribed 1846  
pursuant to division (C)(2) of section 109.572 of the Revised 1847  
Code, obtain the completed form and impression sheet from each 1848  
applicant, and forward the completed form and impression sheet to 1849  
the superintendent of the bureau of criminal identification and 1850  
investigation at the time the criminal records check is requested. 1851

Any applicant who receives pursuant to this division a copy 1852  
of the form prescribed pursuant to division (C)(1) of section 1853  
109.572 of the Revised Code and a copy of an impression sheet 1854  
prescribed pursuant to division (C)(2) of that section and who is 1855  
requested to complete the form and provide a set of fingerprint 1856  
impressions shall complete the form or provide all the information 1857  
necessary to complete the form and shall provide the material with 1858  
the impressions of the applicant's fingerprints. If an applicant, 1859  
upon request, fails to provide the information necessary to 1860

complete the form or fails to provide impressions of the 1861  
applicant's fingerprints, the director shall not employ the 1862  
applicant. 1863

(D) The director may request any other state or federal 1864  
agency to supply the director with a written report regarding the 1865  
criminal record of each applicant. With regard to an applicant who 1866  
becomes a department employee, if the employee holds an 1867  
occupational or professional license or other credentials, the 1868  
director may request that the state or federal agency that 1869  
regulates the employee's occupation or profession supply the 1870  
director with a written report of any information pertaining to 1871  
the employee's criminal record that the agency obtains in the 1872  
course of conducting an investigation or in the process of 1873  
renewing the employee's license or other credentials. 1874

(E) Except as provided in division (K)(2) of this section and 1875  
in rules adopted by the director in accordance with division (M) 1876  
of this section, the director shall not employ a person to fill a 1877  
position with the department who has been convicted of or pleaded 1878  
guilty to any of the following: 1879

(1) A violation of section 2903.01, 2903.02, 2903.03, 1880  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 1881  
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 1882  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 1883  
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 1884  
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 1885  
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 1886  
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 1887  
section 2905.04 of the Revised Code as it existed prior to July 1, 1888  
1996, a violation of section 2919.23 of the Revised Code that 1889  
would have been a violation of section 2905.04 of the Revised Code 1890  
as it existed prior to July 1, 1996, had the violation occurred 1891  
prior to that date, a violation of section 2925.11 of the Revised 1892

Code that is not a minor drug possession offense, or felonious 1893  
sexual penetration in violation of former section 2907.12 of the 1894  
Revised Code; 1895

(2) A felony contained in the Revised Code that is not listed 1896  
in this division, if the felony bears a direct and substantial 1897  
relationship to the duties and responsibilities of the position 1898  
being filled; 1899

(3) Any offense contained in the Revised Code constituting a 1900  
misdemeanor of the first degree on the first offense and a felony 1901  
on a subsequent offense, if the offense bears a direct and 1902  
substantial relationship to the position being filled and the 1903  
nature of the services being provided by the department; 1904

(4) A violation of an existing or former municipal ordinance 1905  
or law of this state, any other state, or the United States, if 1906  
the offense is substantially equivalent to any of the offenses 1907  
listed or described in division (E)(1), (2), or (3) of this 1908  
section. 1909

(F) Prior to employing an applicant, the director shall 1910  
require the applicant to submit a statement with the applicant's 1911  
signature attesting that the applicant has not been convicted of 1912  
or pleaded guilty to any of the offenses listed or described in 1913  
division (E) of this section. The director also shall require the 1914  
applicant to sign an agreement under which the applicant agrees to 1915  
notify the director within fourteen calendar days if, while 1916  
employed with the department, the applicant is ever formally 1917  
charged with, convicted of, or pleads guilty to any of the 1918  
offenses listed or described in division (E) of this section. The 1919  
agreement shall inform the applicant that failure to report formal 1920  
charges, a conviction, or a guilty plea may result in being 1921  
dismissed from employment. 1922

(G) The director shall pay to the bureau of criminal 1923

identification and investigation the fee prescribed pursuant to 1924  
division (C)(3) of section 109.572 of the Revised Code for each 1925  
criminal records check requested and conducted pursuant to this 1926  
section. 1927

(H)(1) Any report obtained pursuant to this section is not a 1928  
public record for purposes of section 149.43 of the Revised Code 1929  
and shall not be made available to any person, other than the 1930  
applicant who is the subject of the records check or criminal 1931  
records check or the applicant's representative, the department or 1932  
its representative, a county board of mental retardation and 1933  
developmental disabilities, and any court, hearing officer, or 1934  
other necessary individual involved in a case dealing with the 1935  
denial of employment to the applicant or the denial, suspension, 1936  
or revocation of a certificate or evidence of registration under 1937  
section 5123.082 of the Revised Code. 1938

(2) An individual for whom the director has obtained reports 1939  
under this section may submit a written request to the director to 1940  
have copies of the reports sent to any state agency, entity of 1941  
local government, or private entity. The individual shall specify 1942  
in the request the agencies or entities to which the copies are to 1943  
be sent. On receiving the request, the director shall send copies 1944  
of the reports to the agencies or entities specified. 1945

The director may request that a state agency, entity of local 1946  
government, or private entity send copies to the director of any 1947  
report regarding a records check or criminal records check that 1948  
the agency or entity possesses, if the director obtains the 1949  
written consent of the individual who is the subject of the 1950  
report. 1951

(I) The director shall request the registrar of motor 1952  
vehicles to supply the director with a certified abstract 1953  
regarding the record of convictions for violations of motor 1954  
vehicle laws of each applicant who will be required by the 1955

applicant's employment to transport individuals with mental 1956  
retardation or a developmental disability or to operate the 1957  
department's vehicles for any other purpose. For each abstract 1958  
provided under this section, the director shall pay the amount 1959  
specified in section 4509.05 of the Revised Code. 1960

(J) The director shall provide each applicant with a copy of 1961  
any report or abstract obtained about the applicant under this 1962  
section. 1963

(K)(1) The director shall inform each person, at the time of 1964  
the person's initial application for employment, that the person 1965  
is required to provide a set of impressions of the person's 1966  
fingerprints and that a criminal records check is required to be 1967  
conducted and satisfactorily completed in accordance with section 1968  
109.572 of the Revised Code if the person comes under final 1969  
consideration for employment as a precondition to employment in a 1970  
position. 1971

(2) The director may employ an applicant pending receipt of 1972  
reports requested under this section. The director shall terminate 1973  
employment of any such applicant if it is determined from the 1974  
reports that the applicant failed to inform the director that the 1975  
applicant had been convicted of or pleaded guilty to any of the 1976  
offenses listed or described in division (E) of this section. 1977

(L) The director may charge an applicant a fee for costs the 1978  
director incurs in obtaining reports, abstracts, or fingerprint 1979  
impressions under this section. A fee charged under this division 1980  
shall not exceed the amount of the fees the director pays under 1981  
divisions (G) and (I) of this section. If a fee is charged under 1982  
this division, the director shall notify the applicant of the 1983  
amount of the fee at the time of the applicant's initial 1984  
application for employment and that, unless the fee is paid, the 1985  
director will not consider the applicant for employment. 1986



(M) The director shall adopt rules in accordance with Chapter 1987  
119. of the Revised Code to implement this section, including 1988  
rules specifying circumstances under which the director may employ 1989  
a person who has been convicted of or pleaded guilty to an offense 1990  
listed or described in division (E) of this section but who meets 1991  
standards in regard to rehabilitation set by the director. 1992

**Sec. 5123.50.** As used in this section and sections 5123.51 1993  
~~and~~, 5123.52, and 5123.541 of the Revised Code: 1994

(A) "Abuse" means all of the following: 1995

(1) The use of physical force that can reasonably be expected 1996  
to result in physical harm or serious physical harm; 1997

(2) Sexual abuse; 1998

(3) Verbal abuse. 1999

(B) "Misappropriation" means depriving, defrauding, or 2000  
otherwise obtaining the real or personal property of an individual 2001  
by any means prohibited by the Revised Code, including violations 2002  
of Chapter 2911. or 2913. of the Revised Code. 2003

(C) "MR/DD employee" means all of the following: 2004

(1) An employee of the department of mental retardation and 2005  
developmental disabilities; 2006

(2) An employee of a county board of mental retardation and 2007  
developmental disabilities; 2008

(3) An "ICF/MR worker," as defined in section 5123.193 of the 2009  
Revised Code; 2010

(4) An individual who is employed in a position that includes 2011  
providing specialized services to an individual with mental 2012  
retardation or a another developmental disability. 2013

(D) "Neglect" means, when there is a duty to do so, failing 2014

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

section 2930.061 or 5123.541 of the Revised Code, the department 2045  
shall review the notice. 2046

2047

(B) The department shall do both of the following: 2048

(1) Investigate the allegation or adopt the findings of an 2049  
investigation or review of the allegation conducted by another 2050  
person or government entity and determine whether there is a 2051  
reasonable basis for the allegation; 2052

(2) If the department determines that there is a reasonable 2053  
basis for the allegation, conduct an adjudication pursuant to 2054  
Chapter 119. of the Revised Code. 2055

(C)(1) The department shall appoint an independent hearing 2056  
officer to conduct any hearing conducted pursuant to division 2057  
(B)(2) of this section, except that, if the hearing is regarding 2058  
an employee of the department who is represented by a union, the 2059  
department and a representative of the union shall jointly select 2060  
the hearing officer. 2061

(2) ~~No~~ (a) Except as provided in division (C)(2)(b) of this 2062  
section, no hearing shall be conducted under division (B)(2) of 2063  
this section until any criminal proceeding or collective 2064  
bargaining arbitration concerning the same allegation has 2065  
concluded. 2066

(b) The department may conduct a hearing pursuant to division 2067  
(B)(2) of this section before a criminal proceeding concerning the 2068  
same allegation is concluded if both of the following are the 2069  
case: 2070

(i) The department notifies the prosecutor responsible for 2071  
the criminal proceeding that the department proposes to conduct a 2072  
hearing. 2073

(ii) The prosecutor consents to the hearing. 2074

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

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

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

(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;

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

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

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

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

(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;

(viii) Unreasonably failed to make a report pursuant to division (C) of section 5123.61 of the Revised Code when the employee knew or should have known that the failure would result

in a substantial risk of harm to an individual with mental 2105  
retardation or a developmental disability. 2106

(b) Give weight to the decision in any collective bargaining 2107  
arbitration regarding the same allegation; 2108

(c) Give weight to any relevant facts presented at the 2109  
hearing. 2110

(D)(1) Unless the director of mental retardation and 2111  
developmental disabilities determines that there are extenuating 2112  
circumstances and except as provided in ~~divisions (D)(4) and~~ 2113  
division (E) of this section, the director shall include in the 2114  
registry established under section 5123.52 of the Revised Code the 2115  
name of an MR/DD employee if the director, after considering all 2116  
of the factors listed in division (C)(3) of this section, finds 2117  
that there is clear and convincing evidence that ~~the~~ an MR/DD 2118  
employee has done one or more of the things described in division 2119  
(C)(3)(a) of this section the director shall include the name of 2120  
the employee in the registry established under section 5123.52 of 2121  
the Revised Code. 2122

(2) Extenuating circumstances the director must consider 2123  
include the use of physical force by an MR/DD employee that was 2124  
necessary as self-defense. 2125

(3) If the director includes an MR/DD employee in the 2126  
registry established under section 5123.52 of the Revised Code, 2127  
the director shall notify the employee, the person or government 2128  
entity that employs or contracts with the employee, the individual 2129  
with mental retardation or a developmental disability who was the 2130  
subject of the report and that individual's legal guardian, if 2131  
any, the attorney general, and the prosecuting attorney or other 2132  
law enforcement agency. If the MR/DD employee holds a license, 2133  
certificate, registration, or other authorization to engage in a 2134  
profession issued pursuant to Title XLVII of the Revised Code, the 2135

director shall notify the appropriate agency, board, department, 2136  
or other entity responsible for regulating the employee's 2137  
professional practice. 2138

(4) ~~The director shall not include in the registry an~~ 2139  
~~individual who has been found not guilty by a court or jury of an~~ 2140  
~~offense arising from the same facts~~ If an individual whose name 2141  
appears on the registry is involved in a court proceeding or 2142  
arbitration arising from the same facts as the allegation 2143  
resulting in the individual's placement on the registry, the 2144  
disposition of the proceeding or arbitration shall be noted in the 2145  
registry next to the individual's name. 2146

(E) In the case of an allegation concerning an employee of 2147  
the department, after the hearing conducted pursuant to division 2148  
(B)(2) of this section, the director of health or that director's 2149  
designee shall review the decision of the hearing officer to 2150  
determine whether the standard described in division (C)~~(2)~~(3) of 2151  
this section has been met. If the director or designee determines 2152  
that the standard has been met and that no extenuating 2153  
circumstances exist, the director or designee shall notify the 2154  
director of mental retardation and developmental disabilities that 2155  
the MR/DD employee is to be included in the registry established 2156  
under section 5123.52 of the Revised Code. If the director of 2157  
mental retardation and developmental disabilities receives such 2158  
notification, the director shall include the MR/DD employee in the 2159  
registry, ~~unless division (D)(4) of this section applies,~~ and 2160  
shall provide the notification described in division (D)(3) of 2161  
this section. 2162

(F) If the department is required by Chapter 119. of the 2163  
Revised Code to give notice of an opportunity for a hearing and 2164  
the MR/DD employee subject to the notice does not timely request a 2165  
hearing in accordance with section 119.07 of the Revised Code, the 2166  
department is not required to hold a hearing. 2167

(G) Files and records of investigations conducted pursuant to 2168  
this section are not public records as defined in section 149.43 2169  
of the Revised Code, but, on request, the department shall provide 2170  
copies of those files and records to the attorney general, a 2171  
prosecuting attorney, or a law enforcement agency. 2172

Sec. 5123.541. (A) No MR/DD employee shall engage in any 2173  
sexual conduct or have any sexual contact with an individual with 2174  
mental retardation or another developmental disability for whom 2175  
the MR/DD employee is employed or under a contract to provide care 2176  
unless the individual is the MR/DD employee's spouse. 2177

(B) Any MR/DD employee who violates division (A) of this 2178  
section shall be eligible to be included in the registry regarding 2179  
misappropriation, abuse, neglect, or other specified misconduct by 2180  
MR/DD employees established under section 5123.52 of the Revised 2181  
Code, in addition to any other sanction or penalty authorized or 2182  
required by law. 2183

(C)(1) Any person listed in division (C)(2) of section 2184  
5123.61 of the Revised Code who has reason to believe that an 2185  
MR/DD employee has violated division (A) of this section shall 2186  
immediately report that belief to the department of mental 2187  
retardation and developmental disabilities. 2188

(2) Any person who has reason to believe that an MR/DD 2189  
employee has violated division (A) of this section may report that 2190  
belief to the department of mental retardation and developmental 2191  
disabilities. 2192

Sec. 5123.542. (A) Each of the following shall annually 2193  
provide a written notice to each of its MR/DD employees explaining 2194  
the conduct for which an MR/DD employee may be included in the 2195  
registry established under section 5123.52 of the Revised Code: 2196

(1) The department of mental retardation and developmental 2197

<u>disabilities;</u>	2198
<u>(2) Each county board of mental retardation and developmental disabilities;</u>	2199
<u>(3) Each contracting entity, as defined in section 5126.281 of the Revised Code;</u>	2200
<u>(4) Each owner, operator, or administrator of a residential facility, as defined in section 5123.19 of the Revised Code;</u>	2201
<u>(5) Each owner, operator, or administrator of a program certified by the department to provide supported living.</u>	2202
<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>	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
<b>Sec. 5123.61.</b> (A) As used in this section:	2205
(1) "Law enforcement agency" means the state highway patrol, the police department of a municipal corporation, or a county sheriff.	2206
(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.	2207
(3) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.	2208
(B) The department of mental retardation and developmental disabilities shall establish a registry office for the purpose of	2209



maintaining reports of abuse, neglect, and other major unusual 2227  
incidents made to the department under this section and reports 2228  
received from county boards of mental retardation and 2229  
developmental disabilities under section 5126.31 of the Revised 2230  
Code. The department shall establish committees to review reports 2231  
of abuse, neglect, and other major unusual incidents. 2232

(C)(1) Any person listed in division (C)(2) of this section, 2233  
having reason to believe that a person with mental retardation or 2234  
a developmental disability has suffered or faces a substantial 2235  
risk of suffering any wound, injury, disability, or condition of 2236  
such a nature as to reasonably indicate abuse or neglect of that 2237  
person, shall immediately report or cause reports to be made of 2238  
such information to the entity specified in this division. Except 2239  
as provided in section 5120.173 of the Revised Code or as 2240  
otherwise provided in this division, the person making the report 2241  
shall make it to a law enforcement agency or to the county board 2242  
of mental retardation and developmental disabilities, ~~except that~~ 2243  
~~if.~~ If the report concerns a resident of a facility operated by 2244  
the department of mental retardation and developmental 2245  
disabilities the report shall be made either to a law enforcement 2246  
agency or to the department. If the report concerns any act or 2247  
omission of an employee of a county board of mental retardation 2248  
and developmental disabilities, the report immediately shall be 2249  
made to the department and to the county board. 2250

(2) All of the following persons are required to make a 2251  
report under division (C)(1) of this section: 2252

(a) Any physician, including a hospital intern or resident, 2253  
any dentist, podiatrist, chiropractor, practitioner of a limited 2254  
branch of medicine as specified in section 4731.15 of the Revised 2255  
Code, hospital administrator or employee of a hospital, nurse 2256  
licensed under Chapter 4723. of the Revised Code, employee of an 2257  
ambulatory health facility as defined in section 5101.61 of the 2258

Revised Code, employee of a home health agency, employee of an 2259  
adult care facility licensed under Chapter 3722. of the Revised 2260  
Code, or employee of a community mental health facility; 2261

(b) Any school teacher or school authority, social worker, 2262  
psychologist, attorney, peace officer, coroner, ~~clergyman~~, or 2263  
residents' rights advocate as defined in section 3721.10 of the 2264  
Revised Code; 2265

(c) A superintendent, board member, or employee of a county 2266  
board of mental retardation and developmental disabilities; an 2267  
administrator, board member, or employee of a residential facility 2268  
licensed under section 5123.19 of the Revised Code; an 2269  
administrator, board member, or employee of any other public or 2270  
private provider of services to a person with mental retardation 2271  
or a developmental disability, or any MR/DD employee, as defined 2272  
in section 5123.50 of the Revised Code; 2273

(d) A member of a citizen's advisory council established at 2274  
an institution or branch institution of the department of mental 2275  
retardation and developmental disabilities under section 5123.092 2276  
of the Revised Code; 2277

(e) A clergyman who is employed in a position that includes 2278  
providing specialized services to an individual with mental 2279  
retardation or another developmental disability, while acting in 2280  
an official or professional capacity in that position, or a person 2281  
who is employed in a position that includes providing specialized 2282  
services to an individual with mental retardation or another 2283  
developmental disability and who, while acting in an official or 2284  
professional capacity, renders spiritual treatment through prayer 2285  
in accordance with the tenets of an organized religion. 2286

(3)(a) The reporting requirements of this division do not 2287  
apply to members of the legal rights service commission or to 2288  
employees of the legal rights service. 2289

(b) An attorney or physician is not required to make a report pursuant to division (C)(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 (C)(1) of this section, if both of the following apply:

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

(ii) 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 substantial risk of suffering any wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(4) Any person who fails to make a report required under division (C) of this section and who is an MR/DD employee, as defined in section 5123.50 of the Revised Code, 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.

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

(1) The names and addresses of the person with mental

retardation or a developmental disability and the person's 2321  
custodian, if known; 2322

(2) The age of the person with mental retardation or a 2323  
developmental disability; 2324

(3) Any other information that would assist in the 2325  
investigation of the report. 2326

(E) When a physician performing services as a member of the 2327  
staff of a hospital or similar institution has reason to believe 2328  
that a person with mental retardation or a developmental 2329  
disability has suffered injury, abuse, or physical neglect, the 2330  
physician shall notify the person in charge of the institution or 2331  
that person's designated delegate, who shall make the necessary 2332  
reports. 2333

(F) Any person having reasonable cause to believe that a 2334  
person with mental retardation or a developmental disability has 2335  
suffered or faces a substantial risk of suffering abuse or neglect 2336  
may report ~~the belief,~~ or cause a report to be made, of that 2337  
belief to the entity specified in this division. Except as 2338  
provided in section 5120.173 of the Revised Code or as otherwise 2339  
provided in this division, the person making the report shall make 2340  
it to a law enforcement agency or the county board of mental 2341  
retardation and developmental disabilities, ~~or, if.~~ If the person 2342  
is a resident of a facility operated by the department of mental 2343  
retardation and developmental disabilities, the report shall be 2344  
made to a law enforcement agency or to the department. If the 2345  
report concerns any act or omission of an employee of a county 2346  
board of mental retardation and developmental disabilities, the 2347  
report immediately shall be made to the department and to the 2348  
county board. 2349

(G)(1) Upon the receipt of a report concerning the possible 2350  
abuse or neglect of a person with mental retardation or a 2351

developmental disability, the law enforcement agency shall inform 2352  
the county board of mental retardation and developmental 2353  
disabilities or, if the person is a resident of a facility 2354  
operated by the department of mental retardation and developmental 2355  
disabilities, the director of the department or the director's 2356  
designee. 2357

(2) On receipt of a report under this section that includes 2358  
an allegation of action or inaction that may constitute a crime 2359  
under federal law or the law of this state, the department of 2360  
mental retardation and developmental disabilities shall notify the 2361  
law enforcement agency. 2362

(3) When a county board of mental retardation and 2363  
developmental disabilities receives a report under this section 2364  
that includes an allegation of action or inaction that may 2365  
constitute a crime under federal law or the law of this state, the 2366  
superintendent of the board or an individual the superintendent 2367  
designates under division (H) of this section shall notify the law 2368  
enforcement agency. The superintendent or individual shall notify 2369  
the department of mental retardation and developmental 2370  
disabilities when it receives any report under this section. 2371

(4) When a county board of mental retardation and 2372  
developmental disabilities receives a report under this section 2373  
and believes that the degree of risk to the person is such that 2374  
the report is an emergency, the superintendent of the board or an 2375  
employee of the board the superintendent designates shall attempt 2376  
a face-to-face contact with the person with mental retardation or 2377  
a developmental disability who allegedly is the victim within one 2378  
hour of the board's receipt of the report. 2379

(H) The superintendent of the board may designate an 2380  
individual to be responsible for notifying the law enforcement 2381  
agency and the department when the county board receives a report 2382  
under this section. 2383

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

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

If the person is an adult and is not a resident of a facility operated by the department, the county board of mental retardation and developmental disabilities shall review the report of abuse or neglect in accordance with sections 5126.30 to 5126.33 of the

Revised Code and the law enforcement agency shall make the written 2416  
report of its findings to the county board. 2417

(K) Any person or any hospital, institution, school, health 2418  
department, or agency participating in the making of reports 2419  
pursuant to this section, any person participating as a witness in 2420  
an administrative or judicial proceeding resulting from the 2421  
reports, or any person or governmental entity that discharges 2422  
responsibilities under sections 5126.31 to 5126.33 of the Revised 2423  
Code shall be immune from any civil or criminal liability that 2424  
might otherwise be incurred or imposed as a result of such actions 2425  
except liability for perjury, unless the person or governmental 2426  
entity has acted in bad faith or with malicious purpose. 2427

(L) No employer or any person with the authority to do so 2428  
shall discharge, demote, transfer, prepare a negative work 2429  
performance evaluation, reduce pay or benefits, terminate work 2430  
privileges, or take any other action detrimental to an employee or 2431  
retaliate against an employee as a result of the employee's having 2432  
made a report under this section. This division does not preclude 2433  
an employer or person with authority from taking action with 2434  
regard to an employee who has made a report under this section if 2435  
there is another reasonable basis for the action. 2436

(M) Reports made under this section are not public records as 2437  
defined in section 149.43 of the Revised Code. Information 2438  
contained in the reports on request shall be made available to the 2439  
person who is the subject of the report, to the person's legal 2440  
counsel, and to agencies authorized to receive information in the 2441  
report by the department or by a county board of mental 2442  
retardation and developmental disabilities. 2443

(N) Notwithstanding section 4731.22 of the Revised Code, the 2444  
physician-patient privilege shall not be a ground for excluding 2445  
evidence regarding the injuries or physical neglect of a person 2446  
with mental retardation or a developmental disability or the cause 2447

thereof in any judicial proceeding resulting from a report 2448  
submitted pursuant to this section. 2449

Sec. 5123.614. (A) Subject to division (B) of this section, 2450  
on receipt of a report of a major unusual incident made pursuant 2451  
to section 5123.61 or 5126.31 of the Revised Code or rules adopted 2452  
under section 5123.612 of the Revised Code, the department of 2453  
mental retardation and developmental disabilities may do either of 2454  
the following: 2455

(1) Conduct an independent review or investigation of the 2456  
incident; 2457

(2) Request that an independent review or investigation of 2458  
the incident be conducted by a county board of mental retardation 2459  
and developmental disabilities that is not implicated in the 2460  
report, a regional council of government, or any other entity 2461  
authorized to conduct such investigations. 2462

(B) If a report described in division (A) of this section 2463  
concerning the health or safety of a person with mental 2464  
retardation or a developmental disability involves an allegation 2465  
that an employee of a county board of mental retardation and 2466  
developmental disabilities has created a substantial risk of 2467  
serious physical harm to a person with mental retardation or a 2468  
developmental disability, the department shall do one of the 2469  
following: 2470

(1) Conduct an independent investigation regarding the 2471  
incident; 2472

(2) Request that an independent review or investigation of 2473  
the incident be conducted by a county board of mental retardation 2474  
and developmental disabilities that is not implicated in the 2475  
report, a regional council of government, or any other entity 2476  
authorized to conduct such investigations. 2477



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

(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.

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

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

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

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

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

<u>the probate judge who is senior in point of service or the senior</u>	2508
<u>probate judge's representative;</u>	2509
<u>(3) The county peace officer;</u>	2510
<u>(4) All chief municipal peace officers within the county;</u>	2511
<u>(5) Other law enforcement officers handling abuse, neglect,</u>	2512
<u>and exploitation of mentally retarded and developmentally disabled</u>	2513
<u>persons in the county;</u>	2514
<u>(6) The prosecuting attorney of the county;</u>	2515
<u>(7) The public children services agency;</u>	2516
<u>(8) The coroner of the county.</u>	2517
<u>(B) A memorandum of understanding shall set forth the normal</u>	2518
<u>operating procedure to be employed by all concerned officials in</u>	2519
<u>the execution of their respective responsibilities under this</u>	2520
<u>section and sections 313.12, 2151.421, 2903.16, 5126.31, and</u>	2521
<u>5126.33 of the Revised Code and shall have as its primary goal the</u>	2522
<u>elimination of all unnecessary interviews of persons who are the</u>	2523
<u>subject of reports made pursuant to this section. A failure to</u>	2524
<u>follow the procedure set forth in the memorandum by the concerned</u>	2525
<u>officials is not grounds for, and shall not result in, the</u>	2526
<u>dismissal of any charge or complaint arising from any reported</u>	2527
<u>case of abuse, neglect, or exploitation or the suppression of any</u>	2528
<u>evidence obtained as a result of any reported abuse, neglect, or</u>	2529
<u>exploitation and does not give any rights or grounds for appeal or</u>	2530
<u>post-conviction relief to any person.</u>	2531
<u>(C) A memorandum of understanding shall include, but is not</u>	2532
<u>limited to, all of the following:</u>	2533
<u>(1) The roles and responsibilities for handling emergency and</u>	2534
<u>nonemergency cases of abuse, neglect, or exploitation;</u>	2535
<u>(2) The roles and responsibilities for handling and</u>	2536
<u>coordinating investigations of reported cases of abuse, neglect,</u>	2537

or exploitation and methods to be used in interviewing the person 2538  
who is the subject of the report and who allegedly was abused, 2539  
neglected, or exploited; 2540

(3) The roles and responsibilities for addressing the 2541  
categories of persons who may interview the person who is the 2542  
subject of the report and who allegedly was abused, neglected, or 2543  
exploited; 2544

(4) The roles and responsibilities for providing victim 2545  
services to mentally retarded and developmentally disabled persons 2546  
pursuant to Chapter 2930. of the Revised Code; 2547

(5) The roles and responsibilities for the filing of criminal 2548  
charges against persons alleged to have abused, neglected, or 2549  
exploited mentally retarded or developmentally disabled persons. 2550

(D) A memorandum of understanding may be signed by victim 2551  
advocates, municipal court judges, municipal prosecutors, and any 2552  
other person whose participation furthers the goals of a 2553  
memorandum of understanding, as set forth in this section. 2554

**Sec. 5126.28.** (A) As used in this section: 2555

(1) "Applicant" means a person who is under final 2556  
consideration for appointment or employment in a position with a 2557  
county board of mental retardation and developmental disabilities, 2558  
including, but not limited to, a person who is being transferred 2559  
to the county board and an employee who is being recalled or 2560  
reemployed after a layoff. 2561

(2) "Criminal records check" has the same meaning as in 2562  
section 109.572 of the Revised Code. 2563

(3) "Minor drug possession offense" has the same meaning as 2564  
in section 2925.01 of the Revised Code. 2565

(B) The superintendent of a county board of mental 2566

retardation and developmental disabilities shall request the 2567  
superintendent of the bureau of criminal identification and 2568  
investigation to conduct a criminal records check with respect to 2569  
any applicant who has applied to the board for employment in any 2570  
position, except that a county board superintendent is not 2571  
required to request a criminal records check for an employee of 2572  
the board who is being considered for a different position or is 2573  
returning after a leave of absence or seasonal break in 2574  
employment, as long as the superintendent has no reason to believe 2575  
that the employee has committed any of the offenses listed or 2576  
described in division (E) of this section. 2577

If the applicant does not present proof that the applicant 2578  
has been a resident of this state for the five-year period 2579  
immediately prior to the date upon which the criminal records 2580  
check is requested, the county board superintendent shall request 2581  
that the superintendent of the bureau obtain information from the 2582  
federal bureau of investigation as a part of the criminal records 2583  
check for the applicant. If the applicant presents proof that the 2584  
applicant has been a resident of this state for that five-year 2585  
period, the county board superintendent may request that the 2586  
superintendent of the bureau include information from the federal 2587  
bureau of investigation in the criminal records check. For 2588  
purposes of this division, an applicant may provide proof of 2589  
residency in this state by presenting, with a notarized statement 2590  
asserting that the applicant has been a resident of this state for 2591  
that five-year period, a valid driver's license, notification of 2592  
registration as an elector, a copy of an officially filed federal 2593  
or state tax form identifying the applicant's permanent residence, 2594  
or any other document the superintendent considers acceptable. 2595

(C) The county board superintendent shall provide to each 2596  
applicant a copy of the form prescribed pursuant to division 2597  
(C)(1) of section 109.572 of the Revised Code, provide to each 2598

applicant a standard impression sheet to obtain fingerprint 2599  
impressions prescribed pursuant to division (C)(2) of section 2600  
109.572 of the Revised Code, obtain the completed form and 2601  
impression sheet from each applicant, and forward the completed 2602  
form and impression sheet to the superintendent of the bureau of 2603  
criminal identification and investigation at the time the criminal 2604  
records check is requested. 2605

Any applicant who receives pursuant to this division a copy 2606  
of the form prescribed pursuant to division (C)(1) of section 2607  
109.572 of the Revised Code and a copy of an impression sheet 2608  
prescribed pursuant to division (C)(2) of that section and who is 2609  
requested to complete the form and provide a set of fingerprint 2610  
impressions shall complete the form or provide all the information 2611  
necessary to complete the form and shall provide the impression 2612  
sheet with the impressions of the applicant's fingerprints. If an 2613  
applicant, upon request, fails to provide the information 2614  
necessary to complete the form or fails to provide impressions of 2615  
the applicant's fingerprints, the county board superintendent 2616  
shall not employ that applicant. 2617

(D) A county board superintendent may request any other state 2618  
or federal agency to supply the board with a written report 2619  
regarding the criminal record of each applicant. With regard to an 2620  
applicant who becomes a board employee, if the employee holds an 2621  
occupational or professional license or other credentials, the 2622  
superintendent may request that the state or federal agency that 2623  
regulates the employee's occupation or profession supply the board 2624  
with a written report of any information pertaining to the 2625  
employee's criminal record that the agency obtains in the course 2626  
of conducting an investigation or in the process of renewing the 2627  
employee's license or other credentials. 2628

(E) Except as provided in division (K)(2) of this section and 2629  
in rules adopted by the department of mental retardation and 2630

developmental disabilities in accordance with division (M) of this 2631  
section, no county board of mental retardation and developmental 2632  
disabilities shall employ a person to fill a position with the 2633  
board who has been convicted of or pleaded guilty to any of the 2634  
following: 2635

(1) A violation of section 2903.01, 2903.02, 2903.03, 2636  
2903.341, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2637  
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2638  
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2639  
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2640  
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2641  
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2642  
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 2643  
section 2905.04 of the Revised Code as it existed prior to July 1, 2644  
1996, a violation of section 2919.23 of the Revised Code that 2645  
would have been a violation of section 2905.04 of the Revised Code 2646  
as it existed prior to July 1, 1996, had the violation occurred 2647  
prior to that date, a violation of section 2925.11 of the Revised 2648  
Code that is not a minor drug possession offense, or felonious 2649  
sexual penetration in violation of former section 2907.12 of the 2650  
Revised Code; 2651

(2) A felony contained in the Revised Code that is not listed 2652  
in this division, if the felony bears a direct and substantial 2653  
relationship to the duties and responsibilities of the position 2654  
being filled; 2655

(3) Any offense contained in the Revised Code constituting a 2656  
misdemeanor of the first degree on the first offense and a felony 2657  
on a subsequent offense, if the offense bears a direct and 2658  
substantial relationship to the position being filled and the 2659  
nature of the services being provided by the county board; 2660

(4) A violation of an existing or former municipal ordinance 2661  
or law of this state, any other state, or the United States, if 2662

the offense is substantially equivalent to any of the offenses 2663  
listed or described in division (E)(1), (2), or (3) of this 2664  
section. 2665

(F) Prior to employing an applicant, the county board 2666  
superintendent shall require the applicant to submit a statement 2667  
with the applicant's signature attesting that the applicant has 2668  
not been convicted of or pleaded guilty to any of the offenses 2669  
listed or described in division (E) of this section. The 2670  
superintendent also shall require the applicant to sign an 2671  
agreement under which the applicant agrees to notify the 2672  
superintendent within fourteen calendar days if, while employed by 2673  
the board, the applicant is ever formally charged with, convicted 2674  
of, or pleads guilty to any of the offenses listed or described in 2675  
division (E) of this section. The agreement shall inform the 2676  
applicant that failure to report formal charges, a conviction, or 2677  
a guilty plea may result in being dismissed from employment. 2678

(G) A county board of mental retardation and developmental 2679  
disabilities shall pay to the bureau of criminal identification 2680  
and investigation the fee prescribed pursuant to division (C)(3) 2681  
of section 109.572 of the Revised Code for each criminal records 2682  
check requested and conducted pursuant to this section. 2683

(H)(1) Any report obtained pursuant to this section is not a 2684  
public record for purposes of section 149.43 of the Revised Code 2685  
and shall not be made available to any person, other than the 2686  
applicant who is the subject of the records check or criminal 2687  
records check or the applicant's representative, the board 2688  
requesting the records check or criminal records check or its 2689  
representative, the department of mental retardation and 2690  
developmental disabilities, and any court, hearing officer, or 2691  
other necessary individual involved in a case dealing with the 2692  
denial of employment to the applicant or the denial, suspension, 2693  
or revocation of a certificate or evidence of registration under 2694

section 5126.25 of the Revised Code. 2695

(2) An individual for whom a county board superintendent has 2696  
obtained reports under this section may submit a written request 2697  
to the county board to have copies of the reports sent to any 2698  
state agency, entity of local government, or private entity. The 2699  
individual shall specify in the request the agencies or entities 2700  
to which the copies are to be sent. On receiving the request, the 2701  
county board shall send copies of the reports to the agencies or 2702  
entities specified. 2703

A county board may request that a state agency, entity of 2704  
local government, or private entity send copies to the board of 2705  
any report regarding a records check or criminal records check 2706  
that the agency or entity possesses, if the county board obtains 2707  
the written consent of the individual who is the subject of the 2708  
report. 2709

(I) Each county board superintendent shall request the 2710  
registrar of motor vehicles to supply the superintendent with a 2711  
certified abstract regarding the record of convictions for 2712  
violations of motor vehicle laws of each applicant who will be 2713  
required by the applicant's employment to transport individuals 2714  
with mental retardation or developmental disabilities or to 2715  
operate the board's vehicles for any other purpose. For each 2716  
abstract provided under this section, the board shall pay the 2717  
amount specified in section 4509.05 of the Revised Code. 2718

(J) The county board superintendent shall provide each 2719  
applicant with a copy of any report or abstract obtained about the 2720  
applicant under this section. At the request of the director of 2721  
mental retardation and developmental disabilities, the 2722  
superintendent also shall provide the director with a copy of a 2723  
report or abstract obtained under this section. 2724

(K)(1) The county board superintendent shall inform each 2725



person, at the time of the person's initial application for 2726  
employment, that the person is required to provide a set of 2727  
impressions of the person's fingerprints and that a criminal 2728  
records check is required to be conducted and satisfactorily 2729  
completed in accordance with section 109.572 of the Revised Code 2730  
if the person comes under final consideration for appointment or 2731  
employment as a precondition to employment in a position. 2732

(2) A board may employ an applicant pending receipt of 2733  
reports requested under this section. The board shall terminate 2734  
employment of any such applicant if it is determined from the 2735  
reports that the applicant failed to inform the county board that 2736  
the applicant had been convicted of or pleaded guilty to any of 2737  
the offenses listed or described in division (E) of this section. 2738

(L) The board may charge an applicant a fee for costs it 2739  
incurs in obtaining reports, abstracts, or fingerprint impressions 2740  
under this section. A fee charged under this division shall not 2741  
exceed the amount of the fees the board pays under divisions (G) 2742  
and (I) of this section. If a fee is charged under this division, 2743  
the board shall notify the applicant of the amount of the fee at 2744  
the time of the applicant's initial application for employment and 2745  
that, unless the fee is paid, the board will not consider the 2746  
applicant for employment. 2747

(M) The department of mental retardation and developmental 2748  
disabilities shall adopt rules pursuant to Chapter 119. of the 2749  
Revised Code to implement this section and section 5126.281 of the 2750  
Revised Code, including rules specifying circumstances under which 2751  
a county board or contracting entity may hire a person who has 2752  
been convicted of or pleaded guilty to an offense listed or 2753  
described in division (E) of this section but who meets standards 2754  
in regard to rehabilitation set by the department. The rules may 2755  
not authorize a county board or contracting entity to hire an 2756  
individual who is included in the registry established under 2757

section 5123.52 of the Revised Code. 2758

**Sec. 5126.30.** As used in sections 5126.30 to 5126.34 of the 2759  
Revised Code: 2760

(A) "Adult" means a person eighteen years of age or older 2761  
with mental retardation or a developmental disability. 2762

(B) "Caretaker" means a person who is responsible for the 2763  
care of an adult by order of a court, including an order of 2764  
guardianship, or who assumes the responsibility for the care of an 2765  
adult as a volunteer, as a family member, by contract, or by the 2766  
acceptance of payment for care. 2767

(C) "Abuse" has the same meaning as in section 5123.50 of the 2768  
Revised Code, except that it includes a misappropriation, as 2769  
defined in that section. 2770

(D) "Neglect" has the same meaning as in section 5123.50 of 2771  
the Revised Code. 2772

(E) "Exploitation" means the unlawful or improper act of a 2773  
caretaker using an adult or an adult's resources for monetary or 2774  
personal benefit, profit, or gain, including misappropriation, as 2775  
defined in section 5123.50 of the Revised Code, of an adult's 2776  
resources. 2777

(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, 2778  
or Friday, except when that day is a holiday as defined in section 2779  
1.14 of the Revised Code. 2780

~~(F)~~(G) "Incapacitated" means lacking understanding or 2781  
capacity, with or without the assistance of a caretaker, to make 2782  
and carry out decisions regarding food, clothing, shelter, health 2783  
care, or other necessities, but does not include mere refusal to 2784  
consent to the provision of services. 2785

(H) "Emergency protective services" means protective services 2786  
furnished to a person with mental retardation or a developmental 2787

<u>disability to prevent immediate physical harm.</u>	2788
<u>(I) "Protective services" means services provided by the</u>	2789
<u>county board of mental retardation and developmental disabilities</u>	2790
<u>to an adult with mental retardation or a developmental disability</u>	2791
<u>for the prevention, correction, or discontinuance of an act of as</u>	2792
<u>well as conditions resulting from abuse, neglect, or exploitation.</u>	2793
<u>(J) "Protective service plan" means an individualized plan</u>	2794
<u>developed by the county board of mental retardation and</u>	2795
<u>developmental disabilities to prevent the further abuse, neglect,</u>	2796
<u>or exploitation of an adult with mental retardation or a</u>	2797
<u>developmental disability.</u>	2798
<u>(K) "Substantial risk" has the same meaning as in section</u>	2799
<u>2901.01 of the Revised Code.</u>	2800
<u>(L) "Party" means all of the following:</u>	2801
<u>(1) An adult who is the subject of a probate proceeding under</u>	2802
<u>sections 5126.30 to 5126.33 of the Revised Code;</u>	2803
<u>(2) A caretaker, unless otherwise ordered by the probate</u>	2804
<u>court;</u>	2805
<u>(3) Any other person designated as a party by the probate</u>	2806
<u>court including but not limited to, the adult's spouse, custodian,</u>	2807
<u>guardian, or parent.</u>	2808
<u>(M) "Board" has the same meaning as in section 5126.02 of the</u>	2809
<u>Revised Code.</u>	2810
<b>Sec. 5126.33.</b> (A) A county board of mental retardation and	2811
developmental disabilities may file a complaint with the probate	2812
court of the county in which an adult with mental retardation or a	2813
developmental disability resides for an order authorizing the	2814
board to arrange services described in division (C) of section	2815
5126.31 of the Revised Code for that adult if <u>the adult is</u>	2816

eligible to receive services or support under section 5126.041 of 2817  
the Revised Code and the board has been unable to secure consent. 2818  
The complaint shall include: 2819

(1) The name, age, and address of the adult; 2820

(2) Facts describing the nature of the abuse ~~or~~, neglect, or 2821  
exploitation and supporting the board's belief that services are 2822  
needed; 2823

(3) The types of services proposed by the board, as set forth 2824  
in the individualized protective service plan ~~prepared pursuant to~~ 2825  
described in division (J) of section 5126.31 5126.30 of the 2826  
Revised Code and filed with the complaint; 2827

(4) Facts showing the board's attempts to obtain the consent 2828  
of the adult or the adult's guardian to the services. 2829

(B) The board shall give the adult notice of the filing of 2830  
the complaint and in simple and clear language shall inform the 2831  
adult of the adult's rights in the hearing under division (C) of 2832  
this section and explain the consequences of a court order. This 2833  
notice shall be personally served upon ~~the adult~~ all parties, and 2834  
also shall be given to ~~the adult's caretaker~~, the adult's legal 2835  
counsel, if any, and the legal rights service. The notice shall be 2836  
given at least twenty-four hours prior to the hearing, although 2837  
the court may waive this requirement upon a showing that there is 2838  
a substantial risk that the adult will suffer immediate physical 2839  
harm in the twenty-four hour period and that the board has made 2840  
reasonable attempts to give the notice required by this division. 2841

(C) Upon the filing of a complaint for an order under this 2842  
section, the court shall hold a hearing at least twenty-four hours 2843  
and no later than seventy-two hours after the notice under 2844  
division (B) of this section has been given unless the court has 2845  
waived the notice. ~~The adult~~ All parties shall have the right to 2846

be present at the hearing, present evidence, and examine and 2847  
cross-examine witnesses. The Ohio Rules of Evidence shall apply to 2848  
a hearing conducted pursuant to this division. The adult shall be 2849  
represented by counsel unless the court finds that the adult has 2850  
made a voluntary, informed, and knowing waiver of the right to 2851  
counsel. If the adult is indigent, the court shall appoint counsel 2852  
to represent the adult. The board shall be represented by the 2853  
county prosecutor or an attorney designated by the board. 2854

(D)(1) The court shall issue an order authorizing the board 2855  
to arrange the protective services if it finds, on the basis of 2856  
clear and convincing evidence, all of the following: 2857

(a) The adult has been abused ~~or~~, neglected, or exploited; 2858

(b) The adult is incapacitated; 2859

(c) There is a substantial risk to the adult of immediate 2860  
physical harm or death; 2861

(d) The adult is in need of the services; 2862

(e) No person authorized by law or court order to give 2863  
consent for the adult is available or willing to consent to the 2864  
services. 2865

(2) The board shall develop a detailed protective service 2866  
plan describing the services that the board will provide, or 2867  
arrange for the provision of, to the adult to prevent further 2868  
abuse, neglect, or exploitation. The board shall submit the plan 2869  
to the court for approval. The protective service plan may be 2870  
changed only by court order. 2871

(3) In formulating the order, the court shall consider the 2872  
individual protective service plan and shall specifically 2873  
designate the services that are necessary to deal with the abuse 2874  
~~or~~, neglect, or exploitation or condition resulting from abuse ~~or~~, 2875  
neglect, or exploitation and that are available locally, and 2876

authorize the board to arrange for these services only. The court 2877  
shall limit the provision of these services to a period not 2878  
exceeding ~~fourteen days~~ six months, renewable for an additional 2879  
~~fourteen day~~ six-month period on a showing by the board that 2880  
continuation of the order is necessary. 2881

(E) If the court finds that all other options for meeting the 2882  
adult's needs have been exhausted, it may order that the adult be 2883  
removed from the adult's place of residence and placed in another 2884  
residential setting. Before issuing that order, the court shall 2885  
consider the adult's choice of residence and shall determine that 2886  
the new residential setting is the least restrictive alternative 2887  
available for meeting the adult's needs and is a place where the 2888  
adult can obtain the necessary requirements for daily living in 2889  
safety. The court shall not order an adult to a hospital or public 2890  
hospital as defined in section 5122.01 or a state institution as 2891  
defined in section 5123.01 of the Revised Code. 2892

(F) The court shall not authorize a change in an adult's 2893  
placement ordered under division (E) of this section unless it 2894  
finds compelling reasons to justify a change. The parties to whom 2895  
notice was given in division (B) of this section shall be given 2896  
notice of a proposed change at least five working days prior to 2897  
the change. 2898

(G) The adult, the board, or any other person who received 2899  
notice of the petition may file a motion for modification of the 2900  
court order at any time. 2901

(H) The county board shall pay court costs incurred in 2902  
proceedings brought pursuant to this section. The adult shall not 2903  
be required to pay for court-ordered services. 2904

(I)(1) After the filing of a complaint for an order under 2905  
this section, the court, prior to the final disposition, may enter 2906  
any temporary order that the court finds necessary to protect the 2907

adult with mental retardation or a developmental disability from 2908  
abuse, neglect, or exploitation including, but not limited to, the 2909  
following: 2910

(a) A temporary protection order; 2911

(b) An order requiring the evaluation of the adult; 2912

(c) An order requiring a party to vacate the adult's place of 2913  
residence or legal settlement, provided that, subject to division 2914  
(K)(1)(d) of this section, no operator of a residential facility 2915  
licensed by the department may be removed under this division; 2916

(d) In the circumstances described in, and in accordance with 2917  
the procedures set forth in, section 5123.191 of the Revised Code, 2918  
an order of the type described in that section that appoints a 2919  
receiver to take possession of and operate a residential facility 2920  
licensed by the department. 2921

(2) The court may grant an ex parte order pursuant to this 2922  
division on its own motion or if a party files a written motion or 2923  
makes an oral motion requesting the issuance of the order and 2924  
stating the reasons for it if it appears to the court that the 2925  
best interest and the welfare of the adult require that the court 2926  
issue the order immediately. The court, if acting on its own 2927  
motion, or the person requesting the granting of an ex parte 2928  
order, to the extent possible, shall give notice of its intent or 2929  
of the request to all parties, the adult's legal counsel, if any, 2930  
and the legal rights service. If the court issues an ex parte 2931  
order, the court shall hold a hearing to review the order within 2932  
seventy-two hours after it is issued or before the end of the next 2933  
day after the day on which it is issued, whichever occurs first. 2934  
The court shall give written notice of the hearing to all parties 2935  
to the action. 2936

Sec. 5126.331. (A) A probate court, through a probate judge 2937

or magistrate, may issue by telephone an ex parte emergency order 2938  
authorizing any of the actions described in division (B) of this 2939  
section if all of the following are the case: 2940

(1) The court receives notice from the county board of mental 2941  
retardation and developmental disabilities, or an authorized 2942  
employee of the board, that the board or employee believes an 2943  
emergency order is needed as described in this section. 2944

(2) The adult who is the subject of the notice is eligible to 2945  
receive services or support under section 5126.041 of the Revised 2946  
Code. 2947

(3) There is reasonable cause to believe that the adult is 2948  
incapacitated. 2949

(4) There is reasonable cause to believe that there is a 2950  
substantial risk to the adult of immediate physical harm or death. 2951

(B) An order issued under this section may authorize the 2952  
county board of mental retardation and developmental disabilities 2953  
to do any of the following: 2954

(1) Provide, or arrange for the provision of, emergency 2955  
protective services for the adult; 2956

(2) Remove the adult from the adult's place of residence or 2957  
legal settlement; 2958

(3) Remove the adult from the place where the abuse, neglect, 2959  
or exploitation occurred. 2960

(C) A court shall not issue an order under this section to 2961  
remove an adult from a place described in division (B)(2) or (3) 2962  
of this section until the court is satisfied that reasonable 2963  
efforts have been made to notify the adult and any person with 2964  
whom the adult resides of the proposed removal and the reasons for 2965  
it, except that, the court may issue an order prior to giving the 2966



notice if one of the following is the case: 2967

(1) Notification could jeopardize the physical or emotional safety of the adult. 2968  
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(2) The notification could result in the adult being removed from the court's jurisdiction. 2970  
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(D) An order issued under this section shall be in effect for not longer than twenty-four hours, except that if the day following the day on which the order is issued is a weekend-day or legal holiday, the order shall remain in effect until the next business day. 2972  
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(E)(1) Except as provided in division (E)(2) of this section, not later than twenty-four hours after an order is issued under this section, the county board or employee that provided notice to the probate court shall file a complaint with the court in accordance with division (A) of section 5126.33 of the Revised Code. 2977  
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(2) If the day following the day on which the order was issued is a weekend-day or a holiday, the county board or employee shall file the complaint with the probate court on the next business day. 2983  
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(3) Except as provided in section 5126.332 of the Revised Code, proceedings on the complaint filed pursuant to this division shall be conducted in accordance with section 5126.33 of the Revised Code. 2987  
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**Sec. 5126.332.** (A) If an order is issued pursuant to section 5126.331 of the Revised Code, the court shall hold a hearing not later than twenty-four hours after the issuance to determine whether there is probable cause for the order, except that if the day following the day on which the order is issued is a weekend-day or legal holiday, the court shall hold the hearing on 2991  
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the next business day. 2997

(B) At the hearing, the court: 2998

(1) Shall consider the adult's choice of residence and 2999  
determine whether protective services are the least restrictive 3000  
alternative available for meeting the adult's needs; 3001

(2) May issue temporary orders to protect the adult from 3002  
immediate physical harm, including, but not limited to, temporary 3003  
protection orders, evaluations, and orders requiring a party to 3004  
vacate the adult's place of residence or legal settlement; 3005

(3) May order emergency protective services. 3006

(C) A temporary order issued pursuant to division (B)(2) of 3007  
this section is effective for thirty days. The court may renew the 3008  
order for an additional thirty-day period. 3009

**Sec. 5126.333.** Any person who has reason to believe that 3010  
there is a substantial risk to an adult with mental retardation or 3011  
a developmental disability of immediate physical harm or death and 3012  
that the responsible county board of mental retardation and 3013  
developmental disabilities has failed to seek an order pursuant to 3014  
section 5126.33 or 5126.331 of the Revised Code may notify the 3015  
department of mental retardation and developmental disabilities. 3016  
Within twenty-four hours of receipt of such notice, the department 3017  
shall cause an investigation to be conducted regarding the notice. 3018  
The department shall provide assistance to the county board to 3019  
provide for the health and safety of the adult as permitted by 3020  
law. 3021

**Section 2.** That existing sections 109.572, 313.12, 2108.50, 3022  
2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 3023  
5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 of the Revised 3024  
Code are hereby repealed. 3025

**Section 3.** The Department of Mental Retardation and 3026  
Developmental Disabilities shall adopt rules pursuant to Chapter 3027  
119. of the Revised Code that provide standards for the 3028  
substantiation by the Department and by county boards of mental 3029  
retardation of reports of abuse or neglect filed under section 3030  
5123.61 of the Revised Code. 3031

**Section 4.** That the version of section 5123.50 of the Revised 3032  
Code that is scheduled to take effect on December 31, 2003, be 3033  
amended to read as follows: 3034

**Sec. 5123.50.** As used in this section and sections 5123.51 3035  
~~and~~, 5123.52, and 5123.541 of the Revised Code: 3036

(A) "Abuse" means all of the following: 3037

(1) The use of physical force that can reasonably be expected 3038  
to result in physical harm or serious physical harm; 3039

(2) Sexual abuse; 3040

(3) Verbal abuse. 3041

(B) "Misappropriation" means depriving, defrauding, or 3042  
otherwise obtaining the real or personal property of an individual 3043  
by any means prohibited by the Revised Code, including violations 3044  
of Chapter 2911. or 2913. of the Revised Code. 3045

(C) "MR/DD employee" means all of the following: 3046

(1) An employee of the department of mental retardation and 3047  
developmental disabilities; 3048

(2) An employee of a county board of mental retardation and 3049  
developmental disabilities; 3050

(3) An employee in a position that includes providing 3051  
specialized services to an individual with mental retardation or a 3052

another developmental disability. 3053

(D) "Neglect" means, when there is a duty to do so, failing 3054  
to provide an individual with any treatment, care, goods, or 3055  
services that are necessary to maintain the health and safety of 3056  
the individual. 3057

(E) "Physical harm" and "serious physical harm" have the same 3058  
meanings as in section 2901.01 of the Revised Code. 3059

(F) "Sexual abuse" means unlawful sexual conduct or sexual 3060  
~~contact, as those terms are defined in section 2907.01 of the~~ 3061  
~~Revised Code.~~ 3062

(G) "Specialized services" means any program or service 3063  
designed and operated to serve primarily individuals with mental 3064  
retardation or a developmental disability, including a program or 3065  
service provided by an entity licensed or certified by the 3066  
department of mental retardation and developmental disabilities. A 3067  
program or service available to the general public is not a 3068  
specialized service. 3069

(H) "Verbal abuse" means purposely using words to threaten, 3070  
coerce, intimidate, harass, or humiliate an individual. 3071

(I) "Sexual conduct," "sexual contact," and "spouse" have the 3072  
same meanings as in section 2907.01 of the Revised Code. 3073

**Section 5.** That the existing version of section 5123.50 of 3074  
the Revised Code that is scheduled to take effect on December 31, 3075  
2003, is hereby repealed. 3076

**Section 6.** Sections 4 and 5 of this act shall take effect 3077  
December 31, 2003. 3078

**Section 7.** Sections 107.31 and 107.32 of the Revised Code 3079  
shall apply to all state institutional facilities, as defined in 3080

section 107.31 of the Revised Code, that were in operation on or 3081  
after January 1, 2003. 3082

**Section 8.** Section 109.572 of the Revised Code is presented 3083  
in this act as a composite of the section as amended by both Sub. 3084  
H.B. 448 and Sub. H.B. 538 of the 123rd General Assembly. Section 3085  
2151.421 of the Revised Code is presented in this act as a 3086  
composite of the section as amended by Am. Sub. H.B. 374, Sub. 3087  
H.B. 510, and Am. Sub. S.B. 221 all of the 124th General Assembly. 3088  
Section 5126.28 of the Revised Code is presented in this act as a 3089  
composite of the section as amended by both Sub. H.B. 538 and Sub. 3090  
S.B. 171 of the 123rd General Assembly. The General Assembly, 3091  
applying the principle stated in division (B) of section 1.52 of 3092  
the Revised Code that amendments are to be harmonized if 3093  
reasonably capable of simultaneous operation, finds that the 3094  
composites are the resulting versions of the sections in effect 3095  
prior to the effective date of the sections as presented in this 3096  
act. 3097